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4. An introduction to the finding aids of the FR/CFR system.

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

WHEN: Tuesday, September 14, 2010
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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Federal Register
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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG10

Surety Bond Guarantee Program; Size Standards

AGENCY: U.S. Small Business Administration.

ACTION: Direct final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is issuing this direct final rule to permanently adopt the temporary size standard implemented under the American Recovery and Reinvestment Act that is now in effect through September 30, 2010 for the Surety Bond Guarantee Program. The direct final rule provides that a business concern is small if such concern, combined with its affiliates, does not exceed the size standard for the North American Industry Classification System (NAICS) code that corresponds to the primary industry of the business concern combined with its affiliates.

DATES: This direct final rule is effective October 1, 2010 without further action, unless significant adverse comment is received by September 10, 2010. If significant adverse comment is received, SBA will publish a timely notice in the **Federal Register** to withdraw this direct final rule.

ADDRESSES: You may submit comments, identified by RIN 3245–AG10 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Office of Surety Guarantees, Suite 8600, 409 Third Street, SW., Washington, DC 20416.
- *Hand Delivery/Courier:* Office of Surety Guarantees, 409 Third Street, SW., Washington DC 20416.

SBA will post all comments on *http://www.regulations.gov*. If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.regulations.gov*, please submit information to Ms. Barbara Brannan, Special Assistant, Office of Surety Guarantees, 409 Third Street, SW., Washington, DC 20416 or send an e-mail to *Barbara.brannan@sba.gov*. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Brannan, Office of Surety Guarantees, 202–205–6545, e-mail: *Barbara.brannan@sba.gov*.

SUPPLEMENTARY INFORMATION:

I. Background Information

The Administrator of the Small Business Administration (SBA) is authorized to establish size standards by which a business concern may be determined to be a small business concern for purposes of the Small Business Act and any other Act. 15 USC 632(a)(2)(A). The SBA Administrator is generally required to ensure that size standards vary from industry to industry to the extent necessary to reflect the differing characteristics of the various industries. 15 U.S.C. 632(a)(2)(A).

Prior to the American Recovery and Reinvestment Act of 2009, Public Law 111–5 (Recovery Act), a business concern was deemed small under the Surety Bond Guarantee Program (SBG) if: (1) With respect to any construction (general or special trade) concern or concern performing a contract for services, its average annual receipts, together with its affiliates, did not exceed $7 million (except as provided in (3) below); (2) with respect to any concern not specified in (1) above, the business concern met the size standard for the primary industry in which it, combined with its affiliates, was engaged; or (3) with respect to any construction (general or special trade) concern or concern performing a contract for services in the Presidentially-declared disaster areas resulting from the 2005 Hurricanes Katrina, Rita or Wilma, the business concern, together with its affiliates, met either the size standard for the primary industry in which it, together with its affiliates, was engaged, or the size standard set forth in (1) above, whichever was higher.

As required by section 508(c) of the Recovery Act, SBA amended its regulations with respect to the Surety Bond Guarantee Program to provide that, notwithstanding the size standards set forth above, from February 19, 2009, through September 30, 2010, a business concern would be eligible for assistance under the SBG Program only if it, together with its affiliates, did not exceed the size standard for the primary industry in which the business concern, together with its affiliates, was engaged. This change temporarily raised the size standard for many firms in the construction and service industries because, as described in (1) above, the size standard for most construction and service firms seeking surety bond guarantees prior to the Recovery Act was $7 million. SBA has decided to permanently adopt the Recovery Act size standard. Without this action, approximately 8% of the businesses that qualified for assistance under the Recovery Act provision in fiscal year 2010 would be ineligible for bond guarantees after September 30, 2010, and the lack of access to bonding would jeopardize the continuity and growth of these businesses.

In addition, from February 17, 2009, until now, firms in service industries with size standards lower than $7 million lost their eligibility for surety bond guarantees if their annual revenue exceeded the size standard for the industry in which the firm, together with its affiliates, was engaged. This change only affected service industry concerns because all construction size standards are $7 million or higher. Although SBA does not anticipate that many firms wishing to provide services in the Presidentially-declared disaster areas resulting from Hurricanes Katrina, Rita or Wilma would be adversely affected by eliminating the alternative $7 million size standard under (3) above, SBA has decided to retain this option to ensure that no firm wishing to do such business would be denied assistance through the SBG Program. For purposes of surety bonds in connection with these contracts, a concern will continue to be small if the concern, together with its affiliates, meets the size standard for the primary industry in which it, together with its affiliates, is engaged, or if its average

annual receipts do not exceed $7 million, whichever is higher.

In accordance with 13 CFR 121.302(a), this rule will apply to applications for surety bond guarantees accepted for processing by SBA on or after October 1, 2010.

II. Consideration of Comments

SBA believes that this direct final rule is non-controversial since it simply adopts the temporary size standard established for the Surety Bond Guarantee Program under the Recovery Act, and would make the Surety Bond Guarantee Program size eligibility criteria consistent with SBA industry based standards. SBA also notes that it received no adverse comments to the temporary size standard that was published in the **Federal Register** on July 22, 2009 (74 FR 36110), and anticipates no significant adverse comments to this direct final rule. If SBA receives any significant adverse comments, it will publish a notice in the **Federal Register** for a timely withdrawal of this direct final rule.

Section Analysis

Section 121.301(d). SBA is permanently adopting a temporary provision of the American Recovery and Reinvestment Act of 2009 that specifies that a concern is small if it, together with its affiliates, meets the size standard corresponding to the NAICS code for the primary industry in which it, together with its affiliates, is engaged. This direct final rule will make the SBG Program size eligibility criteria consistent with SBA industry based standards. It will expand the scope of eligible small businesses and will enable SBA to assist more small businesses to obtain the bonding necessary for them to bid on and perform contracts. SBA is retaining the $7 million alternative size standard for construction or services contracts performed in the Presidentially-declared disaster areas resulting from the 2005 Hurricanes Katrina, Rita or Wilma.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this direct final rule does not constitute a significant regulatory action under Executive Order 12866. This rule is also not a major rule under the Congressional Review Act.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this direct final rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purpose of Executive Order 13132, Federalism, SBA has determined that this direct final rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C., Chapter 35

SBA has determined that this direct final rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

Regulatory Flexibility Act, 5 U.S.C. 601–612

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small non-profit enterprises, and small local governments. Pursuant to RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of this rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Within the meaning of RFA, SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities. There are 18 Sureties that participate in the SBG Program, and no part of this direct final rule would impose any significant additional cost or burden on them.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

■ For the reasons stated in the preamble, SBA amends 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

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

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 637(a), 644, 662(5) and 694a; Pub. L. 105–135, sec. 401 *et seq.,* 111 Stat. 2592.

■ 2. Amend § 121.301 by revising paragraph (d) to read as follows:

§ 121.301 What size standards are applicable to financial assistance programs?

* * * * *

(d) For Surety Bond Guarantee assistance—

(1) A business concern, combined with its affiliates, must meet the size standard for the primary industry in which such business concern, combined with its affiliates, is engaged.

(2) For any contract or subcontract, public or private, to be performed in the Presidentially-declared disaster areas resulting from the 2005 Hurricanes Katrina, Rita or Wilma, a construction (general or special trade) concern or concern performing a contract for services is small if it meets the size standard set forth in paragraph (d)(1) of this section, or the average annual receipts of the concern, together with its affiliates, do not exceed $7 million, whichever is higher.

* * * * *

Dated: August 5, 2010.

Karen G. Mills,

Administrator.

[FR Doc. 2010–19741 Filed 8–10–10; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0498; Airspace Docket No. 10–ASO–26]

Amendment of Class E Airspace; Pine Mountain, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E Airspace at Pine Mountain, GA, to accommodate the Standard Instrument Approach Procedures (SIAPs) developed for Harris County Airport.

DATES: Effective 0901 UTC, November 18, 2010. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to

the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

History

On May 24, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Pine Mountain, GA (75 FR 28765) Docket No. FAA–2010–0498. Interested persons were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends the Class E airspace extending upward from 700 feet above the surface at Pine Mountain, GA to provide controlled airspace required to support the SIAPs for Harris County Airport. This action is necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace at Pine Mountain, GA.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

■ 1. The authority citation for Part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO GA E5 Pine Mountain, GA [Amended]

Harris County Airport, GA
(Lat. 32°50′26″ N., long. 84°52′57″ W.)
Pine Mountain NDB, GA
(Lat. 32°50′34″ N., long. 84°52′22″ W.)

That airspace extending upward from 700 feet above the surface within a 8-mile radius of the Harris County Airport and within 8 miles north and 4 miles south of the 267° bearing from the Pine Mountain NDB extending from the 8-mile radius of the Harris County Airport to 16 miles from the Harris County Airport.

Issued in College Park, Georgia, on July 30, 2010.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2010–19584 Filed 8–10–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0416; Airspace Docket No. 10–AEA–12]

Establishment of Class E Airspace; Williamson, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E Airspace at Williamson, WV, to accommodate the additional airspace needed for the Standard Instrument Approach Procedures (SIAPs) developed for Mingo County Regional. This action also makes a minor adjustment to the geographic coordinates of the airport.

DATES: Effective 0901 UTC, November 18, 2010. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

History

On May 11, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Class E airspace at Williamson, WV (75 FR 26150) Docket No. FAA–2010–0416. Subsequent to publication, the FAA found that the geographic coordinates needed to be adjusted. This action makes that adjustment by incorporating the revised geographic coordinates into the final rule. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective

September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order. With the exception of editorial changes, and the changes described above, this rule is the same as that proposed in the NPRM.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes the Class E airspace extending upward from 700 feet above the surface at Williamson, WV, to provide controlled airspace required to support the SIAPs developed for Mingo County Regional. The geographic coordinates for the airport will be adjusted to coincide with the FAAs National Aeronautical Navigation Services. This action is necessary for the safety and management of IFR operations at the airports.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace at Williamson, WV.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AEA WV E5 Williamson, WV [New]

Mingo County Regional, WV
(Lat. 37°40′54″ N., long. 82°07′19″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Mingo County Regional.

Issued in College Park, Georgia, on August 2, 2010.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2010–19582 Filed 8–10–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2007–29305; Amdt. No. 91–314]

RIN 2120–AI92

Automatic Dependent Surveillance–Broadcast (ADS–B) Out Performance Requirements To Support Air Traffic Control (ATC) Service; OMB Approval of Information Collection

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; OMB approval of information collection.

SUMMARY: This document notifies the public of the Office of Management and Budget's (OMB's) approval of the information collection requirement contained in the FAA's final rule, "Automatic Dependent Surveillance–Broadcast (ADS–B) Out Performance Requirements To Support Air Traffic Control (ATC) Service," which was published on May 28, 2010.

DATES: The effective date of the final rule published on May 28, 2010, is August 11, 2010. However, because it contained new information collection requirements, compliance with the information collection provisions contained in § 91.225 was not required until they were approved by OMB. This document announces that OMB approval was received on July 29, 2010.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this document, contact Vincent Capezzuto, Surveillance and Broadcast Services, AJE–6, Air Traffic Organization, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 385–8637; e-mail *vincent.capezzuto@faa.gov.*

For legal questions concerning this document, contact Lorelei Peter, Office of the Chief Counsel, AGC–220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone 202–267–3134; e-mail *lorelei.peter@faa.gov.*

SUPPLEMENTARY INFORMATION: On May 28, 2010, the final rule, "Automatic Dependent Surveillance–Broadcast (ADS–B) Out Performance Requirements To Support Air Traffic Control (ATC) Service," was published in the **Federal Register** (75 FR 30160). In that rule, the FAA amended its regulations by adding equipage requirements and performance standards for Automatic Dependent Surveillance–Broadcast (ADS–B) Out avionics on aircraft operating in Classes A, B, and C airspace, as well as certain other specified classes of airspace within the U.S. National Airspace System (NAS).

In the **DATES** section of the final rule, the FAA noted that affected parties were not required to comply with the new information collection requirements in § 91.225 until OMB approved the FAA's request to collect the information. The regulation requires persons operating in the specified airspace to equip with Automatic Dependent Surveillance–Broadcast (ADS–B) Out avionics that continuously transmits aircraft information via automation for use in providing air traffic surveillance services. That information collection

requirement had not been approved by OMB at the time of publication.

In accordance with the Paperwork Reduction Act, the FAA submitted a copy of the information collection requirements to OMB for its review. OMB approved the collection on July 29, 2010, and assigned the information collection OMB Control Number 2120–0728, which expires on July 31, 2013.

This document is being published to inform affected parties of the approval, and to announce that as of July 29, 2010, affected parties are required to comply with the information collection requirements in § 91.225.

Issued in Washington, DC, on August 6, 2010.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. 2010–19809 Filed 8–10–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM10–27–000]

Update of the Federal Energy Regulatory Commission's Fees Schedule for Annual Charges for the Use of Government Lands; Corrections

Date: August 5, 2010.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule: Correction and correcting amendments.

SUMMARY: On July 28, 2010, the Federal Energy Regulatory Commission published a rule updating its schedule of fees for the use of government lands. The yearly update was based on the most recent schedule of fees for the use of linear rights-of-way prepared by the United States Forest Service. This document makes a preamble correction to that document and amends the CFR to correct an error resulting from that document.

DATES: *Effective Date:* August 11, 2010.

FOR FURTHER INFORMATION CONTACT: Fannie Kingsberry, Division of Financial Services, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6108.

SUPPLEMENTARY INFORMATION: In FR Doc. 2010–18201, appearing on page 44094 in the **Federal Register** of Wednesday, July 28, 2010, make the following preamble correction:

On page 44094, in the center column, in the **SUMMARY** section, beginning on the fourteenth line, correct the date "October 1, 2010" to read "October 1, 2009".

List of Subjects in 18 CFR Part 11

Electric power, Reporting and recordkeeping requirements.

■ In addition, the Commission corrects 18 CFR part 11 by making the following correcting amendment.

PART 11—ANNUAL CHARGES UNDER PART 1 OF THE FEDERAL POWER ACT

■ 1. The authority citation for part 11 continues to read as follows:

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352.

■ 2. In Appendix A to Part 11, add the following footnotes to the end of the fee schedule table:

Appendix A to Part 11—Fee Schedule for FY 2010

State			County			(Fee/acre/yr)
*	*	*	*	*	*	*

* State-average Land and Building value used when no county-specific is available.
** Land areas to be determined.

Thomas R. Herlihy,

Executive Director, Office of the Executive Director.

[FR Doc. 2010–19717 Filed 8–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 376

[Docket No. RM10–28–000; Order No. 738]

Supplement to Commission Procedures During Periods of Emergency Operations Requiring Activation of Continuity of Operations Plan

Issued August 5, 2010.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: In this rule the Commission supplements the procedures previously established with regard to filing and other requirements if the Commission is required to implement its Continuity of Operations Plan in response to an emergency situation that disrupts communications to or from the Commission's headquarters or which otherwise impairs headquarters operations. The rule temporarily tolls for purposes of further consideration the time period for Commission action required for relief from, or reinstatement of, an electric utility's mandatory purchase obligation under the Public Utility Regulatory Policies Act of 1978.

DATES: *Effective Date:* The rule will become effective August 11, 2010.

FOR FURTHER INFORMATION CONTACT:

Rachel E. Bryant, Office of the General Counsel, Federal Energy Regulatory Commission, Room 101–32, 888 First St., NE., Washington, DC 20426, (202) 502–6736.

Lawrence R. Greenfield, Office of the General Counsel, Federal Energy Regulatory Commission, Room 10D–01, 888 First St., NE., Washington, DC 20426, (202) 502–6415.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, John R. Norris, and Cheryl A. LaFleur.

I. Introduction

1. The Federal Energy Regulatory Commission (Commission) previously amended its regulations in Order No. 680 by modifying certain filing requirements and establishing procedures to be effective during emergencies affecting the Commission that require it to implement its Continuity of Operations Plan (COOP Plan). The COOP Plan was developed to address emergency conditions lasting up to 30 days during which Commission headquarters operations may be temporarily disrupted or communications may be temporarily unavailable, either of which may prevent the public or the Commission from meeting regulatory or statutory requirements.[1] The COOP Plan temporarily suspends filing requirements and ensures that deadlines for Commission actions that fall during the period the COOP Plan is in operation are met, thereby providing continuity in the conduct of the Commission's business and certainty to parties with business before the Commission.[2]

2. One procedure established by the COOP Plan tolls for purposes of further consideration the time periods for certain Commission actions that would otherwise be required during an emergency.[3] Examples of such actions include the 60-day period for acting on requests for Exempt Wholesale Generator or Foreign Utility Company status and the 30-day period for acting on requests for rehearing.[4] The Commission is now amending this list to also provide for the tolling of Commission action required in granting relief from, or reinstatement of, an electric utility's mandatory purchase obligation under section 210(m) of the Public Utility Regulatory Policies Act of 1978.[5]

II. Discussion

3. The Energy Policy Act of 2005 (EPAct 2005)[6] was signed into law on August 8, 2005. Section 1253(a) of EPAct 2005 added section 210(m) to the Public Utility Regulatory Policies Act of 1978[7] which provided, among other things, for termination of the requirement that an electric utility enter into a new contract or obligation to purchase electric energy from qualifying cogeneration facilities and qualifying small power production facilities (QFs) if the Commission finds that the QF has nondiscriminatory access to one of the three categories of markets defined in section 210(m)(1)(A), (B) or (C).[8] In consideration of the foregoing, the Commission previously amended Part 292 of the Commission's regulations.

4. Sections 292.309 and 292.310[9] set forth the standards and filing requirements for an application by an electric utility seeking to terminate the requirement to enter into new purchase contracts and obligations with QFs. Sections 292.311 and 292.313 similarly provide the standards and filing requirements for an application for reinstatement of an electric utility's mandatory purchase obligation.[10] In each of these situations the Commission issues an order within 90 days of such application either terminating or reinstating an electric utility's mandatory purchase obligation.

5. Section 376.209(c)[11] enables the Commission, during an emergency, to toll for purpose of further consideration the time periods for certain Commission actions. The Commission's regulations, while providing for the tolling of many Commission actions, do not address the termination of, or reinstatement of, the mandatory purchase obligation. To fill this gap, this rule amends the Commission's COOP Plan to include the tolling of the 90-day period for acting on applications requesting relief from, or reinstatement of, the mandatory purchase obligation.

III. Regulatory Flexibility Act Certification

6. The Regulatory Flexibility Act of 1980 (RFA)[12] generally requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities. This final rule concerns a matter of internal agency procedure and it will not have such an impact. An analysis under the RFA is not required.

IV. Information Collection Standard

7. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.[13] This final rule contains no new information collections. Therefore, OMB review of this final rule is not required.

V. Environmental Analysis

8. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment. Excluded from this requirement are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[14] This rule is procedural in nature and therefore falls within this exception; consequently, no environmental consideration is necessary.

VI. Document Availability

9. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

10. From the Commission's Home Page on the Internet, this information is available in the eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

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[1] More information concerning the COOP Plan can be found on the Commission's Web site at *http://www.ferc.gov/coop.asp.*

[2] Activation of the COOP Plan affects communications with headquarters only, and does not affect communications required to be made directly to the Commission's Regional Offices.

[3] For a complete list of procedures, see *Commission Procedures During Periods of Emergency Operations Requiring Activation of Continuity of Operations Plan,* Order No. 680, FERC Stats. & Regs. ¶ 31,223 (2006).

[4] To view a complete list of tolled Commission actions, see Order 680, FERC Stats. & Regs. ¶ 31,223 at P 5.

[5] *See* 16 U.S.C. 824a–3(m) (2006).

[6] Public Law 109–58, 1253, 119 Stat. 594 (2005).

[7] 16 U.S.C. 824a–3(m).

[8] *New PURPA Section 210(m) Regulations Applicable to Small Power Production and Cogeneration Facilities,* Order No. 688, FERC Stats. & Regs. ¶ 31,233, at P 1–8, *order on reh'g,* Order No. 688–A, FERC Stats. & Regs. ¶ 31,250 (2007) (characterizing the three market types as: (1) Auction based day-ahead and real time markets; (2) auction based real-time markets but not auction based day-ahead markets; and (3) comparable markets).

[9] 18 CFR 292.309, 292.310 (2010); *see also* 18 CFR § 292.312 (2010).

[10] 18 CFR 292.311, 292.313 (2010).

[11] 18 CFR 376.209(c) (2010).

[12] 5 U.S.C. 601–12 (2006).

[13] 5 CFR 1320.12 (2006).

[14] 18 CFR 380.4(a)(2) (2010); *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

11. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact Online Support at 1–866–208–3676 (e-mail at *FERCOnlineSupport@ferc.gov*), or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659 (e-mail at *public.referenceroom@ferc.gov*).

VII. Effective Date and Congressional Notification

12. The provisions of 5 U.S.C. 801 regarding Congressional review of final rules do not apply to this final rule, because the rule concerns agency procedure and practice and will not substantially affect the rights of non-agency parties.

13. These regulations are effective on August 11, 2010. The Commission finds that notice and public comments are unnecessary because this rule concerns only agency procedure or practice. Therefore, the Commission finds good cause to waive the notice period otherwise required before the effective date of a final rule.

List of Subjects in 18 CFR Part 376

Civil defense, Organization and functions (Government agencies).

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

■ In consideration of the foregoing, the Commission amends part 376, chapter I, title 18, Code of Federal Regulations, as follows:

PART 376—ORGANIZATION, MISSION, AND FUNCTIONS; COMMISSION OPERATION DURING EMERGENCY CONDITIONS

■ 1. The authority citation for part 376 continues to read as follows:

Authority: 5 U.S.C. 553; 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

■ 2. In § 376.209, paragraphs (c)(11) and (12) are revised and paragraph (c)(13) is added to read as follows:

§ 376.209 Procedures during periods of emergency requiring activation of the Continuity of Operations Plan.

* * * * *

(c) * * *

(11) 30-day period for acting on requests for rehearing;

(12) Time periods for acting on interlocutory appeals and certified questions; and

(13) 90-day period for acting on applications requesting relief from, or reinstatement of, an electric utility's mandatory purchase obligation pursuant to section 210(m) of the Public Utility Regulatory Policies Act of 1978.

* * * * *

[FR Doc. 2010–19779 Filed 8–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF STATE

22 CFR Part 62

RIN 1400–AC15

[Public Notice: 7114]

Exchange Visitor Program—Trainees and Interns

AGENCY: United States Department of State.

ACTION: Final rule.

SUMMARY: On June 19, 2007, the Department published an interim final rule amending its regulations regarding Trainees and Interns to, among other things, eliminate the distinction between "non-specialty occupations" and "specialty occupations," establish a new internship program, and modify the selection criteria for participation in a training program.

This document confirms the Interim Final Rule as final and amends the requirements to permit the use of telephone interviews to screen potential participants for eligibility, to remove the requirement that sponsors secure a Dun & Bradstreet report profiling companies with whom a participant will be placed and also amends this provision to provide clarification regarding the verification of Worker's Compensation coverage for participants and use of an Employer Identification Number to ascertain that a third-party host organization providing training is a viable entity, and to clarify that trainees and interns may repeat training and internship programs under certain conditions.

DATES: Effective September 10, 2010 this document confirms as final with changes, the interim final rule (E7–11703) published on June 19, 2007 (72 FR 33669).

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Deputy Assistant Secretary for Private Sector Exchange, U.S. Department of State, SA–5, 2200 C Street, NW., 5th Floor, Washington, DC 20522–0505; or e-mail at *JExchanges@state.gov.*

SUPPLEMENTARY INFORMATION: The Department published a Notice of Proposed Rulemaking (NPRM) on April 7, 2006 (71 FR 17768), followed by the Interim Final Rule on June 19, 2007. Having thoroughly reviewed the comments received, the Department has determined that it will, and hereby does, adopt the Interim Final Rule with minor amendments to four regulatory provisions to provide greater specificity regarding the selection, screening, placement and monitoring of trainee and intern participants.

Analysis of Comments

The Interim Final Rule addressed almost 1,600 comments received in response to the NPRM. Subsequently, the Department received a total of 120 comments involving multiple provisions of the Interim Final Rule. Of this total, 79 responses were identical form letters encouraged through a writing campaign directed by a third party organization that opposed the exclusion of trainees or interns from the field of veterinary sciences. As explained in both the proposed and interim final rules, the Department, as a matter of long established policy does not support use of the J–1 visa for clinical patient care including veterinary medicine. The sole exception to this policy are foreign medical graduates entering the United States for the purpose of graduate medical education of training. The activities undertaken by Foreign Medical Graduates (FMG) are specifically authorized by statute (The Mutual Educational and Cultural Exchange Act, as amended by the Health Care Professions Act, Pub. L. 94–484). The remaining 41 responses were from Exchange Visitor Program sponsors and the general public. The commenting parties addressed the following issues:

One comment was received recommending that the trainee and intern categories be separated into two distinct categories and one comment proposed a moratorium on all training programs. These two comments are beyond the scope of the Interim Rule in that such action was not proposed, nor is it current practice.

Six comments were received regarding § 62.22(b)(1), all of which were opposed to the requirement that internships must be related to the students' fields of study; these comments recommended that the Department eliminate this requirement. The Department has determined that for participants to benefit from the Exchange Visitor Program, it is essential that their training and internship programs be in their fields of study, and that they are adequately advanced in their chosen career fields to benefit from program participation. Otherwise, the risk exists that persons participating in these internships could be seen as a source of labor, rather than interns

gaining hands-on experience in their chosen career fields. This aspect of this rulemaking is intended to correct potential deficiencies in this exchange category identified by the United States Government Accountability Office's (GAO) October 2005 report entitled, "Stronger Action Needed to Improve Oversight and Assess Risks of the Summer Work and Travel and Trainee Categories of the Exchange Visitor Program." With respect to the importance of being adequately advanced in a career field, as an example, the Department questions whether an undergraduate with less than two semesters' credit in the field of education is sufficiently advanced in his or her field to engage in a classroom-based internship. Generally, it is common practice in the United States higher education community to pursue such experience during one's junior or senior year of study. Accordingly, the Department makes no change to the current requirement that students participating in an internship do so in their fields of study. Participants with insufficient academic preparation have been viewed as potential replacements for American workers rather than bona fide interns by the Government Accountability Office, as the activity is, or cannot be distinguished from ordinary work. Trainees and interns are therefore necessarily excluded from participation until such time as they have acquired sufficient education to justify this valuable experiential learning opportunity designed to further an established career track rather than to provide temporary employment to the non-immigrant alien. Further, and of particular concern to the Department is the past practice of placing participants as counter help in quick service restaurants or other counter service positions. The Department has found that training and internship placement plans submitted for these visitors are either questionable or in fact not adhered to by the third party host organizations. The Department finds that counter help positions are unskilled and casual labor. Placement of participants in these positions are prohibited as they are not suitable placements for interns and trainees and are seen as extended Summer Work Travel programs, and may bring the Department and the Exchange Visitor Program into notoriety and disrepute due to the potential displacement of American workers.

Fifteen (15) comments were received regarding § 62.22(d)(1). This regulation requires sponsors to ensure that trainees and interns have verifiable English language skills sufficient to function on a day-to-day basis in a training or internship environment. English language proficiency should, necessarily, be verified by a recognized English language test, by signed documentation from an academic institution or English language school, or through a measurable process (*i.e.,* an interview conducted by the sponsor in person, or by video conference). All comments suggested that telephone interviews also be permitted, as such telephonic interviewing is widely utilized in the business environment and deemed both reliable and sufficient. Noting that video conferencing is not as prevalent in some countries as in the United States, the Department agrees that use of telephone interviews is appropriate only if the availability of video conferencing is not available. The Department anticipates that sponsors will pursue diligently the video conferencing approach and will use telephone interviews as a secondary or tertiary method of determining English language proficiency. The text of § 62.22(d)(1) has been amended accordingly. The Department notes that many sponsors have already adopted this practice. Regardless of how the interview is conducted, sponsors' conclusions regarding English language proficiency must be documented and such information maintained by the sponsor in either documentary or electronic format for a three-year period following the completion of the exchange visitor's exchange program as stipulated in 22 CFR 62.10(h).

Fourteen (14) comments were received regarding § 62.22(d)(2), all of which opposed an eligibility requirement that trainees possess a degree or professional certificate from a foreign post-secondary academic institution and at least one year of prior related work experience in their occupational field acquired outside the United States, or, in the alternative, five years of work experience outside the United States in their occupational field. These comments recommended that two years of work experience, rather than five, be required. Two additional comments recommended that trainees should be eligible to participate in a training program directly following graduation rather than after obtaining a year of experience. The Department takes administrative notice of the GAO October 2005 report referenced above. This report highlighted the potential for the Trainee Program to be misused as an employment program, suggesting that negative experiences for exchange participants could undermine the public diplomacy underpinnings of the program. The Department's acceptance of these concerns prompted an overhaul of regulations governing the Trainee category and the publication of the NPRM followed by the Interim Final Rule that has been in effect since July 19, 2007. The Interim Final Rule eliminated the "non-specialty" and "specialty" categorizations of training activities, establishing in its place a "trainee," "intern" and "student intern" category, with participant eligibility requirements to ensure that the programs in these categories operate as intended and are not abused. With the benefit of two years of experience with these requirements, the Department finds that the Interim Final Rule eligibility requirements have addressed GAO concerns regarding program abuse; therefore, the Department sees no need to modify these requirements.

Nine (9) comments were received regarding § 62.22(f)(2)(vi), which requires that training and internship program sponsors certify that training and internship programs in the field of agriculture conform with the requirements of the Fair Labor Standards Act, as amended, and the Migrant and Seasonal Agricultural Worker Protection Act, as amended. The Department finds that these comments offered no compelling reason why agricultural training and internship programs should not meet the statutory protections afforded all workers in the United States. Thus, the Department has determined that this requirement is necessary to ensure the appropriate protections and treatment of foreign nationals, and makes no modification to these requirements.

One comment was received regarding § 62.22(g)(3)(i), the screening and vetting of host organizations. This comment opposed the collection of Dun & Bradstreet Identification Numbers. The requirement of a Dun & Bradstreet number was proposed to help the Department ensure the bona fides of a potential third party provider with whom sponsors contract for exchange visitor program-related services, or with whom they place program participants. The Department has examined further this interim requirement for a Dun & Bradstreet number and has determined that the potential financial and resource implications, to be borne by designated sponsors outweigh the utility of the report for oversight purposes. Accordingly, the Department has removed this requirement in the final rule.

A comment was received opposing site visits of host organizations by sponsors. The Department takes this

opportunity to again draw attention to the sponsor's responsibility to ensure that host organizations for trainees and interns possess and maintain both the ability and resources to provide structured and guided training or internship programs. Thus, site visits will be required for host organizations that have not previously participated successfully in the sponsor's training and internship programs if such organizations have fewer than 25 employees or less than three million dollars in annual revenue. The Department has determined that these requirements are a reasonable methodology to ensure that foreign nationals participating in these programs are being placed with employers capable of providing the training or internship experience that has been offered to the trainee or intern participant and documented on the required Training/Internship Placement Plan (Form DS–7002). This approach further helps to ensure that any training provider is properly motivated to participate in an experiential learning public diplomacy based activity and is not motivated by the desire for a temporary worker to meet transient labor needs. In addition, this requirement directly addresses GAO concerns. The Department makes no change to this rule.

Six comments were received relating to activities that are excluded from the training and internship programs as set forth at § 62.22(j)(1). These comments requested clarification of the meaning of "social work" and "medical social work" and whether both activities are excluded from training and internship programs. In addition, two comments proposed allowing supervised clinical activities. With the exception of the Alien Physician category, and as a matter of policy and long-standing practice, the Department finds that clinical-based activities fall outside the purview of the Exchange Visitor Program. Given this policy, the rule prohibits training or internship programs that involve "clinical" activities, i.e. those activities by definition or actual practice that involve or require direct patient contact. Thus, occupational fields as classified by the Department of Education's Classification of Instructional Programs (CIP) codes that fall under Public Administration and Social Service Professions (*i.e.,* youth services) will be permitted while occupational fields that fall under the Health Professions and Related Clinical Sciences classification of the CIP codes (*i.e.,* clinical/medical social work, hairdressers, dental services, nursing, veterinary medicine and services, etc.) are prohibited and no changes to the current interim regulation are being made.

Two (2) comments were received regarding the duration of internship program participation § 62.22(k) and nine (9) comments were received opposing the change in the program length of agriculture training programs from 18 months to 12 months. All 11 comments requested that the program length of training and internship programs be set at 18 months duration, as previously allowed under the now defunct "non-specialty" category for training programs. Mindful of the expertise of the GAO, and desiring to address criticism raised in no less than three GAO reports regarding the potential misuse of the Exchange Visitor Program for work purposes, the Department has determined that 12 months permits sufficient time to pursue a training program in the field of agriculture. Before entering the United States to participate in an agricultural training program, trainees must already have either a degree or professional certificate from a foreign post-secondary academic institution and at least one year of prior related work experience in their occupational field acquired outside the United States; or in the alternative, five years of work experience in their occupational field outside the United States. Thus, this level of expertise further supports the Department's view that 12 months provides an appropriate length of program participation and the Department makes no change to the rule.

Two comments were received opposing the provisions governing the eligibility of intern and trainee participants and their potential participation in additional internship and training programs, § 62.22(n). These requirements were adopted to ensure that the objectives of the Exchange Visitor Program are met (*i.e.,* that participants receive training that will advance their chosen career fields, that interns complete their education and return to their home country with enhanced skills, and that the Exchange Visitor Program is not utilized for ordinary work purposes). To meet these policy objectives, the rule at § 62.22(n) is amended to clearly permit foreign nationals to participate in additional internship programs as long as the participant maintains full-time student status, (*i.e.,* changes to a higher educational level, or begins a new internship program within 12 months of graduation). The Department concludes that this clarification augments the pool of potential participants and is desirable as a matter of policy.

Fourteen (14) comments were received regarding the certifications required on the Training/Internship Placement Plan (Form DS–7002). The Department acknowledges concerns raised regarding sponsor obligations to screen host organizations and has added a field to the Form DS–7002 that will collect the Employer Identification Number (EIN). The Department has ascertained that each state has adopted differing requirements for Workers' Compensation Insurance coverage. Accordingly, § 62.22(g) has been amended to require sponsors to verify the existence of either a Workers' Compensation Insurance Policy, equivalent coverage, or if applicable, evidence of state exemption from the requirement of coverage.

The regulatory language governing the duration of a training or internship program has been amended to clarify the inherent expectation that sponsors administer their programs in accordance with their letter of designation or most recent letter of redesignation. This language will ensure that the trainee or intern is fully aware of the expectations of their program identified in the outlined Training/Internship Placement Plan (T/IPP). Twelve-month training programs in the field of agriculture may not be extended to 18 months by adding six months of classroom participation and studies at the end of the original 12-month program duration. The six months of related classroom participation and studies must have been part of the trainee's original T/IPP.

Finally, the Department published a notice in the **Federal Register** on July 11, 2008, (73 FR 40008) which announced the termination of flight training from the Exchange Visitor Program as of June 1, 2010. The section which governed flight training regulations has been removed from the final rule. Current flight training sponsors continue to have obligations to their exchange visitors pursuant to 22 CFR 62.63, and they must fulfill their responsibilities to all exchange visitors who are in the United States until the individual's exchange program is completed.

Administrative Procedure Act

The Department originally published this rulemaking as a Proposed Rule, with a 60-day comment period. 71 FR 17768 (April 7, 2006). The Department received almost 1,600 comments in response to the NPRM, and incorporating many of the comments received into an Interim Final Rule and again solicited public comment (72 FR

33669 (June 19, 2007)). In response, the Department received and analyzed 120 comments. Certain suggestions identified above are incorporated in this Final Rule. The Department of State is of the opinion that the Exchange Visitor Program is a foreign affairs function of the United States Government and that regulations implementing this function are exempt from the provisions of 5 U.S.C. 553. This rulemaking process has been conducted without prejudice as to whether it involves a foreign affairs function of the United States exempt from the requirements of 5 U.S.C. 553 and without prejudice as to whether the Department may invoke that exemption in other contexts.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $1 million or more in any year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501–1504.

Small Business Regulatory Enforcement Fairness Act of 1996

This Final Rule has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 804(2). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Executive Orders 12372 and 13132

This rule will not have a substantial effect on the states, the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this Final Rule does not have sufficient federalism implications to warrant application of the consultation provisions of Executive Orders 12372 and 13132.

Regulatory Flexibility Act

In its promulgation of the Interim Final Rule at 72 FR at page 33673, the Department certified that the proposed changes to the regulations were not expected to have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 601–612, and Executive Order 13272, section 3(b). As discussed above, the Department is of the opinion that this Final Rule is exempt from the provisions of 5 U.S.C. 553, and no other law requires the Department of State to give notice of proposed rulemaking, and accordingly this proposed rule is not subject to the requirements of the Regulatory Flexibility Act. However, the Department has examined the potential impact of this final rule on small entities. Entities conducting student exchange programs are classified under code number 6117.10 of the North American Industry Classification System. Some 5,573 for profit and tax exempt entities are listed as falling within this classification. Of this total number of so-classified entities, 1,226 are designated by the Department of State as sponsors of an exchange visitor program, designated as such to further the public diplomacy mission of the Department and U.S. Government through the conduct of exchange visitor programs. Of these 1,226 Department designated entities, 933 are academic institutions and 293 are for profit or tax exempt entities. Of the 293 for profit or tax exempt entities designated by the Department, 131 have annual revenues of less than $7 million thereby falling within the purview of the Regulatory Flexibility Act. Of these 131 entities with revenues of less than $7 million, 50 are either an internship or a training program. Eight large, *i.e.* state universities are designated to conduct training and or intern based exchange activities. No state, local or tribal governments are designated training or intern sponsors. Although, as stated above, the Department is of the opinion that the Exchange Visitor Program is a foreign affairs function of the United States Government and, as such, that this final rule is exempt from the rulemaking provisions of § 553 of the Administrative Procedure Act, given the demonstrated lack of impact of this rule, discussed immediately below to the small entities conducting student exchange programs noted above, the Department has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities.

The Department notes that these regulations have been in place since June 2007 and that no entity designated to conduct training and intern programs has identified an additional cost of compliance, involving either money or manpower. The Department has been unable to identify any such additional cost as well, thus the Department certifies this Rule as not having a significant economic impact on its designated sponsoring organizations.

The Department's certification concerning impact on small entities is made without prejudice as to whether this rulemaking involves a foreign affairs function of the United States exempt from the Regulatory Flexibility Act, as the Department believes it is, and without prejudice as to whether the Department may invoke that exemption in any other context.

Executive Order 12866

The Department of State does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. The Department is of the opinion that the Exchange Visitor Program is a foreign affairs function of the United States Government and that rules governing the conduct of this function are exempt from the requirements of Executive Order 12866. However, the Department has nevertheless reviewed this proposed regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Training and Internship exchange programs conducted under the authorities of the Fulbright-Hays Act promote mutual understanding by providing exchange visitors in their academic or occupational fields through participation in structured and guided work-based training and internship programs and to improve participants' knowledge of American techniques, methodologies, and technology. Upon their return home, these students and participants enrich their schools and communities with different perspectives of U.S. culture and events, providing local communities with new and diverse perspectives. Training and internship exchanges also foster enduring relationships and lifelong friendships which help build longstanding ties between the people of the United States and other countries. Though the benefits of these exchanges to the United States and its people cannot be monetized, the Department is nonetheless of the opinion that these benefits outweigh the costs associated with this final rule. The final rule does not impose any additional costs, but does eliminate the cost associated with sponsor staff researching and identifying Dun and Bradstreet numbers as currently required by 22 CFR 62.22(g)(3)(i). The Department

calculates that the elimination of this requirement provides a net savings to sponsors of $140,000 (7,000 staff hours × $20 per hour).

Executive Order 12988

The Department has reviewed this Final Rule in light of Sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Section 5 of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

The information collection requirements contained in this rulemaking (Form DS–7002) have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. Chapter 35, under OMB Control Number 1405–0170, expiration date: 07/31/2012.

List of Subjects in 22 CFR Part 62

Cultural exchange programs, Reporting and recordkeeping requirements.

■ Accordingly, the interim final rule published on June 19, 2007 (72 FR 33669), amending 22 CFR part 62 confirmed as final with the following changes:

PART 62—EXCHANGE VISITOR PROGRAM

■ 1. The Authority citation for part 62 is revised to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258; 22 U.S.C. 1431–1442, 2451 *et seq.;* Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. 105–277, Div. G, 112 Stat. 2681 *et seq.;* Reorganization Plan No. 2 of 1977, 3 CFR, 1977 Comp. p. 200; E.O. 12048 of March 27, 1978; 3 CFR, 1978 Comp. p. 168; the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. 104–208, Div. C, 110 Stat. 3009–546, as amended; Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT) (Pub. L. 107–56), Section 416, 115 Stat. 354; and the Enhanced Border Security and Visa Entry Reform Act of 2002, Pub. L. 107–173; 116 Stat. 543.

■ 2. Section 62.22 is revised to read as follows:

§ 62.22 Trainees and Interns.

(a) *Introduction.* These regulations govern Exchange Visitor Programs under which foreign nationals with significant experience in their occupational field have the opportunity to receive training in the United States in such field. These regulations also establish a new internship program under which foreign national students and recent graduates of foreign post-secondary academic institutions have the opportunity to receive training in the United States in their field of academic study. These regulations include specific requirements to ensure that both trainees and interns receive hands-on experience in their specific fields of study/expertise and that they do not merely participate in work programs. Regulations dealing with training opportunities for certain foreign students who are studying at post-secondary accredited educational institutions in the United States are located at § 62.23 ("College and University Students"). Regulations governing alien physicians in graduate medical education or training are located at § 62.27 ("Alien Physicians").

(b) *Purpose.* (1)(i) The primary objectives of the programs offered under these regulations are to enhance the skills and expertise of exchange visitors in their academic or occupational fields through participation in structured and guided work-based training and internship programs and to improve participants' knowledge of American techniques, methodologies, and technology. Such training and internship programs are also intended to increase participants' understanding of American culture and society and to enhance Americans' knowledge of foreign cultures and skills through an open interchange of ideas between participants and their American associates. A key goal of the Fulbright-Hays Act, which authorizes these programs, is that participants will return to their home countries and share their experiences with their countrymen.

(ii) Exchange Visitor Program training and internship programs must not be used as substitutes for ordinary employment or work purposes; nor may they be used under any circumstances to displace American workers. The requirements in these regulations for trainees are designed to distinguish between *bona fide* training, which is permitted, and merely gaining additional work experience, which is not permitted. The requirements in these regulations for interns are designed to distinguish between a period of work-based learning in the intern's academic field, which is permitted (and which requires a substantial academic framework in the participant's field), and unskilled labor, which is not.

(2) In addition, a specific objective of the new internship program is to provide foreign nationals who are currently enrolled full-time and pursuing studies at a degree- or certificate-granting post-secondary academic institution or graduated from such an institution no more than 12 months prior to their exchange visitor program begin date a period of work-based learning to allow them to develop practical skills that will enhance their future careers. Bridging the gap between formal education and practical work experience and gaining substantive cross-cultural experience are major goals in educational institutions around the world. By providing training opportunities for current foreign students and recent foreign graduates at formative stages of their development, the U.S. Government will build partnerships, promote mutual understanding, and develop networks for relationships that will last through generations as these foreign nationals move into leadership roles in a broad range of occupational fields in their own societies. These results are closely tied to the goals, themes, and spirit of the Fulbright-Hays Act.

(c) *Designation.* (1) The Department may, in its sole discretion, designate as sponsors those entities it deems to meet the eligibility requirements set forth in Subpart A of 22 CFR part 62 and to have the organizational capacity successfully to administer and facilitate training and internship programs.

(2) Sponsors must provide training and internship programs only in the occupational category or categories for which the Department has designated them as sponsors. The Department may designate training and internship programs in any of the following occupational categories:

(i) Agriculture, Forestry, and Fishing;

(ii) Arts and Culture;

(iii) Construction and Building Trades;

(iv) Education, Social Sciences, Library Science, Counseling and Social Services;

(v) Health Related Occupations;

(vi) Hospitality and Tourism;

(vii) Information Media and Communications;

(viii) Management, Business, Commerce and Finance;

(ix) Public Administration and Law; and

(x) The Sciences, Engineering, Architecture, Mathematics, and Industrial Occupations.

(d) *Selection criteria.* (1) In addition to satisfying the general requirements set forth in § 62.10(a), sponsors must ensure that trainees and interns have verifiable English language skills sufficient to function on a day-to-day basis in their training environment. Sponsors must verify an applicant's English language proficiency through a recognized English language test, by signed documentation from an academic institution or English language school, or through a documented interview conducted by the sponsor either in-person or by videoconferencing, or by telephone if videoconferencing is not a viable option.

(2) Sponsors of training programs must verify that all potential trainees are foreign nationals who have either a degree or professional certificate from a foreign post-secondary academic institution and at least one year of prior related work experience in their occupational field acquired outside the United States or five years of work experience in their occupational field acquired outside the United States.

(3) Sponsors of internship programs must verify that all potential interns are foreign nationals who are currently enrolled full-time and pursuing studies in their advanced chosen career field at a degree- or certificate-granting post-secondary academic institution outside the United States or graduated from such an institution no more than 12 months prior to their exchange visitor program begin date.

(e) *Issuance of Forms DS–2019.* In addition to the requirements set forth in Subpart A, sponsors must ensure that:

(1) They do not issue Forms DS–2019 to potential participants in training and internship programs until they secure placements for trainees or interns and complete and secure requisite signatures on Form DS–7002, Training/Internship Placement Plan (T/IPP);

(2) Trainees and interns have sufficient finances to support themselves for their entire stay in the United States, including housing and living expenses; and

(3) The training and internship programs expose participants to American techniques, methodologies, and technology and expand upon the participants' existing knowledge and skills. Programs must not duplicate the participants' prior work experience or training received elsewhere.

(f) *Obligations of training and internship program sponsors.* (1) Sponsors designated by the Department to administer training and internship programs must:

(i) Ensure that trainees and interns are appropriately selected, placed, oriented, supervised, and evaluated;

(ii) Be available to trainees and interns (and host organizations, as appropriate) to assist as facilitators, counselors, and information resources;

(iii) Ensure that training and internship programs provide a balance between the trainees' and interns' learning opportunities and their contributions to the organizations in which they are placed;

(iv) Ensure that the training and internship programs are full-time (minimum of 32 hours a week); and

(v) Ensure that any host organizations and third parties involved in the recruitment, selection, screening, placement, orientation, evaluation for, or the provision of training and internship programs are sufficiently educated on the goals, objectives, and regulations of the Exchange Visitor Program and adhere to all regulations set forth in this Part as well as all additional terms and conditions governing Exchange Visitor Program administration that the Department may from time to time impose.

(2) Sponsors must certify that they or any host organization acting on the sponsor's behalf:

(i) Have sufficient resources, plant, equipment, and trained personnel available to provide the specified training and internship program;

(ii) Provide continuous on-site supervision and mentoring of trainees and interns by experienced and knowledgeable staff;

(iii) Ensure that trainees and interns obtain skills, knowledge, and competencies through structured and guided activities such as classroom training, seminars, rotation through several departments, on-the-job training, attendance at conferences, and similar learning activities, as appropriate in specific circumstances;

(iv) Conduct periodic evaluations of trainees and interns, as set forth in § 62.22(l);

(v) Do not displace full- or part-time or temporary or permanent American workers or serve to fill a labor need and ensure that the positions that trainees and interns fill exist primarily to assist trainees and interns in achieving the objectives of their participation in training and internship programs; and

(vi) Certify that training and internship programs in the field of agriculture meet all the requirements of the Fair Labor Standards Act, as amended (29 U.S.C. 201 *et seq.*) and the Migrant and Seasonal Agricultural Worker Protection Act, as amended (29 U.S.C. 1801 *et seq.*).

(3) Sponsors or any third parties acting on their behalf must complete thorough screening of potential trainees or interns, including a documented interview conducted by the sponsor either in-person or by videoconferencing, or by telephone if videoconferencing is not a viable option.

(4) Sponsors must retain all documents referred to in § 62.22(f) for at least three years following the completion of all training and internship programs. Documents and any requisite signatures may be retained in either hard copy or electronic format.

(g) *Use of third parties.* (1) *Sponsors use of third parties.* Sponsors may engage third parties (including, but not limited to host organizations, partners, local businesses, governmental entities, academic institutions, and other foreign or domestic agents) to assist them in the conduct of their designated training and internship programs. Such third parties must have an executed written agreement with the sponsor to act on behalf of the sponsor in the conduct of the sponsor's program. This agreement must outline the obligations and full relationship between the sponsor and third party on all matters involving the administration of their exchange visitor program. A sponsor's use of a third party does not relieve the sponsor of its obligations to comply with and to ensure third party compliance with Exchange Visitor Program regulations. Any failure by any third party to comply with the regulations set forth in this Part or with any additional terms and conditions governing Exchange Visitor Program administration that the Department may from time to time impose will be imputed to the sponsors engaging such third party.

(2) *Screening and vetting third parties operating outside the United States.* Sponsors must ascertain that third parties operating outside the United States are legitimate entities within the context of their home country environment. For third parties that operate as businesses, sponsors must obtain relevant home country documentation, such as a business registration or certification. Such home country documentation must include an English Language translation for any business registration or certification documents submitted in a foreign language. Written agreements between sponsors and third parties operating outside the United States must include annually updated price lists for training and internship programs offered by each third party, and must indicate that such

overseas third parties are sufficiently trained in all aspects of the programs they represent, including the regulations set forth in this Part.

(3) *Screening and vetting host organizations.* Sponsors must adequately screen all potential host organizations at which a trainee or intern will be placed by obtaining the following information:

(i) Employer Identification Number (EIN) used for tax purposes;

(ii) Third party verification of telephone number, address, and professional activities, *e.g.,* via advertising, brochures, Web site, and/or feedback from prior participants; and

(iii) Verification of Worker's Compensation Insurance Policy or equivalent in each state or, if applicable, evidence of state exemption from requirement of coverage.

(4) *Site visits of host organizations.* Sponsors must conduct site visits of host organizations that have not previously participated successfully in the sponsor's training and internship programs and that have fewer than 25 employees or less than three million dollars in annual revenue. Placements at academic institutions or at federal, state, or local government offices are specifically excluded from this requirement. The purpose of the site visits is for the sponsors to ensure that host organizations possess and maintain the ability and resources to provide structured and guided work-based learning experiences according to individualized T/IPPs and that host organizations understand and meet their obligations set forth in this Part.

(h) *Host organization obligations.* Sponsors must ensure that:

(1) Host organizations sign a completed Form DS–7002 to verify that all placements are appropriate and consistent with the objectives of the trainees or interns as outlined in their program applications and as set forth in their T/IPPs. All parties involved in internship programs should recognize that interns are seeking entry-level training and experience. Accordingly, all placements must be tailored to the skills and experience level of the individual intern;

(2) Host organizations notify sponsors promptly of any concerns about, changes in, or deviations from T/IPPs during training and internship programs and contact sponsors immediately in the event of any emergency involving trainees or interns;

(3) Host organizations abide by all federal, state, and local occupational health and safety laws; and

(4) Host organizations abide by all program rules and regulations set forth by the sponsors, including the completion of all mandatory program evaluations.

(i) *Training/internship placement plan (Form DS–7002).* (1) Sponsors must fully complete and obtain all requisite signatures on a Form DS–7002 for each trainee or intern before issuing a Form DS–2019. Sponsors must provide each signatory an executed copy of the Form DS–7002. Upon request, trainees and interns must present their fully executed Form DS–7002 to Consular Officials during their visa interview.

(2) To further distinguish between *bona fide* training for trainees or work-based learning for interns, which are permitted, and unskilled or casual labor positions which are not, all T/IPPs must:

(i) State the specific goals and objectives of the training and internship program (for each phase or component, if applicable);

(ii) Detail the knowledge, skills, or techniques to be imparted to the trainee or intern (for each phase or component, if applicable); and

(iii) Describe the methods of performance evaluation and the supervision for each phase or component, if applicable.

(3) A T/IPP for trainees must be divided into specific and various phases or components, and for each phase or component must:

(i) Describe the methodology of training and

(ii) Provide a chronology or syllabus.

(4) A T/IPP for interns must:

(i) Describe the role of the intern in the organization and, if applicable, identify various departments or functional areas in which the intern will work; and

(ii) Identify the specific tasks and activities the intern will complete.

(j) *Program exclusions.* Sponsors designated by the Department to administer training and internship programs must not:

(1) Place trainees or interns in unskilled or casual labor positions, in positions that require or involve child care or elder care; or in clinical or any other kind of work that involves patient care or patient contact, including any work that would require trainees or interns to provide therapy, medication, or other clinical or medical care (*e.g.,* sports or physical therapy, psychological counseling, nursing, dentistry, veterinary medicine, social work, speech therapy, early childhood education);

(2) Place trainees or interns in positions, occupations, or businesses that could bring the Exchange Visitor Program or the Department into notoriety or disrepute; or

(3) Engage or otherwise cooperate or contract with a Staffing/Employment Agency to recruit, screen, orient, place, evaluate, or train trainees or interns, or in any other way involve such agencies in an Exchange Visitor Program training and internship program.

(4) Issue a T/IPP for any trainee or intern for which the duties involve more than 20 per cent clerical work.

(5) Have less than three departmental or functional rotations for "Hospitality and Tourism" training and internship programs of six months or longer.

(k) *Duration.* The duration of participation in a training and internship program must be established before a sponsor issues a Form DS–2019 and must not exceed the sponsor's authorized designation as set forth in the sponsor's letter of designation or most recent letter of redesignation. Except as noted below, the maximum duration of a training program is 18 months, and the maximum duration of an internship program is 12 months. For training programs in the field of agriculture and in the occupational category of Hospitality and Tourism, the maximum duration of program participation is 12 months. If an original T/IPP specifies that at least six months of a program includes related classroom participation and studies, training programs in the field of agriculture may be designated for a total duration of 18 months. Program extensions are permitted within the maximum duration as set forth in the letter of designation/redesignation provided that the need for an extended training or internship program is documented by the full completion and execution of a new Form DS–7002. 12-month training programs in the field of agriculture may not be extended to 18 months by adding six months of classroom participation and studies at the end of the original 12-month program duration. Per above, the six months of related classroom participation and studies must have been part of the trainee's original T/IPP.

(l) *Evaluations.* In order to ensure the quality of training and internship programs, sponsors must develop procedures for evaluating all trainees and interns. All required evaluations must be completed prior to the conclusion of a training and internship program, and both the trainees and interns and their immediate supervisors must sign the evaluation forms. For programs exceeding six months' duration, at a minimum, midpoint and concluding evaluations are required. For programs of six months or less, at a minimum, concluding evaluations are

required. Sponsors must retain trainee and intern evaluations (electronic or hard copy) for a period of at least three years following the completion of each training and internship program.

(m) *Issuance of certificate of eligibility for exchange visitor (J–1) status.* Sponsors must not deliver or cause to be delivered any Certificate of Eligibility for Exchange Visitor (J–1) Status (Form DS–2019) to potential trainees or interns unless the individualized Form DS–7002 required by § 62.22(i) has been completed and signed by all requisite parties.

(n) *Additional training and internship program participation.* Foreign nationals who enter the United States under the Exchange Visitor Program to participate in training and internship programs are eligible to participate in additional training and internship programs under certain conditions. For both trainees and interns, additional training and internship programs must address the development of more advanced skills or a different field of expertise. Interns may apply for additional internship programs if they:

(1) Are currently enrolled full-time and pursuing studies at degree- or certificate-granting post-secondary academic institutions outside the United States; or,

(2) Have graduated from such institutions no more than 12 months prior to the start of their proposed exchange visitor program. A new internship is also permissible when a student has successfully completed a recognized course of study (*i.e.,* associate, bachelors, masters, Ph.D., or their recognized equivalents) and has enrolled and is pursuing studies at the next higher level of academic study. Trainees are eligible for additional training programs after a period of at least two years residency outside the United States following completion of their training program. Participants who have successfully completed internship programs and no longer meet the selection criteria for an internship program may participate in a training program if they have resided outside the United States or its territories for at least two years. If participants meet these selection criteria and fulfill these conditions, there will be no limit to the number of times they may participate in a training and internship program.

Dated: August 5, 2010.

Stanley S. Colvin,

Deputy Assistant Secretary for Private Sector Exchange, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–19727 Filed 8–10–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 560

Iranian Transactions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control ("OFAC") is publishing the names of 21 persons it has determined to be the *Government of Iran,* as that term is defined in the Iranian Transactions Regulations. The names of these persons will be added, at a future date, to Appendix A to Part 560 in the Code of Federal Regulations.

DATES: The determination by the Director of OFAC with respect to these 21 persons is effective on August 3, 2010.

FOR FURTHER INFORMATION CONTACT: Assistant Director for Compliance, Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

The Iranian Transactions Regulations, 31 CFR part 560 (the "ITR"), implement a series of Executive orders that began with Executive Order 12613, which was issued on October 29, 1987, pursuant to authorities including the International Security and Development Cooperation Act of 1985 (22 U.S.C. 2349aa–9). In that Order, after finding, *inter alia,* that the Government of Iran was actively supporting terrorism as an instrument of state policy, the President prohibited the importation of Iranian-origin goods and services. Subsequently, in Executive Order 12957, issued on March 15, 1995, under the authority of, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) ("IEEPA"), the President declared a national emergency with respect to the actions and policies of the Government of Iran, including its support for international terrorism, its efforts to undermine the Middle East peace process, and its efforts to acquire weapons of mass destruction and the means to deliver them. To deal with that threat, Executive Order 12957 imposed prohibitions on certain transactions with respect to the development of Iranian petroleum resources. On May 6, 1995, to further respond to this threat, the President issued Executive Order 12959, which imposed comprehensive trade and financial sanctions on Iran. Finally, on August 19, 1997, the President issued Executive Order 13059 consolidating and clarifying the previous orders.

The ITR implement these Executive orders and prohibit various transactions, including, among others, transactions with the *Government of Iran,* a term defined in section 560.304. That definition includes:

(a) The state and the Government of Iran, as well as any political subdivision, agency, or instrumentality thereof;

(b) Any entity owned or controlled directly or indirectly by the foregoing; and

(c) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, * * * acting or purporting to act directly or indirectly on behalf of any of the foregoing * * *.

The phrase *entity owned or controlled by the Government of Iran* is itself defined in section 560.313 of the ITR. OFAC today is publishing the names of 21 persons it has determined to be the *Government of Iran.* The names of these persons will be added to Appendix A to Part 560 at a later date.

It is important to note that Appendix A to Part 560 is not a comprehensive list of persons falling within the definition of *Government of Iran.* Even if a person is not listed in Appendix A to Part 560 or has not otherwise been specifically determined by OFAC to be the *Government of Iran,* if the person satisfies the definition of the term *Government of Iran* in the ITR, U.S. persons and others engaging in transactions subject to the ITR are prohibited from engaging in transactions with that person, regardless of its location, to the same extent they are prohibited from engaging in transactions with the persons listed in Appendix A to Part 560 or that have otherwise been specifically determined by OFAC to be the *Government of Iran.* U.S. persons and others engaging in transactions subject to the ITR also are prohibited from engaging in most transactions with any person located in Iran, even if that person does not come within the

definition of the term *Government of Iran.* Finally, a person listed in Appendix A to Part 560 or otherwise specifically determined by OFAC to be the *Government of Iran* also may be subject to other sanctions programs administered by OFAC, in which case that person's name would also appear in the list at Appendix A to 31 CFR chapter V or on OFAC's Specially Designated Nationals and Blocked Persons List ("SDN" list), available on OFAC's Web site. Such a person is identified in Appendix A to Part 560, Appendix A to 31 CFR chapter V, or the SDN list by references ("tags"), located at the end of the person's listing, to the sanctions program(s) to which the person is subject (*e.g.,* [IRAN] [NPWMD] or [IRAN] [SDGT]).

OFAC has determined the following persons to be the *Government of Iran:*

Entities

1. ASCOTEC HOLDING GMBH (f.k.a. AHWAZ STEEL COMMERCIAL & TECHNICAL SERVICE GMBH ASCOTEC; f.k.a. AHWAZ STEEL COMMERCIAL AND TECHNICAL SERVICE GMBH ASCOTEC; a.k.a. ASCOTEC GMBH), Tersteegen Strasse 10, Dusseldorf 40474, Germany; Registration ID HRB 26136 (Germany); all offices worldwide [IRAN]

2. ASCOTEC JAPAN K.K., 8th Floor, Shiba East Building, 2–3–9 Shiba, Minato-ku, Tokyo 105–0014, Japan; all offices worldwide [IRAN]

3. ASCOTEC MINERAL & MACHINERY GMBH (a.k.a. ASCOTEC MINERAL AND MACHINERY GMBH; f.k.a. BREYELLER KALTBAND GMBH), Tersteegenstr. 10, Dusseldorf 40474, Germany; Registration ID HRB 55668 (Germany); all offices worldwide [IRAN]

4. ASCOTEC SCIENCE & TECHNOLOGY GMBH (a.k.a. ASCOTEC SCIENCE AND TECHNOLOGY GMBH), Tersteegenstrasse 10, Dusseldorf D 40474, Germany; Registration ID HRB 58745 (Germany); all offices worldwide [IRAN]

5. ASCOTEC STEEL TRADING GMBH (a.k.a. ASCOTEC STEEL), Tersteegenstr. 10, Dusseldorf 40474, Germany; Georg-Glock-Str. 3, Dusseldorf 40474, Germany; Registration ID HRB 48319 (Germany); all offices worldwide [IRAN]

6. BANK TORGOVOY KAPITAL ZAO (a.k.a. TC BANK; a.k.a. TK BANK; a.k.a. TK BANK ZAO; a.k.a. TORGOVY KAPITAL (TK BANK); a.k.a. TRADE CAPITAL BANK; a.k.a. TRADE CAPITAL BANK (TC BANK); a.k.a. ZAO BANK TORGOVY KAPITAL), 3 Kozlova Street, Minsk 220005, Belarus; Registration ID 30 (Belarus); all offices worldwide [IRAN]

7. BREYELLER STAHL TECHNOLOGY GMBH & CO. KG (a.k.a. BREYELLER STAHL TECHNOLOGY GMBH AND CO. KG; f.k.a. ROETZEL–STAHL GMBH & CO. KG; f.k.a. ROETZEL–STAHL GMBH AND CO. KG), Josefstrasse 82, Nettetal 41334, Germany; Registration ID HRA 4528 (Germany); all offices worldwide [IRAN]

8. EXPORT DEVELOPMENT BANK OF IRAN (a.k.a. BANK TOSEH SADERAT IRAN; a.k.a. BANK TOWSEEH SADERAT IRAN; a.k.a. BANK TOWSEH SADERAT IRAN; a.k.a. EDBI), Export Development Building, Next to the 15th Alley, Bokharest Street, Argentina Square, Tehran, Iran; Tose'e Tower, Corner of 15th St., Ahmed Qasir Ave., Argentine Square, Tehran, Iran; No. 129, 21's Khaled Eslamboli, No. 1 Building, Tehran, Iran; No. 26, Tosee Tower, Arzhantine Square, P.O. Box 15875–5964, Tehran 15139, Iran; No. 4, Gandi Ave., Tehran 1516747913, Iran; Registration ID 86936 (Iran) issued 10 Jul 1991; all offices worldwide [IRAN] [NPWMD]

9. IFIC HOLDING AG (a.k.a. IHAG), Koenigsallee 60 D, Dusseldorf 40212, Germany; Registration ID HRB 48032 (Germany); all offices worldwide [IRAN]

10. IHAG TRADING GMBH, Koenigsallee 60 D, Dusseldorf 40212, Germany; Registration ID HRB 37918 (Germany); all offices worldwide [IRAN]

11. INDUSTRIAL DEVELOPMENT AND RENOVATION ORGANIZATION OF IRAN (a.k.a. IDRO; a.k.a. IRAN DEVELOPMENT & RENOVATION ORGANIZATION COMPANY; a.k.a. IRAN DEVELOPMENT AND RENOVATION ORGANIZATION COMPANY; a.k.a. SAWZEMANE GOSTARESH VA NOWSAZI SANAYE IRAN), Vali Asr Building, Jam e Jam Street, Vali Asr Avenue, Tehran 15815–3377, Iran; all offices worldwide [IRAN]

12. IRAN FOREIGN INVESTMENT COMPANY (a.k.a. IFIC), No. 4, Saba Blvd., Africa Blvd., Tehran 19177, Iran; P.O. Box 19395–6947, Tehran, Iran; all offices worldwide [IRAN]

13. IRANIAN MINES AND MINING INDUSTRIES DEVELOPMENT AND RENOVATION ORGANIZATION (a.k.a. IMIDRO; a.k.a. IRAN MINING INDUSTRIES DEVELOPMENT AND RENOVATION ORGANIZATION; a.k.a. IRANIAN MINES AND MINERAL INDUSTRIES DEVELOPMENT AND RENOVATION), No. 39, Sepahbod Gharani Avenue, Ferdousi Square, Tehran, Iran; all offices worldwide [IRAN]

14. IRASCO S.R.L. (a.k.a. IRASCO ITALY), Via Di Francia 3, Genoa 16149, Italy; Registration ID GE 348075 (Italy); all offices worldwide [IRAN]

15. MACHINE SAZI ARAK CO. LTD. (a.k.a. MACHINE SAZI ARAK COMPANY P J S C; a.k.a. MACHINE SAZI ARAK SSA; a.k.a. MASHIN SAZI ARAK; a.k.a. "MSA"), Arak, Km 4 Tehran Road, Arak, Markazi Province, Iran; No. 1, Northern Kargar Street, Tehran 14136, Iran; P.O. Box 148, Arak 351138, Iran; all offices worldwide [IRAN]

16. MAHAB GHODSS CONSULTING ENGINEERING COMPANY (a.k.a. MAHAB GHODSS CONSULTING ENGINEERING CO.; a.k.a. MAHAB GHODSS CONSULTING ENGINEERS SSK; a.k.a. MAHAB QODS ENGINEERING CONSULTING CO.), 16 Takharestan Alley, Dastgerdy Avenue, P.O. Box 19395–6875, Tehran 19187 81185, Iran; No. 17, Dastgerdy Avenue, Takharestan Alley, 19395–6875, Tehran 1918781185, Iran; Registration ID 48962 (Iran) issued 1983; all offices worldwide [IRAN]

17. METAL & MINERAL TRADE S.A.R.L. (a.k.a. METAL & MINERAL TRADE (MMT); a.k.a. METAL AND MINERAL TRADE (MMT); a.k.a. METAL AND MINERAL TRADE S.A.R.L.; a.k.a. MMT LUXEMBURG; a.k.a. MMT SARL), 11b, Boulevard Joseph II L–1840, Luxembourg; Registration ID B 59411 (Luxembourg); all offices worldwide [IRAN]

18. MINES AND METALS ENGINEERING GMBH (M.M.E.), Georg-Glock-Str. 3, Dusseldorf 40474, Germany; Registration ID HRB 34095 (Germany); all offices worldwide [IRAN]

19. ONERBANK ZAO (a.k.a. EFTEKHAR BANK; a.k.a. HONOR BANK; a.k.a. HONORBANK; a.k.a. HONORBANK ZAO; a.k.a. ONER BANK; a.k.a. ONERBANK; a.k.a. ONER–BANK), Ulitsa Klary Tsetkin 51, Minsk 220004, Belarus; Registration ID 807000227 (Belarus) issued 16 Oct 2009; SWIFT/BIC HNRBBY2X (Belarus); all offices worldwide [IRAN]

20. SINA BANK (f.k.a. BFCC; f.k.a. BONYAD FINANCE AND CREDIT COMPANY; f.k.a. SINA FINANCE AND CREDIT COMPANY), 187 Motahhari Avenue, P.O. Box 1587998411, Tehran, Iran; Kish Financial Center, Sahel, Kish Island, Iran; SWIFT/BIC SINAIRTH (Iran); alt. SWIFT/BIC SINAIRTH418 (Iran); all offices worldwide [IRAN]

21. WEST SUN TRADE GMBH (a.k.a. WEST SUN TRADE), Winterhuder Weg 8, Hamburg 22085, Germany; Arak Machine Mfg. Bldg., 2nd Floor, opp. of College Economy, Northern Kargar Ave., Tehran 14136, Iran; Mundsburger Damm 16, Hamburg 22087, Germany; Registration ID HRB 45757 (Germany); all offices worldwide [IRAN]

Dated: August 3, 2010.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2010–19781 Filed 8–10–10; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 3 and 165

[Docket No. USCG–2010–0351]

RIN 1625–ZA25

Navigation and Navigable Waters; Technical, Organizational, and Conforming Amendments, Sector Columbia River, WA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: This rule makes non-substantive changes throughout our regulations. The purpose of this rule is to make conforming amendments and technical corrections to reflect the renaming of Sector Seattle to Sector Puget Sound as part of the Coast Guard reorganization.

DATES: This final rule is effective 12:01 a.m. on August 16, 2010.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2010–0351 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2010–0351 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lt. Matthew Jones, Coast Guard; telephone 206–220–7110, e-mail *Matthew.m.jones@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this rule. Under 5 U.S.C. 553(b)(3)(A), the Coast Guard finds this rule is exempt from notice and comment rulemaking requirements because these changes involve rules of agency organization, procedure, or practice. In addition, the Coast Guard finds notice and comment procedure are unnecessary under 5 U.S.C. 553(b)(3)(B) as this rule consists only of corrections and editorial, organizational, and conforming amendments and these changes will have no substantive effect on the public.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that, for the same reasons, good cause exists for making this rule effective upon publication in the **Federal Register**.

Basis and Purpose

This rule makes technical and editorial corrections to Title 33 parts 3 and 165 in the Code of Federal Regulations. This internal agency reorganization establishes Sector Columbia River and is part of a process begun in 2004, intended to strengthen unity of command in Coast Guard port, waterway and coastal areas.

Discussion of Rule

This rule revises 33 CFR parts 3 and 165 to reflect changes in Coast Guard internal organizational structure. Sector Portland has been disestablished and Sector Columbia River has been established in its place. This rule revises 33 CFR parts 3 and 165 to reflect the Sector Columbia River and Captain of the Port Zone name change in current regulations. This rule is a technical revision reflecting changes in agency procedure and organization, and does not indicate new authorities nor create any substantive requirements.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Because this rule involves non-substantive changes and internal agency practices and procedures, it will not impose any additional costs on the public.

Small Entities

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

We estimate this rule will not impose any additional costs and should have little or no impact on small entities because the provisions of this rule are technical and non-substantive, and will have no substantive effect on the public and will impose no additional costs. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects

33 CFR Part 3

Organization and functions (government agencies).

33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 3 and 165 as follows:

PART 3—COAST GUARD AREAS, DISTRICTS, SECTORS, MARINE INSPECTION ZONES, AND CAPTAIN OF THE PORT ZONES

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

Authority: 14 U.S.C. 92, Pub. L. 107–296, 116 Stat. 2135; Department of Homeland Security Delegation No. 0170.1, para. 2(23).

■ 2. Revise § 3.65–15 to read as follows:

§ 3.65–15 Sector Columbia River Marine Inspection Zone and Captain of the Port Zone.

Sector Columbia River's office is located in Astoria, OR. The boundaries of Sector Columbia River's Marine Inspection and Captain of the Port Zones start at the Washington coast at latitude 47°32′00″ N, longitude 124°21′15″ W, proceeding along this latitude east to latitude 47°32′00″ N, longitude 123°18′00″ W; thence south to latitude 46°55′00″ N, longitude 123°18′00″ W; thence east along this latitude to the eastern Idaho state line; thence southeast along the Idaho state line to the intersection of the Idaho-Wyoming boundary; thence south along the Idaho-Wyoming boundary to the intersection of the Idaho-Utah-Wyoming boundaries; thence west along the southern border of Idaho to Oregon and then west along the southern border of Oregon to the coast at latitude 41°59′54″ N, longitude 124°12′42″ W; thence west along the southern boundary of the Thirteenth Coast Guard District, which is described in § 3.65–10, to the outermost extent of the EEZ at latitude 41°38′35″ N, 128°51′26″ W; thence north along the outermost extent of the EEZ to latitude 47°32′00″ N; thence east to the point of origin.

PART 165— REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 3. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

§ 165.1308 [Amended]

■ 4. In § 165.1308(c), remove the phrase "Captain of the Port, Portland, Oregon" and add, in its place, the phrase "Captain of the Port Columbia River".

§ 165.1312 [Amended]

■ 5. In § 165.1312(b), remove the phrase "Coast Guard Captain of the Port, Portland, Oregon" and add, in its place, the phrase "Captain of the Port Columbia River".

§ 165.1315 [Amended]

■ 6. In § 165.1315, in the heading and paragraph (b), remove the phrase "Captain of the Port Portland" and add, in its place, the phrase "Captain of the Port Columbia River".

§ 165.1318 [Amended]

■ 7. In § 165.1318:

■ a. In the section heading, remove "Portland, OR Captain of the Port Zone" and add, in its place, "Captain of the Port Columbia River Zone".

■ b. In paragraphs (a), (d), (i) and (l) remove the phrase "Captain of the Port Portland" and add, in its place, the phrase "Captain of the Port Columbia River".

§ 165.1322 [Amended]

■ 8. In § 165.1322, in the section heading remove "Oregon Captain of the Port Zone" and add, in its place

"Captain of the Port Columbia River Zone".

§ 165.1323 [Amended]

■ 8. In § 165.1323, in the section heading remove "Portland, Oregon Captain of the Port Zone" and add, in its place ", Captain of the Port Columbia River Zone".

Dated: August 5, 2010.

Sandra Selman,

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

[FR Doc. 2010–19754 Filed 8–10–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2009–0606; FRL–9186–6]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Administrative and Non-Substantive Amendments to Existing Delaware SIP Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Delaware State Implementation Plan (SIP). The revisions streamline, renumber and reformat the Delaware Regulations for the Control of Air Pollution which EPA has approved as part of the Delaware SIP. This SIP vision is administrative in nature; there are no substantive changes. EPA is approving these revisions to Delaware SIP regulations in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on October 12, 2010 without further notice, unless EPA receives adverse written comment by September 10, 2010. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2009–0606 by one of the following methods:

A. *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *E-mail: frankford.harold@epa.gov.*

C. *Mail:* EPA–R03–OAR–2009–0606, Harold A. Frankford, Air Protection Division, Mailcode 3AP00, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. 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–R03–OAR–2009–0606. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108, or by e-mail at *frankford.harold@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On June 15, 2009, the State of Delaware submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of administrative and non-substantive amendments to 32 of the SIP approved Delaware air pollution control regulations. In its SIP revision submittal, Delaware explains that under Title 29, Chapter 101 of the Delaware Codes (29 Del. C., Ch 101), regulatory agencies in Delaware are required to develop and adopt regulations, and publish the regulations in Delaware Register of Regulations. The State Registrar's Office under Division of Research of the General Assembly has developed guidelines and drafting manuals for Delaware regulations. Delaware issued the latest edition of drafting and style manual, entitled "Delaware Manual for Drafting Regulations" in March 2006 ("the 2006 Manual"). Since then, EPA has approved several Delaware SIP regulations in the manual-compliant format. However, a majority of the Delaware SIP regulations have not been updated.

II. Summary of SIP Revision

The purpose of this SIP revision is to revise all Delaware SIP regulations so that they are consistent with the format prescribed in the 2006 Manual. In addition, Delaware has made some non-substantive changes and corrections of errors exclusively for this SIP revision:

- Administrative or editorial changes made under the administrative authority granted to Delaware Registrar's Office by 29 Del. C., Ch 1134 and applicable to all Delaware regulations for consistency purposes. Therefore, all Delaware air regulations, both existing ones and future ones, shall follow this format.
- Non-substantive changes made for clarification and consistency purposes and which do not alter or amend the intent or meaning of the subject regulation.
- Editorial changes, including correction of errors due to typos or misprints when a regulation was developed or revised to its current version.

A. SIP Regulations Revised in This SIP Revision

The 32 regulations which Delaware has submitted administrative changes to EPA in this SIP revision are:

- Regulation 1 "Definitions and Administrative Principles";
- Regulation 1102* "Permits";
- Regulation 3 "Ambient Air Quality Standards";
- Regulation 4 "Particulate Emissions From Fuel Burning Equipment";
- Regulation 5 "Particulate Emissions From Industrial Process Operations";
- Regulation 6 "Particulate Emissions From Construction and Materials Handling";
- Regulation 7 "Particulate Emissions From Incineration";
- Regulation 8 "Sulfur Dioxide Emissions From Fuel Burning Equipment";
- Regulation 9 "Emissions of Sulfur Compounds From Industrial Operations";
- Regulation 10 "Control of Sulfur Dioxide Emissions—Kent and Sussex Counties";
- Regulation 11 "Carbon Monoxide Emissions From Industrial Process Operations New Castle County";
- Regulation 12 "Control of Nitrogen Oxide Emissions";
- Regulation 1113* "Open Burning";
- Regulation 14 "Visible Emissions";
- Regulation 15 "Air Pollution Alert and Emergency Plan";
- Regulation 16 "Sources Having an Interstate Air Pollution Potential";
- Regulation 17 "Source Monitoring, Recordkeeping and Reporting";
- Regulation 23 "Standards of Performance for Steel Plants: Electric Arc Furnaces";
- Regulation 1124* "Control of Volatile Organic Compound Emissions";
- Regulation 1125* "Requirements for Preconstruction Review" (Sections 1, 2 and 3);
- Regulation 26 "Motor Vehicle Emissions Inspection Program"
- Regulation 27 "Stack Heights";
- Regulation 1132* "Transportation Conformity";
- Regulation 35 "Conformity of General Federal Actions to the State Implementation Plans";
- Regulation 39 "Nitrogen Oxides (NO_X) Budget Trading Program";
- Regulation 40 "Delaware's National Low Emission Vehicle (NLEV) Regulation";
- Regulation 1141* "Limiting Emissions of Volatile Organic Compounds From Consumer and Commercial Products";
- Regulation 1142* "Specific Emission Control Requirements (Section 1)";
- Regulation 1144* "Control of Stationary Generator Emissions";
- Regulation 1145* "Excessive Idling of Heavy Duty Vehicles";
- Regulation 1146* "Electric Generating Unit (EGU) Multi-Pollutant Regulation";
- Regulation 1148* "Control of Stationary Combustion Turbine Electric Generating Unit Emissions".

The regulations marked with an asterisk (*) are SIP regulations (or a section or sections therein) which Delaware has revised after the issuance of the 2006 drafting manual.

B. SIP Regulations Not Affected by This Revision

Delaware has not submitted the following SIP regulations or sections in this SIP revision:

- Regulation 31 "Low Enhanced Inspection and Maintenance Program";
- Regulation 37 "NO_X Budget Program";

Delaware did not include Regulation 31 because it is currently under substantive revision, and did not include Regulation 37 because it is no longer State enforceable. In addition, on June 10, 2010, Delaware withdrew the following regulations from this SIP submittal, as they are not currently part of the Delaware SIP: Regulation 1101, Section 2.0—those definitions not associated with SIP-approved regulations; Regulation 1103, Sections 7.0 and 9.0; Regulation 7, Section 2.0; Regulation 9, Section 2.2; and all regulatory provisions in Regulation 1146 governing the control of mercury emissions.

C. Summary of Administrative Changes

The following paragraphs summarize the global administrative amendments to Delaware's regulations that are part of this SIP revision:

1. *Font Face and Size*—All State regulations are converted to a standard font size. Such change does not alter any meaning of the subject regulations in any aspect.

2. *Regulation Title Coding and Numbering*—All revised regulations use a bold-face text for their titles.

3. *Format of Definitions*—All defined terms are highlighted in bold type, with the expression "means the" inserted at the beginning of each definition.

4. *Section and Subsection Numbering*—Two changes are made with respect to sections in a regulation under this SIP revision: (1) All prefixes of "Section-" in section title lines are deleted; (2) Sections are numbered using a consistent format of Arabic numeral "#.0".

A majority of the current SIP regulations have subsections of various levels, and use different symbols for subsections, such as lower-case letters (a, b, * * *), Roman numbers (i, ii, * * *), Arabic numbers in parenthesis [(1), (2), * * *], upper-case letters (A, B, * * *), and paired lower-case letters (aa, bb, * * *). All those subsection symbols in the current Delaware Air Quality Management (AQM) regulations are replaced by Arabic numbers under this SIP revision.

5. *Citations in Regulations*—All Delaware AQM regulations are to be cited as Delaware Administration Code by title and regulation number. Therefore, citations of another regulation are revised to a standard format.

6. *Other Changes*—The following changes are also made to the State AQM regulations submitted under this SIP revision, with strikeouts representing deletions and underlines for additions:

a. Changing "and/or" to "or".

b. Changing "word(s)" to "word or words".

c. Spelling out numbers from 1 to 9, except those followed by specifying symbols such as %, °C, °F, and those used for special terms such as "the 1-hour ozone standard." However, numerals between 1.0 and 9.0 are not spelled out, due to the precision meaning held by the decimal place.

d. Using Arabic numbers for 10 and greater, except when used at the beginning of a sentence.

e. Changing word "percent" following a numeral to "%".

f. Changing "deg C and deg F" to "°C and °F", respectively.

g. Changing dates in the text, for example, from "12/02/94" to "December 2, 1994."

D. Non-Substantive Changes

1. Addition and Deletion of Words

a. *Additions*—In the current AQM regulations, sections and subsections may be referenced frequently in the regulation itself. In addition, the Federal Clean Air Act (the Act) may be cited frequently as well. To ensure precise citations and references, the terms "of (or in) this regulation" and "of (or in) the Act" are added wherever they seem necessary and adequate.

b. *Deletions*—In the current AQM regulations, terms such "section, subsection, part, subpart, paragraph, and subparagraph" are used extensively, but not consistently and properly. Under this SIP revision, the terms "section, subsection, part, subpart, paragraph, and subparagraph" are no longer used in front of section or subsection numbers.

c. *Deleting Specific Section and Subsection Numbers*—There are cases in the current AQM regulations where there is only one subsection in a section. This single subsection is no longer numbered.

2. Changing *Italic* Font Style to Regular Style

The *italic* font is no longer used in Delaware's regulations.

3. Renumbering Tables and Equations

A standard format of "X–Y" is adopted for all tables and equations, with X denoting a section and Y denoting table or equation order in that section.

4. Dates Associated With Section Titles

Historically, all Delaware AQM regulations have placed a date immediately in front of or after a section title, indicating the date when the subject section was adopted in its latest version. Under this SIP revision, these dates are formatted as "mm/dd/yyyy."

5. Appendices

a. *Numbering Appendices*—All appendices in Regulation 24 are renumbered with un-quoted capital letters under this SIP revision, without strikeouts and underlines. In addition, all appendices of AQM regulations are identified using bold-face (*i.e.,* Appendix) to distinguish them from appendixes of other documents cited in the SIP regulations.

b. *Footnotes in Appendices*—According to Delaware's 2006 Manual, footnotes should be presented at the end of a regulation. For appendices, however, footnotes are placed at the end of each appendix under this SIP revision. For example, footnotes used in an appendix of Regulation 24 are presented at the end of the subject appendix, instead of at the far end of the entire regulation.

c. *References in Appendices*—Under this SIP revision, references in an appendix are no longer denoted by superscripts. Instead, a directing text in parenthesis "(*see* # of this appendix)" is used, where "#" is the order number of the reference listed at the end of the appendix.

6. Other Changes

Other non-substantive changes are made, mainly for consistency and clarification purposes.

E. Correction of Typographical and Global Errors

Examples of global errors include:
- Correcting "cm3" to "cm^3";
- Correcting "the 31st" to "the 31^{st}".

III. Final Action

EPA is approving the described administrative and non-substantive amendments to the SIP approved Delaware air pollution control regulations as a revision of the Delaware SIP. As a result of this approval action, the format of Federally enforceable SIP regulations will be consistent with the format of the current Delaware AQM regulations. EPA's approval action does not revise the following sections of Regulations 1113, 1132, 1141, 1144, 1146, and 1148, as previous EPA SIP approvals had already incorporated these administrative and non-substantive changes:
- Regulation 1113, Sections 1.0, 2.0, 5.0 and 7.0.
- Regulation 1132, Section 1.0.
- Regulation 1141, Section 2.0.
- Regulation 1144, Sections 3.0, 8.0, and 9.0.
- Regulation 1146, Section 2.0, and Table 5–1.
- Regulation 1148, Sections 1.0 and 6.0.

Prior to Delaware's June 15, 2009 SIP revision submittal, Delaware submitted substantive amendments to Regulation 1102, Appendix A. EPA's action on that SIP revision is still pending. EPA will address the State's administrative revisions associated with these amendments concurrently with our review of the substantive amendments.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on October 12, 2010 without further notice unless EPA receives adverse comment by September 10, 2010. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must 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.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:
- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

B. Submission to Congress and the Comptroller General

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).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 12, 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action pertaining to administrative and non-substantive changes to Delaware's existing SIP-approved regulations may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 26, 2010.

Shawn M. Garvin,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart I—Delaware

■ 2. In § 52.420, the table in paragraph (c) is revised to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
1101 Definitions and Administrative Principles				
Section 1.0	General Provisions	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 2.0	Definitions	9/11/08	8/11/10 [Insert page number where the document begins].	Revised format for all definitions which EPA has previously approved as part of the SIP.
Section 3.0	Administrative Principles	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 4.0	Abbreviations	9/11/08	8/11/10 [Insert page number where the document begins].	
1102 Permits				
Section 1.0	General Provisions	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 2.0	Applicability	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 3.0	Application/Registration Prepared by Interested Parties.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 4.0	Cancellation of Construction Permits.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 5.0	Action on Applications	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 6.0	Denial, Suspension or Revocation of Operating Permits.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 7.0	Transfer of Permit/Registration Prohibited.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 8.0	Availability of Permit/Registration	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 9.0	Registration Submittal	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 10.0	Source Category Permit Application.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 11.0	Permit Application	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 12.0	Public Participation	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 13.0	Department Records	9/11/08	8/11/10 [Insert page number where the document begins].	

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
Appendix A, paragraphs 1.0 through 31.0).	[List of Permit Exemptions]	9/11/08	8/11/10 [Insert page number where the document begins].	
	1103 Ambient Air Quality Standards			
Section 1.0	General Provisions	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 2.0	General Restrictions	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 3.0	Suspended Particulates	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 4.0	Sulfur Dioxide	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 5.0	Carbon Monoxide	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 6.0	Ozone	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 8.0	Nitrogen Dioxide	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 10.0	Lead	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 11.0	PM10 and PM2.5 Particulates	9/11/08	8/11/10 [Insert page number where the document begins].	
	1104 Particulate Emissions from Fuel Burning Equipment			
Section 1.0	General Provisions	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 2.0	Emission Limits	9/11/08	8/11/10 [Insert page number where the document begins].	
	1105 Particulate Emissions from Industrial Process Operations			
Section 1.0	General Provisions	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 2.0	General Restrictions	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 3.0	Restrictions on Hot Mix Asphalt Batching Operations.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 4.0	Restrictions on Secondary Metal Operations.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 5.0	Restrictions on Petroleum Refining Operations.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 6.0	Restrictions on Prill Tower Operations.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 7.0	Control of Potentially Hazardous Particulate Matter.	9/11/08	8/11/10 [Insert page number where the document begins].	
	1106 Particulate Emissions from Construction and Materials Handling			
Section 1.0	General Provisions	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 2.0	Demolition	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 3.0	Grading, Land Clearing, Excavation and Use of Non-Paved Roads.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 4.0	Material Movement	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 5.0	Sandblasting	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 6.0	Material Storage	9/11/08	8/11/10 [Insert page number where the document begins].	
	1107 Particulate Emissions from Incineration			
Section 1.0	General Provisions	9/11/08	8/11/10 [Insert page number where the document begins].	

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
Section 2	Restrictions	12/8/83	10/3/84 49 FR 39061	Provisions were revised 10/13/89 by State, but not submitted to EPA as SIP revisions.
1108 Sulfur Dioxide Emissions from Fuel Burning Equipment				
Section 1.0	General Provisions	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 2.0	Limit on Sulfur Content of Fuel	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 3.0	Emissions Control in Lieu of Sulfur Content Limits of 2.0 of this Regulation.	9/11/08	8/11/10 [Insert page number where the document begins].	
1109 Emissions of Sulfur Compounds from Industrial Operations				
Section 1.0	General Provisions	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 2.0	Restrictions on Sulfuric Acid Manufacturing Operations.	9/11/08	8/11/10 [Insert page number where the document begins].	Section 2.2 (State effective date: 9/26/1980) is Federally enforceable as a Section 111(d) plan and codified at 40 CFR 62.1875.
Section 3.0	Restriction on Sulfur Recovery Operations.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 4.0	Stack Height Requirements	9/11/08	8/11/10 [Insert page number where the document begins].	
1110 Control of Sulfur Dioxide Emissions—Kent and Sussex Counties				
Section 1.0	Requirements for Existing Sources of Sulfur Dioxide.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 2.0	Requirements for New Sources of Sulfur Dioxide.	9/11/08	8/11/10 [Insert page number where the document begins].	
1111 Carbon Monoxide Emissions from Industrial Process Operations—New Castle County				
Section 1.0	General Provisions	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 2.0	Restrictions on Petroleum Refining Operations.	9/11/08	8/11/10 [Insert page number where the document begins].	
1112 Control of Nitrogen Oxide Emissions				
Section 1.0	Applicability	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 2.0	Definitions	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 3.0	Standards	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 4.0	Exemptions	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 5.0	Alternative and Equivalent RACT Determination.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 6.0	RACT Proposals	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 7.0	Compliance, Certification, Recordkeeping, and Reporting Requirements.	9/11/08	8/11/10 [Insert page number where the document begins].	
1113 Open Burning				
Section 1.0	Purpose	4/11/07	9/20/07 72 FR 53686.	
Section 2.0	Applicability	4/11/07	9/20/07 72 FR 53686.	
Section 3.0	Definitions	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 4.0	Prohibitions and Related Provisions.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 5.0	Season and Time Restrictions	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 6.0	Allowable Open Burning	9/11/08	8/11/10 [Insert page number where the document begins].	

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
Section 7.0	Exemptions	4/11/07	9/20/07 72 FR 53686.	
	1114 Visible Emissions			
Section 1.0	General Provisions	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 2.0	Requirements	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 3.0	Alternate Opacity Requirements ..	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 4.0	Compliance with Opacity Standards.	9/11/08	8/11/10 [Insert page number where the document begins].	
	1115 Air Pollution Alert and Emergency Plan			
Section 1.0	General Provisions	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 2.0	Stages and Criteria	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 3.0	Required Actions	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 4.0	Standby Plans	9/11/08	8/11/10 [Insert page number where the document begins].	
	1116 Sources Having an Interstate Air Pollution Potential			
Section 1.0	General Provisions	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 2.0	Limitations	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 3.0	Requirements	9/11/08	8/11/10 [Insert page number where the document begins].	
	1117 Source Monitoring, Recordkeeping and Reporting			
Section 1.0	Definitions and Administrative Principles.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 2.0	Sampling and Monitoring	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 3.0	Minimum Emission Monitoring Requirements for Existing Sources.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 4.0	Performance Specifications	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 5.0	Minimum Data Requirements	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 6.0	Data Reduction	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 7.0	Emission Statement	9/11/08	8/11/10 [Insert page number where the document begins].	
	1123 Standards of Performance for Steel Plants: Electric Arc Furnaces			
Section 1.0	Applicability	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 2.0	Definitions	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 3.0	Standard for Particulate Matter	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 4.0	Monitoring of Operations	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 5.0	Test Methods and Procedures	9/11/08	8/11/10 [Insert page number where the document begins].	
	1124 Control of Volatile Organic Compound Emissions			
Section 1.0	General Provisions	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 2.0	Definitions	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 3.0	Applicability	9/11/08	8/11/10 [Insert page number where the document begins].	

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
Section 4.0	Compliance Certification, Recordkeeping, and Reporting Requirements for Coating Sources.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 5.0	Compliance Certification, Recordkeeping, and Reporting Requirements for Non-Coating Sources.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 6.0	General Recordkeeping	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 7.0	Circumvention	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 8.0	Handling, Storage, and Disposal of Volatile Organic Compounds (VOCs).	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 9.0	Compliance, Permits, Enforceability.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 10.0	Aerospace Coatings	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 11.0	Mobile Equipment Repair and Refinishing.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 12.0	Surface Coating of Plastic Parts ..	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 13.0	Automobile and Light-Duty Truck Coating Operations.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 14.0	Can Coating	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 15.0	Coil Coating	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 16.0	Paper Coating	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 17.0	Fabric Coating	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 18.0	Vinyl Coating	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 19.0	Coating of Metal Furniture	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 20.0	Coating of Large Appliances	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 21.0	Coating of Magnet Wire	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 22.0	Coating of Miscellaneous Metal Parts.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 23.0	Coating of Flat Wood Panelling ...	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 24.0	Bulk Gasoline Plants	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 25.0	Bulk Gasoline Terminals	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 26.0	Gasoline Dispensing Facility—Stage I Vapor Recovery.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 27.0	Gasoline Tank Trucks	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 28.0	Petroleum Refinery Sources	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 29.0	Leaks from Petroleum Refinery Equipment.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 30.0	Petroleum Liquid Storage in External Floating Roof Tanks.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 31.0	Petroleum Liquid Storage in Fixed Roof Tanks.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 32.0	Leaks from Natural Gas/Gasoline Processing Equipment.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 33.0	Solvent Metal Cleaning and Drying.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 34.0	Cutback and Emulsified Asphalt ..	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 35.0	Manufacture of Synthesized Pharmaceutical Products.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 36.0	Stage II Vapor Recovery	9/11/08	8/11/10 [Insert page number where the document begins].	

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
Section 37.0	Graphic Arts Systems	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 38.0	Petroleum Solvent Dry Cleaners	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 39	[Reserved]	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 40.0	Leaks from Synthetic Organic Chemical, Polymer, and Resin Manufacturing Equipment.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 41.0	Manufacture of High-Density Polyethylene, Polypropylene and Polystyrene Resins.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 42.0	Air Oxidation Processes in the Synthetic Organic Chemical Manufacturing Industry.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 43.0	Bulk Gasoline Marine Tank Vessel Loading Facilities.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 44.0	Batch Processing Operations	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 45.0	Industrial Cleaning Solvents	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 46.0	Crude Oil Lightering Operations ..	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 47.0	Offset Lithographic Printing	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 48.0	Reactor Processes and Distillation Operations in the Synthetic Organic Chemical Manufacturing Industry.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 49.0	Control of Volatile Organic Compound Emissions from Volatile Organic Liquid Storage Vessels.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 50.0	Other Facilities that Emit Volatile Organic Compounds (VOCs).	9/11/08	8/11/10 [Insert page number where the document begins].	The SIP effective date for former Sections 50(a)(5) and 50(b)(3) is 5/1/98.
Appendix A	Test Methods and Compliance Procedures: General Provisions.	9/11/08	8/11/10 [Insert page number where the document begins].	
Appendix B	Test Methods and Compliance Procedures: Determining the Volatile Organic Compound (VOC) Content of Coatings and Inks.	9/11/08	8/11/10 [Insert page number where the document begins].	
Appendix C	Test Methods and Compliance Procedures: Alternative Compliance Methods for Surface Coating.	9/11/08	8/11/10 [Insert page number where the document begins].	
Appendix D	Test Methods and Compliance Procedures: Emission Capture and Destruction or Removal Efficiency and Monitoring Requirements.	9/11/08	8/11/10 [Insert page number where the document begins].	
Appendix E	Test Methods and Compliance Procedures: Determining the Destruction or Removal Efficiency of a Control Device.	9/11/08	8/11/10 [Insert page number where the document begins].	
Appendix F	Test Methods and Compliance Procedures: Leak Detection Methods for Volatile Organic Compounds (VOCs).	9/11/08	8/11/10 [Insert page number where the document begins].	
Appendix G	Performance Specifications for Continuous Emissions Monitoring of Total Hydrocarbons.	9/11/08	8/11/10 [Insert page number where the document begins].	
Appendix H	Quality Control Procedures for Continuous Emission Monitoring Systems (CEMS).	9/11/08	8/11/10 [Insert page number where the document begins].	
Appendix I	Method to Determine Length of Rolling Period for Liquid-Liquid Material Balance Method.	9/11/08	8/11/10 [Insert page number where the document begins].	
Appendices J, J1, J2 and J3.	[Reserved]	9/11/08	8/11/10 [Insert page number where the document begins].	

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
Appendix K	Emission Estimation Methodologies.	9/11/08	8/11/10 [Insert page number where the document begins].	
Appendix L	Method to Determine Total Organic Carbon for Offset Lithographic Solutions.	9/11/08	8/11/10 [Insert page number where the document begins].	
Appendix M	Test Method for Determining the Performance of Alternative Cleaning Fluids.	9/11/08	8/11/10 [Insert page number where the document begins].	
1125 Requirements for Preconstruction Review				
Section 1.0	General Provisions	9/11/08	8/11/10 [Insert page number where the document begins].	In section 1.9, the previous SIP-approved baseline dates for sulfur dioxide, particulate matter, and nitrogen dioxide in the definition of "Baseline Date" remain part of the SIP.
Section 2.0	Emission Offset Provisions (EOP)	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 3.0	Prevention of Significant Deterioration of Air Quality.	9/11/08	8/11/10 [Insert page number where the document begins].	Previous SIP-approved revisions to Section 3.1 for nitrogen dioxide increments and Section 3.9A (now designated as Section 3.10.1) for air quality models remain part of the SIP.
1126 Motor Vehicle Emissions Inspection Program				
Section 1.0	Applicability and General Provisions.	9/11/08	8/11/10 [Insert page number where the document begins].	Regulation 1126 provisions apply to Sussex County only, effective November 1, 1999.
Section 2.0	Definitions	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 3.0	Registration Requirement	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 4.0	Exemptions	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 5.0	Enforcement	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 6.0	Compliance, Waivers, Extensions of Time.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 7.0	Inspection Facility Requirements	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 8.0	Certification of Motor Vehicle Officers.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 9.0	Calibration and Test Procedures and Approved Equipment.	9/11/08	8/11/10 [Insert page number where the document begins].	
Technical Memorandum 1.	Delaware Division of Motor Vehicles Vehicle Exhaust Emissions Test.	9/11/08	8/11/10 [Insert page number where the document begins].	
Technical Memorandum 2.	(Motor Vehicle Inspection and Maintenance Program Emission Limit Determination).	9/11/08	8/11/10 [Insert page number where the document begins].	
1127 Stack Heights				
Section 1.0	General Provisions	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 2.0	Definitions Specific to this	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 3.0	Requirements for Existing and New Sources.	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 4.0	Public Notification	9/11/08	8/11/10 [Insert page number where the document begins].	
Regulation No. 31 Low Enhanced Inspection and Maintenance Program				
Section 1	Applicability	10/11/01	11/27/03 68 FR 66343.	
Section 2	Low Enhanced I/M Performance Standard.	10/11/01	1/27/03 68 FR 66343.	

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
Section 3	Network Type and Program Evaluation.	10/11/01	11/27/03 68 FR 66343.	
Section 4	Test Frequency and Convenience	6/11/99	9/30/99 64 FR 52657.	
Section 5	Vehicle Coverage	10/11/01	1/27/03 68 FR 66343.	
Section 6	Test Procedures and Standards ..	10/11/01	11/27/03 68 FR 66343.	
Section 7	Waivers and Compliance via Diagnostic Inspection.	10/11/01	11/27/03 68 FR 66343.	
Section 8	Motorist Compliance Enforcement	10/11/01	11/27/03 68 FR 66343.	
Section 9	Enforcement Against Operators and Motor Vehicle Technicians.	10/11/01	11/27/03 68 FR 66343.	
Section 10	Improving Repair Effectiveness ...	8/13/98	9/30/99 64 FR 52657.	
Section 11	Compliance with Recall Notices ..	8/13/98	9/30/99 64 FR 52657.	
Section 12	On-Road Testing	8/13/98	9/30/99 64 FR 52657.	
Section 13	Implementation Deadlines	10/11/01	11/27/03 68 FR 66343.	
Appendix 1(d)	Commitment to Extend the I/M Program to the Attainment Date From Secretary Tulou to EPA Administrator W. Michael McCabe.	8/13/98	9/30/99 64 FR 52657.	
Appendix 3(a)(7) ..	Exhaust Emission Limits According to Model Year.	8/13/98	9/30/99 64 FR 52657.	
Appendix 3(c)(2) ..	VMASTM Test Procedure	6/11/99	9/30/99 64 FR 52657.	
Appendix 4(a)	Sections from Delaware Criminal and Traffic Law Manual.	8/13/98	9/30/99 64 FR 52657.	
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Appendix 6(a)	Idle Test Procedure	10/11/01	1/27/03 68 FR 66343.	
Appendix 6(a)(5) ..	Vehicle Emission Repair Report Form.	8/13/98	9/30/99 64 FR 52657.	
Appendix 6(a)(8) ..	Evaporative System Integrity (Pressure) Test.	10/11/01	11/27/03 68 FR 66343.	
Appendix 6(a)(9) ..	On-board Diagnostic Test Procedure OBD II Test Procedure.	10/11/01	11/27/03 68 FR 66343.	
Appendix 7(a)	Emission Repair Technician Certification Process.	8/13/98	9/30/99 64 FR 52657.	
Appendix 8(a)	Registration Denial System Requirements Definition.	8/13/98	9/30/99 64 FR 52657.	
Appendix 9(a)	Enforcement Against Operators and Inspectors.	10/11/01	11/27/03 68 FR 66343.	
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EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

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Section 4.0	Definitions	9/11/08	8/11/10 [Insert page number where the document begins].	
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Section 8.0	Monitoring and Reporting	9/11/08	8/11/10 [Insert page number where the document begins].	
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Section 10.0	NO_X Allowance Transfers	9/11/08	8/11/10 [Insert page number where the document begins].	
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EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
Section 15.0	General Accounts	9/11/08	8/11/10 [Insert page number where the document begins].	
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Appendix B	7 DE Admin Code 1137–7 DE Admin Code 1139 Program Transition.	9/11/08	8/11/10 [Insert page number where the document begins].	
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Section 5.0	Fuel Requirements	1/11/06	4/29/08 73 FR 23101.	
Section 6.0	Record Keeping and Reporting ...	1/11/06	4/29/08 73 FR 23101.	
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Section 8.0	Credit for Concurrent Emissions Reductions.	9/11/08	8/11/10 [Insert page number where the document begins].	
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Section 1.0	Applicability	9/11/08	8/11/10 [Insert page number where the document begins].	
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Section 6.0	Enforcement and Penalty	9/11/08	8/11/10 [Insert page number where the document begins].	
1146 Electric Generating Unit (EGU) Multi-Pollutant Regulation				
Section 1.0	Preamble	9/11/08	8/11/10 [Insert page number where the document begins].	Except for provisions pertaining to mercury emissions.

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
Section 2.0	Applicability	12/11/06	8/28/08 73 FR 50723	Except for provisions pertaining to mercury emissions.
Section 3.0	Definitions	9/11/08	8/11/10 [Insert page number where the document begins].	Except for provisions pertaining to mercury emissions.
Section 4.0	NO_X Emissions Limitations	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 5.0	SO_2 Emissions Limitations	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 7.0	Recordkeeping and Reporting	9/11/08	8/11/10 [Insert page number where the document begins].	Except for provisions pertaining to mercury emissions.
Section 8.0	Compliance Plan	9/11/08	8/11/10 [Insert page number where the document begins].	Except for provisions pertaining to mercury emissions.
Section 9.0	Penalties	9/11/08	8/11/10 [Insert page number where the document begins].	Except for provisions pertaining to mercury emissions.
Table 4–1 (Formerly Table I).	Annual NO_X Mass Emissions Limits.	9/11/08	8/11/10 [Insert page number where the document begins].	
Table 5–1 (Formerly Table II).	Annual SO_2 Mass Emissions Limits.	9/11/08 10/19/09	3/16/10 75 FR 12449	Modified emissions limit for Conectiv Edge Moor Unit 5.
1148 Control of Stationary Combustion Turbine Electric Generating Unit Emissions				
Section 1.0	Purpose	7/11/07	11/10/08 73 FR 66554.	
Section 2.0	Applicability	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 3.0	Definitions	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 4.0	NO_X Emissions Limitations	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 5.0	Monitoring and Reporting	9/11/08	8/11/10 [Insert page number where the document begins].	
Section 6.0	Recordkeeping	7/11/07	11/10/08 73 FR 66554.	
Section 7.0	Penalties	9/11/08	8/11/10 [Insert page number where the document begins].	

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[FR Doc. 2010–19571 Filed 8–10–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2010–0170; FRL–9186–2]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Missouri State Implementation Plan (SIP) submitted by the state on June 17, 2009. The purpose of these revisions is to rescind the rule *More Restrictive Emission Limitations for Particulate Matter in South St. Louis Area* and to approve revisions to the rule *Restriction of Emission of Particulate Matter from Industrial Processes* which make corrections and clarifications, and add exemptions to the rule. EPA is approving the SIP provisions pursuant to section 110 of the Clean Air Act (CAA).

DATES: This direct final rule will be effective October 12, 2010, without further notice, unless EPA receives adverse comment by September 10, 2010. If EPA receives adverse comment, we 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–R07–OAR–2010–0170, by one of the following methods:

1. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *E-mail: bhesania.amy@epa.gov.*

3. *Mail or Hand Delivery:* Amy Bhesania, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2010–0170. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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, *i.e.,* 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 form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 4:30 p.m. excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Amy Bhesania at (913) 551–7147, or by e-mail at *bhesania.amy@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," or "our" refer to EPA.

Table of Contents

I. What revisions is EPA approving?

A. Rescission of 10 CSR 10–5.290, More Restrictive Emission Limitations for Particulate Matter in South St. Louis Area

EPA is approving revisions to the SIP which will rescind the rule *More Restrictive Emission Limitations for Particulate Matter in South St. Louis Area.* This rule was originally established to control particulate matter and sulfur dioxide (SO_2) emissions for the South St. Louis "Hot Spot" which included restrictions applicable to the byproducts of coke ovens at 526 East Catalan Street owned and operated by Carondelet Coke Corporation and to a titanium pigment plant located at River des Peres and Mississippi River owned by N.L. Industries, Inc. The original rule was first adopted by the state and subsequently effective December 11, 1978. The EPA approved this new regulation through a final rulemaking on July 11, 1980. On August 30, 1982, EPA approved an amendment to this rule which provided for changes in ownership and operating responsibilities of the affected sources. On August 26, 1985, revisions to the state rule were made effective to delete provisions related to N.L. Industries, which was no longer in operation, and to make significant changes to provisions affecting Carondelet Coke. In addition, Missouri changed the title of this rule to *More Restrictive Emission Limitations for Particulate Matter in South St Louis Area,* which removed the reference to Sulfur Dioxide. These changes to the state rule were not approved Federally at that time. In 1988 Carondelet Coke went out of business and therefore Missouri is rescinding the rule as both entities subject to this rule are no longer in business.

In reviewing the rescission to the rule, EPA noted that this rule contained requirements for the restriction of fugitive particulates in the South St. Louis area. The state has a statewide fugitive dust rule, 10 CSR 10–6.170, which contains similar restrictions as the rule being addressed in this action. The statewide rule is also applicable in this South St. Louis "Hot Spot" area. EPA has compared the restrictions in the two rules and believes that the statewide 10 CSR 10–6.170 rule contains the same level of restrictions. In general, the statewide rule requires that "reasonable measures" be utilized to control fugitive emissions. EPA believes the statewide fugitive dust rule is as stringent as the requirements in the rescinded area rule and this action would not result in a relaxation of the SIP.

Because the two entities affected by the area-specific rule are no longer in operation, and because the state's statewide fugitive dust rule contains similar restrictions as this rule, EPA believes a rescission of the rule is appropriate, would ensure consistency between the state and federally-approved rules, and would not adversely affect air quality in the South St. Louis area.

B. Changes to 10 CSR 10–6.400, Restriction of Emission of Particulate Matter From Industrial Processes

The *Restriction of Emission of Particulate Matter from Industrial Processes* rule adds new exemptions and makes corrections and clarifications. The primary purpose of this rule is to limit the emissions of particulate matter in the source gas of an operation or activity from industrial processes. This is done through the use of process weight rate equations and tables contained in the rule. This rule was first adopted and subsequently effective on August 30, 2000. At that time, the rule consolidated the requirements of four similar out-state rules. The state initiated a follow-up rule action which addressed technical revisions to the rule that were adopted and subsequently effective on September 30, 2001. EPA approved this regulation and published the final rule making for this revision of the SIP on November 30, 2001. Subsequently, the state proposed these new rule revisions in October 2008 and submitted the revisions to the SIP on June 17, 2009. The revisions being addressed in this action are as follows:

1. Subsection (1)(B)8. was clarified to remove an outdated reference to 10 CSR 10–6.060 paragraphs (1)(D)1. and (1)(D)2. This subsection was amended to refer to appropriate provisions in 10 CSR 10–6.061. This reflects a prior rule revision by the state in which certain exemptions in rule 10–6.060 were moved to the new rule 10–6.061.

2. Subsection (1)(B)9. was added to clarify that emission sources permitted by rule under 10 CSR 10–6.062 were exempt from this regulation.

3. Subsection (1)(B)14. was added as an exemption for coating operations equipped with a control system designed to control at least ninety-five percent (95%) of the particulate overspray provided the system is operated and maintained in accordance with manufacturers' specifications or comparable maintenance procedures that meet or exceed manufacturers' specifications.

4. Subsection (1)(B)15. was added as an exemption for any particulate matter emission unit that is subject to a Federally enforceable requirement to install, operate, and maintain a particulate matter control device system that controls at least ninety percent (90%) of particulate matter emissions.

5. Subsection (1)(B)16. was added as an exemption for emission units that at maximum hourly design rate (MHDR) have an uncontrolled potential to emit less than the allowable emissions as calculated in subsections (3)(A)1. and (3)(A)2. of the rule.

6. Other general changes to the numbering systems were made.

EPA has reviewed the state's revisions to this rule as well as the state's technical support documentation (TSD) submitted with the SIP revision. The first two revisions to the rule (the revisions described in 1 and 2 above) are clarifying revisions. EPA has

reviewed these revisions and believes these are appropriate and accurate.

The state also submitted three new exemptions to the rule. The first exemption (item 3 above) is for coating operations equipped to control at least ninety-five percent (95%) of particulate overspray. EPA believes that the TSD supports this exemption through a demonstration using one of the larger permitted facilities for spray coating operations. The demonstration shows that for applicable facilities, the controlled particulate matter levels are very minimal and that the controlled emission rate for this example facility is well below the emission rate limitation calculated using the process weight rule. The example unit would have a controlled emission rate of 0.01 lb/hr of particulate matter compared to the applicable process weight emission rate limit of 0.07 lb/hr.

In addition, Missouri indicated that that this rule does not change any actual processes related to coating operations, but instead will no longer require these exempt units to calculate emission rate limits which demonstrate that their units cannot physically exceed the limits contained in the rule.

The second exemption (item 4 above) is for any particulate matter emission unit that is subject to a federally enforceable requirement to install, operate, and maintain a particulate matter control device system that controls at least ninety percent (90%) of particulate matter emissions. Based on EPA's review, this exemption would not increase particulate matter emissions since the exemption requires controls, just through an enforceable mechanism other than this rule.

The third exemption (item 5) is for emission units that at maximum hourly design rate (MHDR) have an uncontrolled potential to emit less than the allowable emissions as calculated in subsections (3)(A)1. and (3)(A)2. of this rule. Based on EPA's review, this exemption would not increase particulate matter emissions limitations since the exemption is specifically for units which would not exceed the limits as calculated. This exemption was included in the rule so that units that are physically unable to reach the allowable emission limits would not have to run calculations each year to demonstrate this.

For item 6 above, these revisions did not change any emissions limits for any sources.

The state submitted the appropriate documentation to support the revisions to this rule and demonstrated that these exemptions will not adversely impact air quality. EPA believes the amendments to this rule are appropriate.

II. What action is EPA taking?

EPA is taking final action to approve the request to amend the Missouri SIP. The revisions pertain to a rescission and routine updates, corrections, clarifications and improvements as listed previously in this document. These modifications will not adversely affect air quality and will not relax the SIP. The state provided adequate justification where certain revisions could result in emissions increases.

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. On October 1, 2008, Missouri published the proposed revisions to the rules in the *Missouri Register.* After considering public comments, the Missouri Air Conservation Commission (MACC) adopted the rule actions on February 3, 2009. Public comments were printed in the *Missouri Register* along with a re-print of the rule on April 15, 2009. The effective date was May 30, 2009. EPA received Missouri's SIP revision on June 17, 2009.

The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

EPA is processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

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 Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the 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 CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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 October 12, 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 21, 2010.

William Rice,

Acting Regional Administrator, Region 7.

■ 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 AA—Missouri

■ 2. In § 52.1320(c) the table is amended by:

■ a. Removing the entry under Chapter 5 for 10–5.290; and

■ b. Revising the entry under Chapter 6 for 10–6.400.

The revision reads as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution Control Regulations for the Entire State of Missouri				
*	*	*	*	*
10–6.400	Restriction of Emission of Particulate Matter from Industrial Processes.	5/30/09	8/11/10 [*insert FR page number where the document begins*].	
*	*	*	*	*

* * * * *

[FR Doc. 2010–19569 Filed 8–10–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2009–0913; FRL–9186–5]

Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the State Implementation Plan (SIP) and Operating Permits Program to revise the state definition of volatile organic compounds; clarify language and incorporate rules related to construction permits to incorporate application fees and include a mechanism to use construction permits to accomplish other permitting needs; and clarify language related to open fires and explicitly include an exemption for fires used for religious activities. Approval of these revisions will ensure consistency between the state and Federally-approved rules.

DATES: This direct final rule will be effective October 12, 2010, without further notice, unless EPA receives adverse comment by September 10, 2010. If adverse comment is 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–R07–OAR–2009–0913, by one of the following methods:

1. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *E-mail: wolfersberger.chris@epa.gov.*

3. *Mail or Hand Delivery:* Chrissy Wolfersberger, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2009–0913. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. The

www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *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 *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Chrissy Wolfersberger at (913) 551–7864, or by e-mail at *wolfersberger.chris@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," or "our" refer to EPA. This section provides additional information by addressing the following questions:

What is being addressed in this document?
What action is EPA taking?
What does Federal approval of a state regulation mean to me?

What is being addressed in this document?

EPA is approving revisions to the Nebraska SIP and Operating Permits Program which revise the state definition of volatile organic compounds; incorporate rules related to construction permit application fees and include a mechanism to use construction permits to accomplish other permitting needs; and clarify language related to open fires.

Changes to Chapter 1 revise the definition of volatile organic compounds (VOCs) to adopt changes that EPA made on November 29, 2004. In the first action (69 FR 69298), EPA added four chemicals to the list of excluded compounds at 40 CFR 51.100(s)(1), on the basis that these compounds make a negligible contribution to tropospheric ozone formation. These are: 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane;3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane; 1,1,1,2,3,3,3-heptafluoropropane; and Methyl formate.

In the second action (69 FR 69304), EPA modified the definition of VOC at 40 CFR 51.100(s)(5) to exclude t-butyl acetate as a VOC for purposes of VOC emission limitations or VOC content requirements. While EPA determined that t-butyl acetate has a negligible contribution to tropospheric ozone formation, and need not be considered in determining source compliance with restrictions on VOC emissions, it also concluded that the compound should still be subject to all recordkeeping, emissions reporting, modeling, and inventory VOC requirements. The EPA final rule was effective December 29, 2004. The Nebraska regulation does not retain the recordkeeping, emissions reporting, modeling, and inventory VOC requirements.

EPA has communicated with the state regarding this issue, and expects that Nebraska will revise its rule to retain the recordkeeping, emissions reporting, modeling, and inventory VOC requirements specified in the federal rule for sources using t-butyl acetate. Pending the state's revision of the rule, EPA is not approving the current submittal as it relates to t-butyl acetate. EPA is, however, approving the revision as it relates to the other compounds discussed above.

Changes to Chapter 17, construction permits, clarify various terms in the regulation, add cross-references, and delete redundant language. Additionally, Chapter 17, *003.01* adopts into Title 129 the construction permit application fee structure adopted by the Nebraska Legislature in 2004 at Neb. Rev. Stat. § 81–1505.06. EPA had determined that these primarily administrative changes are consistent with Federal requirements.

Changes to Chapter 17, *015* delineates the construction permit process to be used as a vehicle to accomplish other permitting needs when a construction permit is not actually required, including to establish enforceable limits to avoid otherwise applicable regulatory provisions, or to modify existing construction permits to incorporate modifications that cannot be processed otherwise. While EPA is approving this regulatory change as part of this SIP submission as consistent with EPA requirements, it should be noted that if this provision is used to establish requirements relating to another regulatory program required to be included in the SIP, such as a best available retrofit technology requirement to address Regional Haze, Nebraska would need to submit such requirements to EPA for SIP approval, in order to meet the requirements of the particular regulatory program. Therefore, EPA approval of this regulation does not imply approval of permit requirements which may be issued under the regulation.

Changes to Chapter 30 clarify language related to open fires, exemptions, and permits. Additionally, Chapter 30, *002.01* expands allowable exceptions to the Nebraska Department of Environmental Quality open fire ban to include fires set solely for religious activities. According to the state's documentation, this change was intended to end confusion about the allowability of fires used in Native American sweat lodge ceremonies in those areas where the state has jurisdiction. EPA believes that fires set solely for religious purposes are similar in terms of size, frequency, and emissions to fires set for recreational purposes, which are already exempted from the open fire ban. Therefore, this change is considered a clarification, and it is not expected to result in additional emissions increases or a SIP relaxation.

Changes to Chapter 30, *002.08* alter the wording to state that burning materials not authorized under a burn permit may result in withdrawal of the permit. The existing wording stating that burning unauthorized materials "will result in immediate withdrawal of the permit" is inconsistent with normal state enforcement procedures, which allow for case-by-case discretion. EPA notes that, in any event, burning of material not authorized under the permit would not be exempt from the open burning ban in the rule, and would, therefore, be a violation of the rule. Therefore, the change regarding withdrawal of permits does not affect the enforceability of the rule. EPA is

approving the rule revision on this basis.

What action is EPA taking?

With the exception of the exemption of t-butyl acetate as discussed above, we are taking final action to approve revisions to the Nebraska SIP and Operating Permits Program. Approval of this revision will ensure consistency between the state and the Federally-approved rules. EPA has determined that these changes will not relax the SIP or adversely impact air emissions and will not substantively change the operating permits program.

We are processing this action as a direct final action because the revisions make noncontroversial changes to the existing rules. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

What does Federal approval of a state regulation mean to me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the 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 CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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 October 12, 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects

40 CFR Part 52

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

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: July 21, 2010.

William Rice,

Acting Regional Administrator, Region 7.

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

PART 52—[AMENDED]

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

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

Subpart CC—Nebraska

■ 2. In § 52.1420(c) the table is amended by revising the entries for 129–1, 129–17, and 129–30 to read as follows:

§ 52.1420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED NEBRASKA REGULATIONS

Nebraska citation	Title	State effective date	EPA approval date	Explanation
STATE OF NEBRASKA Department of Environmental Quality Title 129—Nebraska Air Quality Regulations				
129–1	Definitions	9/25/05	8/11/10 [*insert FR page number where the document begins*].	Requirements for t-butyl acetate are still in effect.
* * *	* * *	*	* * *	*
129–17	Construction Permits—When Required.	9/25/05	8/11/10 [*insert FR page number where the document begins*].	
* * *	* * *	*	* * *	*
129–30	Open Fires, Prohibited; Exceptions.	9/25/05	8/11/10 [*insert FR page number where the document begins*].	
* * *	* * *	*	* * *	*

* * * * *

PART 70—[AMENDED]

■ 3. The authority citation for Part 70 continues to read as follows:

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

Appendix A—[Amended]

■ 4. Appendix A to Part 70 is amended by adding paragraph (j) under the heading "Nebraska; City of Omaha; Lincoln-Lancaster County Health Department" to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Nebraska; City of Omaha; Lincoln-Lancaster County Health Department

* * * * *

(j) The Nebraska Department of Environmental Quality approved a revision to NDEQ Title 129, Chapter 1 on June 2, 2005, which became effective September 25, 2005. This revision was submitted on May 27, 2009. We are approving this program revision effective October 12, 2010.

* * * * *

[FR Doc. 2010–19566 Filed 8–10–10; 8:45 am]

BILLING CODE 6560–50–P

COUNCIL ON ENVIRONMENTAL QUALITY

40 CFR Part 1515

RIN 0331–ZA01

Revision of Freedom of Information Act Regulations

AGENCY: Council on Environmental Quality.

ACTION: Final Rule.

SUMMARY: This document amends the Council on Environmental Quality's (CEQ) regulations governing the disclosure of information pursuant to the requests made under the Freedom of Information Act (FOIA). These revisions also reflect the principles established by President Obama's Presidential Memoranda on "Transparency and Open Government" and "Freedom of Information Act" issued on January 21, 2009 and Attorney General Holder's Memorandum on "The Freedom of Information Act (FOIA)" issued on March 19, 2009. Additionally, the regulations have been updated to reflect CEQ's policy and practices and reaffirm its commitment to providing the fullest possible disclosure of records to the public. The regulations provide for an online FOIA Requester Service Center and Reading Room; electronic FOIA requests; access to records published or released under FOIA in electronic format, provided the record is readily reproducible in that form or format; designation of a Chief FOIA Officer and FOIA Public Liaison; referral of requests to appropriate Federal agencies or consultation with another agency, if appropriate; review of requests in order of receipt; multi-tacking of FOIA requests based on the amount of time and work involved in processing requests; revision of CEQ's initial determination period from 10 days to 20 days, beginning on the date CEQ receives a written request; assignment of individualized tracking numbers for certain requests; tolling of the time limit for CEQ to act on a request; expedited processing of FOIA requests upon showing a showing of compelling need; CEQ consultations with a requester to determine if a FOIA request may be modified to allow for a more timely response, or to arrange an alternative time frame for a response; informing the requester of the volume of requested material withheld and the extent of deletions in records released in response to a FOIA request; increase in time for appeal from 45 to 60 days from the date of denial of a request; extension of the time limit to respond to a request in "unusual circumstances," and aggregation of clearly related requests by a single requester or group of requesters. Further, CEQ's fee structure is revised to include a method for computing fees based upon the classification of the requester and the base pay of the employee making the search, an increase of copying costs from $0.10 to $0.15 per page, and a provision for waiving fees. Additional administrative changes include reorganizing, renumbering, and renaming of the FOIA subsections and updating addresses and telephone numbers.

DATES: This final rule is effective September 10, 2010.

FOR FURTHER INFORMATION CONTACT: Elizabeth Moss, FOIA Coordinator, 722 Jackson Place, NW., Washington, DC 20503 or (202) 456–6550.

SUPPLEMENTARY INFORMATION: On November 13, 2009, the Council on Environmental Quality published a proposed rule that revised its existing regulations under the FOIA and added new provisions implementing the "Openness Promotes Effectiveness in our National Government Act of 2007" (OPEN Government Act of 2007), Public Law 110–175, 121 Stat. 2524 (Dec. 31, 2007) and the "Electronic Freedom of Information Act Amendments of 1996" (Electronic FOIA Amendments), Public

Law 104–231, 110 Stat. 3048 (Oct. 2, 1996). See 74 FR 58576, Nov. 13, 2009. Interested persons were afforded an opportunity to participate in the rulemaking through submission of written comments on the proposed rule. CEQ received three responses to its proposed rule. CEQ has addressed the modifications suggested by the commenters and has made other revisions to its proposed rule for clarity as well.

CEQ coordinates Federal environmental efforts and works closely with agencies White House offices in the development of environmental policies and initiatives. CEQ was established within the Executive Office of the President by Congress as part of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.,* (NEPA); additional responsibilities were provided by the Environmental Quality Improvement Act of 1970, 42 U.S.C. 4372 *et seq.* CEQ's current FOIA regulations are published at 40 CFR part 1515 and are available on the CEQ's FOIA Web site at: *http://www.whitehouse.gov/administration/eop/ceq/foia.* Promulgated in 1977, 42 FR 65158 (Dec. 30, 1977), they have not been revised since to reflect current law or CEQ's policy and practice of conducting its activities in an open manner and providing the public with accurate and timely information about its activities. Amendments to the FOIA, including OPEN Government Act of 2007 and the 1996 Electronic FOIA Amendments, require changes in CEQ FOIA practices to promote openness and transparency in government, provide for public access to information in an electronic format and ensure a prompt and effective response to the public's requests for information. In addition, the Freedom of Information Reform Act of 1986 (1986 Act), Public Law 99–570, 100 Stat. 3207 (1986), the DOJ's "New FOIA Fee Waiver Policy Guidance" (April 2, 1987) and the OMB's Uniform FOIA Fee Schedule and Guidelines, 52 FR 10012, March 27, 1987, established pursuant to the FOIA, require amendments to the FOIA fee provisions, including a method for computing fees that is based upon the classification of the requester and the base pay of the employee making the search and a provision for waiving fees. Finally, the Presidential Memorandum of January 21, 2009, "Transparency and Openness," 74 FR 4685, and the Attorney General's March 19, 2009 FOIA policy guidance have advised Federal agencies to apply a presumption of disclosure in FOIA decision-making. The Attorney General's guidance further advises that agencies should release information to the fullest extent of the law, including information that may be legally withheld, provided there is no foreseeable harm to an interest protected by an exemption or the disclosure is not prohibited by law.

Consistent with these laws and guidance, CEQ undertook a comprehensive review of its FOIA regulations. As a result CEQ proposes to revise its regulations to more clearly reflect current law, CEQ's current organizational structure, its record system configuration, and FOIA policy and practice as well as to eliminate outdated regulatory provisions. CEQ has modeled many of the provisions in today's rules on similar regulations previously adopted by other Federal agencies. Thus, many are identical to or closely resemble the requirements adopted by other Federal agencies, and as such represent regulatory "best practices" concerning FOIA procedures. The fee provisions reflect OMB's FOIA fee provisions. Additional provisions reorganize and renumber current FOIA regulations to reflect and implement the FOIA amendments referenced above.

CEQ's policy of disclosure follows the Presidential Memorandum and the Attorney General's guidance. Congress established CEQ to advise the President on matters of environmental policy. Therefore, members of the public should be advised that communications between CEQ and the President (and their staff) may be confidential and thus may not be released if they fall within a FOIA exemption. However, based on the recommendation of the CEQ FOIA Officer or Appeals Officer, CEQ considers the release of an entire record, even if it comes within an exemption or contains policy advice, if its disclosure would not impair Executive Branch policymaking processes or CEQ's participation in decision-making.

Comments

CEQ received three responses to its request for comments: one from an organization that represents state and local associations of home builders and regularly relies on FOIA as part of its advocacy and two from private citizens who submit FOIA requests. Each of these responses contained several comments, which are available at the CEQ Proactive Disclosure Reading Room at: *http://www.whitehouse.gov/administration/eop/ceq/foia/readingroom.*

In general, all commenters supported CEQ's proposed regulatory revisions. One commenter observed that it was encouraging to see that CEQ was bringing its FOIA response practices "up to date"; another noted that the regulatory changes will facilitate greater access and public disclosure of information: "the public in general and FOIA requesters will greatly benefit from these proposed changes." Within this context, all three commenters requested clarifications and, in several instances, additions to the FOIA regulations.

One commenter was "encouraged" that CEQ's proposed revisions specifically respond to the Presidential Memorandum of January 21, 2009 and the Attorney General's March 19, 2009, FOIA policy guidance but noted that "CEQ makes no mention of a presumption of openness, full disclosure, or increased transparency anywhere in its revisions." The same commenter states that CEQ's proposed deletion of § 1515,10(c) is in direct conflict with the 2009 directives. A commitment to the Presidential Memorandum as well as the Attorney General's guidelines is the driving force behind the revision of CEQ's FOIA regulations. CEQ has revised Section 1515.10(c) to make this intention clear.

One commenter stated that CEQ's designation of its Chief FOIA Officer as also the agency's Appeals Officer constitutes "a conflict of interest." CEQ appreciates the commenter's interest in ensuring that FOIA appeals decisions are rendered on their own merits and without consideration of potentially conflicting administrative or policy considerations. However, CEQ has observed no such conflicts and, to the contrary, has found that its FOIA program has functioned well with a Chief FOIA Officer who benefits from the practical experience of appeals work. Moreover, CEQ remains a small agency that typically does not maintain sufficient career staff with FOIA expertise to ensure that the Chief FOIA Officer and Appeals Officer positions can be maintained by different individuals. Therefore, Section 1515.4(b) of the final regulation makes clear that the Chief FOIA Officer is responsible for oversight of the CEQ's administration of the Freedom of Information Act; he or she does not encounter FOIA requests and responses directly but, rather, designates a CEQ FOIA Officer to manage daily business, including receiving, routing, and overseeing the processing of all FOIA requests. The Chief FOIA Officer maintains general familiarity with CEQ's FOIA practice, which makes the Chief FOIA Officer the logical choice for Appeals Officer.

Two commenters expressed concerns about CEQ's proposed response time. The first asserts that CEQ would like to

use a "complicated formula of tolling to delay a timely response" and that Section 1515.6 "should not be put into practice or into the CEQ's rules." The OPEN Government Act of 2007 amended FOIA's existing time period provision by setting forth statutory provisions regarding when the time period commences and when and how often it can be "tolled," or stopped. Section1515.6 of CEQ's revised regulations are consistent with those statutory provisions (*See* OPEN Government Act § 6 (codified at 5 U.S.C. 552(a)(6)(A)). CEQ proposed shortening the interval during which a requester can file an appeal from 45 days to 30 days once the requester has received an adverse determination through a request for clarification. While supporting this proposed reduction of the interval, a commenter noted inconsistencies between the time period specified in the section-by-section analysis of the proposed regulation and the regulatory language itself. CEQ has decided to provide a 60-day time period for submitting an appeal.

One comment questions the justification for CEQ's adjustment of its fee schedule. CEQ finds that this modest adjustment, the first since the initial publication of CEQ's FOIA regulations in 1977, reflects the increased cost of human resources, specifically the base salary of FOIA staff, in addition to a rise in paper costs and copying equipment. The final fee adjustment is consistent with OMB Fee Guidelines (*See* 52 FR 10012).

The same commenter states that CEQ's policy of consulting requesters about costs associated with a search likely to surface a voluminous amount of records before the search constitutes a means to "withhold information." CEQ experience with requests for voluminous records, including extensive e-mail records, confirms that consulting with requesters can reduce costs and provide for more timely and informative responses. FOIA provides for two hours of free search time and copies the first 100 pages of records at no cost to all but commercial requesters.

One commenter requested the addition of language in the preamble or the regulations that provides for the protection of sensitive archeological information in response to FOIA requests. Several other statutes and regulations relating to cultural resources provide this authority for withholding of archeological resource information. CEQ does not typically maintain non-public records related to archeological sites, but would protect those records in accordance with FOIA and other applicable law. CEQ finds that the regulations adequately protect these interests and has declined to specifically identify other applicable authorities at this time.

Another comment concerned the intersection of the proposed regulations with CEQ's NEPA regulations, specifically 40 CFR 1506(f) which provides that Environmental Impact Statements, the comments received, and the underlying information be made available to the public by Federal agencies pursuant to FOIA at no charge to the extent practicable. The commenter suggested that this section should be referenced in the preamble or the rule. CEQ agrees that its FOIA resources, particularly its Proactive Disclosure Reading Room, should be used to advance NEPA's goals of transparency and public accountability in decision-making. As resources allow, CEQ will use its Proactive Disclosure Reading Room and associated Web sites (particularly *http://www.nepa.gov*) to make environmental documents more accessible to the public.

Section-by-Section Analysis

Section 1515.1. The FOIA, 5 U.S.C. 552, allows the public access to Federal agency records except those that are protected from release by nine specified exemptions. Language is added to the end of this section advising requesters that the regulations should be read together with the FOIA.

Sections 1515.2(b) and 1515.2(c). Sections 1515.2(b) and Section 1515.2(c) are deleted in their entirety. Information about CEQ's purpose and functions is available online at *http://www.whitehouse.gov/administration/eop/ceq*. In 1995 Congress passed the Federal Reports Elimination and Sunset Act (Pub. L. 104–66) aimed at reducing paperwork in government, in part through the elimination of a list of reports identified in House Document No. 103–7. CEQ's Environmental Quality Report was listed on page 41. In addition, CEQ no longer maintains the "Quarterly Reports" referred to in Section 1515.2(c)

Sections 1515.3(a) and (c). These sections have been revised to reflect the current organizational structure of CEQ. Although the National Environmental Policy Act creates CEQ to have three members appointed by the President and confirmed by the Senate (42 U.S.C 4342), in accordance with CEQ annual appropriations, the Council consists of one member.

Section 1515.3(e). This section has been deleted to reflect CEQ's current organizational structure. CEQ currently has an Associate Director for Communications but does not have a "Public Affairs" office.

Section 1515.3(f). The hours of operation and CEQ telephone number and zip code have been updated in this section.

Section 1515.4(a). The Open Government Act of 2007, amending 5 U.S.C. 552(j), requires agencies to designate a Chief FOIA Officer who is responsible for the efficient and appropriate compliance with and implementation of the FOIA. At CEQ, this official may also serve as the FOIA Appeals Officer and, along with the FOIA Public Liaison designated in Subsection 1515.3(d), is designated to provide a clear point of contact for the public in dealing with the CEQ on FOIA matters. Thus, a new Section 1515.4(a) implements these laws and incorporates the information described in the current Section 1515.5(a).

Section 1515.4(b). The OPEN Government Act of 2007, amending 5 U.S.C. 552(k)(6), requires agencies to designate a FOIA Public Liaison who reports to the Chief FOIA Officer and whose role is to provide information to the public regarding the status of its FOIA requests and to receive "concerns about the service a requester has received from the [FOIA Requester Service] Center." The OPEN Government Act of 2007, at 5 U.S.C. 552(l), further directs the Public Liaison to "assist, as appropriate, in reducing delays, increasing transparency and understanding of the status of requests, and resolving disputes." At CEQ, the FOIA Public Liaison is the FOIA Officer responsible for reviewing and making the initial determination on a FOIA request. Thus, a new Section 1515.4(b) is added to implement these laws and CEQ current practice.

Section 1515.5(a). The language in this section has been deleted, and the information concerning CEQ's "Chief FOIA Officer" and "Appeals Officer" has been moved to a new Section 1515.4. In addition, this section has been renamed "Availability of Records." Pursuant to Section 2(c)(i) of E.O. 13392, CEQ maintains an online FOIA Requester Service Center "which shall serve as the first place that a FOIA requester can contact to seek information concerning the status of the person's FOIA request and appropriate information about the agency's FOIA response." The 1996 FOIA Amendments, amending 5 U.S.C 552(a)(2), requires agencies to make records that may be the subject of future requests, including computer telecommunications, created on or after November 1, 1996, available by electronic means. Accordingly, language

is added to this section to implement these laws.

Section 1515.5(b)(1). To reflect current CEQ practice, the language in this section is deleted in its entirety and replaced with the process the public follows when requesting information from CEQ. Like the original section, the new Section 1515.5(b)(1) requires all requests to be in writing and provides updated address and telephone contact information. It has also been revised to add language notifying requesters that they may submit FOIA requests via e-mail or facsimile.

Section 1515.5(b)(2). The first two sentences of this section are deleted in their entirety, and the information contained in these deletions are reorganized and stated in Section 1515.5(b)(1). The language in current Section 1515.5(b)(3) is moved to this section. Additionally, the 1996 Amendments, amending 5 U.S.C. 552(a)(3)(B), require agencies to provide records in the form or format requested "if the record is readily reproducible by the agency in that form or format." Accordingly, language is added to this section notifying requesters to specify the form or format in which they wish to receive their response; otherwise CEQ will produce the request in the form or format most accessible to CEQ. Requesters are advised that FOIA requests themselves are part of CEQ's agency records subject to public release under FOIA.

Section 1515.5(b)(3). This language has been reorganized and incorporated into Section 1515.5(b)(2). In addition, the Open Government Act of 2007, amending 5 U.S.C. 552(a)(6)(B)(iii)(III), grants agencies the authority to consult with another agency with a substantial interest in the determination of the request. The 1996 Amendments, amending 5 U.S.C 552(a)(6)(D)(i) and (ii), allow agencies to provide for multi-track processing of requests for records based on the amount of time and/or work involved in processing of requests and to allow a FOIA requester whose request does not qualify for the fastest multi-track processing an opportunity to limit the scope of the request in order to qualify for faster processing. Thus language is added to this section to implement these amendments.

Section 1515.5(b)(5). The Open Government Act of 2007, amending 5 U.S.C. 552(a)(6)(A), provides that the statutory time period for determination commences "on the date on which the request is first received by the appropriate component of the agency, but in any event not later than ten days after the request is first received by any component of the agency that is designated in the agency's regulations under this section to receive requests." The language in the current Section 1515.5(b)(5) is deleted to reflect current law. In addition, the new § 1515.6 contains new language notifying requesters that the determination period begins on the date CEQ receives the request.

Section 1515.6(a) This section renumbers and revises current Section 1515.5(c)(1). The 1996 Act, amending 5 U.S.C. 552(a)(6)(A)(i), lengthened the time within which agencies must respond to FOIA requests from 10 to 20 working days. Moreover, the OPEN Government Act of 2007 added Sections 552(a)(6)(A)(ii)(I) and (II) to the FOIA which provide authority for agencies to toll the 20 day determination period. Specifically, an agency "may make one request to the requester for information and toll" the statutory time period "while it is awaiting such information that it has reasonably requested from the requester." It may also toll the time period "if necessary to clarify with the requester issues regarding fee assessment." There is no limit given for the number of times the agency may go back to a requester to clarify issues regarding fee assessments, which may need to be done in stages as the records are being located and processed. In both situations, the agency's receipt of the requester's response to the agency's request "ends the tolling period." Accordingly, the time limit for determination is revised and language is added to this subsection to implement these laws.

Section 1515.6(b). The OPEN Government Act of 2007, which added 5 U.S.C. 552(a)(7), requires agencies to assign a tracking number for each request that will require more than 10 days to process and provide requesters with information regarding the status of their request. It further requires agencies to establish a phone number or an internet site to enable requesters to inquire about the status of their request. Accordingly, this section has been added to implement these requirements.

Section 1515.6(c). This section renumbers current Section 1515.5(c)(2).

Section 1515.6(d). This section renumbers and revises current Section 1515.5(c)(4). The 1996 Act and the OPEN Government Act of 2007, amending 5 U.S.C. 552(a)(2), require agencies in the event of a denial, in whole or in part, to indicate the extent of any deletion made in released records and publicly available records and to inform the requester of the estimated volume of material withheld. Thus language is added to this section to implement these laws.

Section 1515.7. The 1996 Act, amending 5 U.S.C. 552(a)(6)(E)(i), directs agencies to provide for expedited processing of FOIA requests in cases of "compelling need" and in other cases, if any, determined by the agency. Thus this new subsection 1515.7 is added which tracks the language of the FOIA amendments. The FOIA also sets out procedures for handling requests for expedited processing and for appeals which are followed and incorporated in this section.

Section 1515.8(a). This section renumbers and revises current § 1515.5(d)(1) and explains the appeals process to a FOIA request determination. In order to streamline CEQ's FOIA process and provide prompt responses, the time period for filing an appeal is increased to 60 days.

Section 1515.8(b). This section is added to advise requesters that they may file written appeals via e-mail or facsimile.

Section 1515.8(d). This section renumbers and revises current § 1515.5(d)(4). Language is added to notify requesters that the 20 day appeal determination period does not include Saturdays, Sundays, and Federal holidays.

Section 1515.9. This section renumbers and revises current Section 1515.5(e). The FOIA at 5 U.S.C. 552(a)(6)(B) and Section 1515.5(e) of CEQ's current regulations permit CEQ, upon written notice to the requester, to extend the time limit for acting on a request or appeal if "unusual circumstances" exist. The 1996 Act, amending 5 U.S.C. 552(a)(6)(B)(ii), expanded this authority to permit agencies to further extend the response time by notifying the requesters and providing them with an opportunity to either limit the scope of their request so that no extension is needed, or to arrange with the agency an alternative time frame for processing the request. Accordingly, a new § 1515.9(b) is added to implement this law, and the definition of "unusual circumstances" currently at § 1515.5(e)(i), (ii) and (iii) is renumbered and restated in a new § 1515.9(c).

Section 1515.10(a). The 1996 Act, amending 5 U.S.C. 522(a)(3) (C) and (D) requires agencies to provide requested records in any form or format requested, if the record is readily reproducible by the agency in that form or format. Agencies must make reasonable efforts to maintain their records in forms or formats that are reproducible electronically and to search for requested records in electronic form or format, except when such efforts would significantly interfere with the operation

of the agency's automated information system. Accordingly, language is added to this section to implement this law. Language is also added to this section advising requesters that CEQ will make requested materials available at its online FOIA Center.

Section 1515.10(b). The OPEN Government Act of 2007, amending 5 U.S.C. 522(b), amends the current FOIA provision listing exemptions and generally requiring agencies to indicate directly "on the released portion of the record" the amount of information deleted, by adding the requirement that agencies also indicate "the exemption under which the deletion is made." Accordingly, this section is added as § 1515.10(b) which follows the language of this law.

Section 1515.10(c). In a Memorandum to Heads of Executive Departments and Agencies dated January 21, 2009, the President directed Federal agencies to implement the FOIA with a presumption of openness and in favor of disclosure. CEQ is committed to operating transparently and subject to public scrutiny and accountability and has revised this provision of its regulations accordingly while providing for the withholding of confidential communications in accordance with CEQ's authorizing legislation.

Section 1515.11. The current § 1515.15 regarding "Costs" is deleted in its entirety, and is replaced with updated fee structure and policy, §§ 1515.11 through 1515.15, to be consistent with "The Freedom of Information Reform Act of 1986," Public Law 99–570, 1801–1804, 100 Stat. 3207, 3207–48 (1986), which established the current FOIA fee structure and waiver standard, and subsequent policy guidance and guidelines issued by the U.S. Department of Justice, "New FOIA Fee Waiver Policy Guidance" (4–2–87), and the Office of Management and Budget, "Uniform Freedom of Information Act Fee Schedule and Guidelines." 52 FR 1007, March 27, 1987. CEQ's fee structure includes a method for computing fees that is based upon the classification of the requester and the base pay of the employee making the search, an increase of copying costs from $0.10 to $0.15 per page, and provides for waiver of fees.

Section 1515.16. This new section advises requesters that CEQ's FOIA regulations do not "entitle any person, as of right, to any service or to the disclosure of any records to which such person is not entitled under the FOIA."

Regulatory Analysis and Notices

Administrative Procedure Act

This rulemaking is in compliance with the Administrative Procedure Act (5 U.S.C. 553). Interested persons were invited to submit written comments to CEQ on the proposed regulation. CEQ reviewed all comments received and made modifications to the proposal which appear warranted.

Regulatory Flexibility Act

For purposes of the Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6), the final rule will not have a significant economic impact on a substantial number of small entities. The rule addresses only the procedures to be followed: (1) To request CEQ records; or (2) in the production or disclosure of CEQ materials and information in litigation where CEQ is not a party. Under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for certain categories of requesters. CEQ's proposed fee structure is in accordance with DOJ guidelines and based upon OMB fee schedules which calculate costs based upon the category of requester and kind of employee duplicating the records. Thus, fees assessed by CEQ are nominal and will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), the final rule would not significantly or uniquely affect small governments and would not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation).

Executive Order 12866

In issuing this regulation, CEQ has adhered to the regulatory philosophy and the applicable principles of regulation as set forth in Section 1 of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735. This final rule has not been reviewed by the Office of Management and Budget under that Executive Order since it is not a significant regulatory action within the meaning of the Executive Order.

Executive Order 12988

CEQ has reviewed this regulation in light of Section 3 of Executive Order 12988, Civil Justice Reform, and certifies that it meets the applicable standards provided therein.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not impose any reporting or recordkeeping requirements.

National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.,* and the CEQ regulations which implement the NEPA, 40 CFR 1500–1508, impose requirements for considering the environmental impacts of proposed agency decisions and actions. They provide for each agency to develop a list of categories of actions called categorical exclusions (CEs) that are determined through agency experience to typically have no significant environmental impact and thus may generally be excluded from detailed analysis and documentation. It further directs agencies to prepare an environmental impact statement (EIS) for "major Federal actions significantly affecting the quality of the human environment." If an action may have a significant impact and the agency has not decided to prepare an EIS, the agency must prepare an environmental assessment (EA). If, as a result of this assessment, the agency makes a Finding of No Significant Impact (FONSI), no further action is necessary. If it will have a significant effect, then the agency uses the EA to develop an EIS.

CEQ's NEPA regulations do not have a CE for either the dissemination of information under the FOIA or the preparation, revision, and adoption of regulations, directives, and other guidance documents. Thus, as set forth in CEQ's November 13, 2009 **Federal Register** notice for its proposed rulemaking, CEQ developed an EA to determine whether the proposed revisions to CEQ's FOIA regulations may or may not have a significant impact on the human environment. CEQ received no comments on the EA. Because these rules pertain solely to procedures regarding the dissemination of information and will have not only a minimal impact on CEQ resources, including paper consumption, but will conserve resources and improve the FOIA process, CEQ has found that these final regulations will have no significant impact on the human environment and therefore, an EIS is not required.

List of Subjects in 40 CFR Part 1515

Administrative practice and procedures, Freedom of information, Government employees, Records.

■ Accordingly, for the reasons set forth in the preamble, the Council on Environmental Quality revises 40 CFR 1515 to read as follows:

PART 1515—FREEDOM OF INFORMATION ACT PROCEDURES

Sec.

Authority: 5 U.S.C. 552, as amended by Pub. L. 93–502, Pub. L. 99–570, Pub. L. 104–231, Pub. L. 110–175; E.O. 13392; Pres. Mem. 74 FR 4685. Source: 42 FR 65158, Dec. 30, 1977, unless otherwise noted.

Purpose

§ 1515.1 FOIA procedures.

The Freedom of Information Act (5 U.S.C. 552), as amended, commonly known as FOIA, is a Federal law that creates a procedure for any person to request documents and other records from United States Government agencies. The law requires every Federal agency to make available to the public the material requested, unless the material falls under one of the limited exemptions stated in Section 552(b) of the Act. These procedures explain how the Council on Environmental Quality (CEQ)—one of several agencies in the Executive Office of the President—will carry out the FOIA. They are written from the standpoint of a FOIA requester and should be read together with the FOIA, which provides additional information about access to records maintained by CEQ. This information is furnished for the guidance of the public and in compliance with the requirements of Section 552 of title 5, United States Code, as amended.

Organization of CEQ

§ 1515.2 About the Council on Environmental Quality (CEQ).

The Council on Environmental Quality ("CEQ" or "the Council") was created by the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 through 4347). The Council's authority is primarily derived from that Act, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371–4374), Reorganization Plan No. 1 of 1977 (July 15, 1977), and Executive Order 11514, "Protection and Enhancement of Environmental Quality," March 5, 1970, as amended by Executive Order 11991, May 24, 1977.

§ 1515.3 CEQ organization.

(a) The Council is made up of a Chair appointed by the President and subject to approval by the Senate who serves in a full-time capacity. Congress has allowed CEQ to consist of a Council of one member who serves as Chairman or Chair.

(b) The National Environmental Policy Act and the Environmental Quality Improvement Act give the Council the authority to hire any officers and staff that may be necessary to carry out responsibilities and functions specified in these two Acts. Also, the use of consultants and experts is permitted.

(c) In addition to the Chair, the Council has program and legal staff.

(d) The Council has no field or regional offices.

(e) The Council is located at 722 Jackson Place NW., Washington, DC 20503. Office hours are 9 a.m.–5:30 p.m., Monday through Friday, except Federal holidays. To meet with any of the staff, please write or phone ahead for an appointment. The main number is 202–456–6224.

§ 1515.4 CEQ FOIA Officials.

(a) The Chair shall appoint a Chief Freedom of Information Act Officer (Chief FOIA Officer) who is responsible for overseeing the Council's administration of the Freedom of Information Act and for receiving, routing and overseeing the processing of all Freedom of Information requests as set forth in these regulations. The Chair shall appoint an Appeals Officer, who is responsible for processing and acting upon any appeals and may designate one or more CEQ officials, as appropriate, as FOIA Officers authorized to oversee and process FOIA requests. The Chief FOIA Officer may serve as the Appeals Officer.

(b) The Chief FOIA officer shall designate a FOIA Public Liaison who is the supervisory official to whom a FOIA requester can raise concerns about the service the FOIA requester has received from the CEQ FOIA Center, described in Section 1515.5(a), following an initial response from the staff of the CEQ FOIA Center staff. The FOIA Public Liaison shall assist, as appropriate, in reducing delays and increasing understanding of the status of requests. The Chief FOIA officer shall also designate a CEQ FOIA Officer responsible for overseeing CEQ's day-to-day administration of the FOIA and for receiving, routing, and overseeing the processing of all FOIA requests.

Procedures for Requesting Records

§ 1515.5 Making a Freedom of Information Act request.

(a) *Availability of records.* The Council maintains a World Wide Web site, *http://www.whitehouse.gov/administration/eop/ceq,* and an online Freedom of Information Act Requester Service Center ("Center"), *http://www.whitehouse.gov/administration/eop/ceq/foia.* From the Center, a requester can find contact information regarding the CEQ's FOIA Public Liaison, as defined in Section 1515.4(b), and access CEQ's Online Reading Room where CEQ makes available records pertaining to matters within the scope of 5 U.S.C. 552(a)(2), as amended, and environmental issues and other documents that, because of the nature of their subject matter, are likely to be the subject of FOIA requests. To save both time and money, CEQ strongly urges requesters to review documents currently available from the Center's Online Reading Room before submitting a request.

(b) *Requesting information from the Council.* (1) Requesters must make a Freedom of Information Act request in writing. For quickest possible handling, it should be sent via e-mail to: *efoia@ceq.eop.gov* and must include in the subject line of the e-mail message: "Freedom of Information Act Request." Written requests may also be faxed to (202) 456–0753 or addressed and mailed to: Council on Environmental Quality, Executive Office of the President, 722 Jackson Place NW., Washington, DC 20503. Requesters should mark both the request letter and the envelope "Freedom of Information Act Request" and include their name, address, and sufficient contact information to allow follow up regarding the scope and status of your request.

(2) The request should identify or reasonably describe the desired record.

It should be as specific as possible, so that the item can be readily found. Blanket requests, such as requests for "all materials relating to" a specified subject are not recommended. Requesters should specify the preferred form or format (including electronic format) for the response. CEQ will accommodate such requests, if the record is readily reproducible in that form or format. Please be aware that FOIA requests and responses may themselves be made available for public inspection.

(3) The CEQ FOIA Officer is responsible for acting on all initial requests; however, he or she may consult and refer, pursuant to Section 552(a)(6)(B)(iii)(III) of the FOIA, with another agency if he or she determines that that agency is better able to act on the request. Whenever the CEQ FOIA Officer refers all or any part of the responsibility for responding to a request to another agency, he or she will notify the requester of the referral, the name of the agency and agency official to whom it has been referred, and which portion of the request has been referred. Unless a request is deemed "expedited" as set forth in Section 1515.7 below, the CEQ FOIA Officer will respond to requests in order of receipt. CEQ may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of time and work needed to process the request. CEQ may provide requesters on a slower track an opportunity to limit the scope of their request in order to qualify for faster processing.

(4) The Council will make a reasonable effort to assist with defining the request to eliminate extraneous and unwanted materials and to keep search and copying fees to a minimum. If budgetary constraints exist, the requester should indicate the maximum fee he or she is prepared to pay to acquire the information. (*See also* § 1515.11)

(5) The Freedom of Information Act does not require a government agency to create or research information; rather, it only requires that existing records be made available to the public.

§ 1515.6 CEQ's response to a request.

(a) Upon receipt of any written request for information or records, under the Act, the CEQ FOIA Officer or his or her designee, will make an initial determination on the request within 20 days (excepting Saturdays, Sundays and Federal holidays) from the date CEQ receives the request unless unusual or exceptional circumstances exist. The CEQ FOIA Officer will provide written notification of the determination, including, if applicable, notification that the request has been referred to another agency for consultation as set forth above in § 1515.5(b)(3). CEQ may make one request to the requester for information and toll the 20-day period while it is awaiting such information that it has reasonably requested from the requester. It may also toll the 20-day period if necessary to clarify with the requester issues regarding fee assessment. In either case, CEQ's receipt of the requester's response to its request for information or clarification ends the tolling period.

(b) Requests received by the CEQ FOIA Officer or his or her designee will be assigned an individualized tracking number if they will take more than 10 days to process. Requesters may call the FOIA Public Liaison at (202) 456–6224 and, using the tracking number, obtain information about the request, including the date on which CEQ originally received the request and an estimated date on which CEQ will complete action on the request.

(c) If it is appropriate to grant the request, a staff member will immediately collect the requested materials in order to accompany, wherever possible, the Freedom of Information Officer's letter conveying decision.

(d) If a request is denied in part or in full, the letter conveying the decision will be signed by the CEQ FOIA Officer, and will include: The reasons for any denial, including any FOIA exemption(s) applied by the FOIA Officer in denying the request; an estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided, if the volume is otherwise indicated through exemptions on records disclosed in part or, if providing an estimate would harm an interest protected by an applicable exemption; and the procedure for filing an appeal.

§ 1515.7 Expedited processing.

(a) Requests and appeals will be taken out of order and given expedited treatment whenever it is determined that they involve:

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person primarily engaged in disseminating information.

(b) A request for expedited processing may be made at the time of the initial request for records or at any later time.

(c) A requester who seeks expedited processing must submit a written statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within the category described in paragraph (a)(2) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A requester within the category (a)(2) of this section must also establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally. Formal certification may be waived as a matter of administrative discretion.

(d) Within 10 days of its receipt of a request for expedited processing, the CEQ FOIA Officer will decide whether to grant it and will notify the requester of the decision. If a request for expedited treatment is granted, the request will be placed in the expedited processing track, given priority, and processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

§ 1515.8 Appeals.

(a) The requester may appeal an adverse determination, in any respect, to the CEQ FOIA Appeals Officer. Any appeal must be received by CEQ within 60 days of the date on the CEQ letter denying the request.

(b) Appeals must be in writing and may be sent via e-mail to: *efoia@ceq.eop.gov*. They may also be sent via facsimile to: (202) 456–0753 or via U.S. mail addressed to: FOIA Appeals Officer, Council on Environmental Quality, Executive Office of the President, 722 Jackson Place NW., Washington, DC 20503.

(c) The appeal letter should specify the records requested and ask the Appeals Officer to review the determination made by the Freedom of Information Officer. The letter should explain the basis for the appeal.

(d) The Appeals Officer will make a final determination on an appeal within 20 working days (excepting Saturdays, Sundays and Federal holidays) from the date CEQ receives the appeal. The Appeals Officer (or designee) will send a letter to the requester conveying the

decision as soon as it is made. If an appeal is denied, in part or in whole, the letter will also include the provisions for judicial review.

§ 1515.9 Extending CEQ's time to respond.

(a) In unusual circumstances as defined in paragraph (c) of this section, the time limits for responding to a request (§§ 1515.6(a) and 1515.8(d)) may be extended by the Council for not more than 10 working days. Extensions may be granted by the CEQ FOIA Officer in the case of initial requests and by the Appeals Officer in the case of any appeals. The extension period may be split between the initial request and the appeal but may not exceed 10 working days overall. Extensions will be confirmed in writing and set forth the reasons for the extension and the date that the final determination is expected.

(b) With respect to a request for which a written notice under this section extends the time limits prescribed under § 1515.6(a), the CEQ FOIA Officer will notify the requester, if the request cannot be processed within the time limit specified in § 1515.6(a) and provide an opportunity to limit the scope of the request, so that it may be processed within that time limit or an opportunity to arrange an alternative time frame for processing the request or a modified request. A requester's refusal to reasonably modify the request or arrange such an alternative time frame will be considered as a factor in determining whether exceptional circumstances exist for purposes of 5 U.S.C. 552(a)(6)(C). When CEQ reasonably believes that a requester, or a group of requesters, has submitted a request constituting a single request that would otherwise satisfy the unusual circumstances specified under this section, CEQ may aggregate those requests for purposes of this paragraph. Multiple requests involving unrelated matters will not be aggregated.

(c) The term "unusual circumstances" means:

(1) The need to search for and collect the requested records from establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which will be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

Availability of Information

§ 1515.10 Obtaining available information.

(a) When a request for information has been granted in whole or in part, CEQ will notify the requester in writing, inform the requester in the notice of any fee charged under § 1515.11 and will disclose records to the requester promptly on payment of any applicable fees. The requested material may be made available on CEQ's Online FOIA Center, *http://www.whitehouse.gov/administration/eop/ceq/foia*, and also in the form or format requested if the record is readily reproducible in that form or format with reasonable effort. When a form or format of the response is not requested, CEQ will respond in the form or format in which the document is most accessible to CEQ. "Readily reproducible" means, with respect to electronic format, that the requested record or records can be downloaded or transferred intact to a computer disk or other electronic medium using equipment currently in use by CEQ.

(b) Records disclosed in part will be marked or annotated to show information deleted, unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted will also be indicated in the record, if technically feasible.

(c) The legislative history of the establishment of CEQ states that the Congress intended CEQ to be a confidential advisor to the President on matters of environmental policy. Therefore, members of the public should be aware that communications between CEQ and the President (including communications between their staff) may be confidential; they will usually fall, at a minimum, within Exemption 5 of the Act. The Freedom of Information Officer shall review each request to determine whether the record is exclusively factual or may have factual portions which may be reasonably segregated and made available to the requester. Furthermore, on the recommendation of the CEQ FOIA Officer or Appeals Officer, CEQ will consider the release of an entire record, even if it comes within an exemption or contains policy advice, if its disclosure would not impair Executive policymaking processes or CEQ's participation in decisionmaking.

Costs

1515.11 Definitions.

For purposes of these regulations:

Commercial use request means a request from or on behalf of a person who seeks information for a use or purpose that furthers the requester's or other person's commercial, trade, or profit interests.

Direct costs means those costs incurred in searching for and duplicating (and, in the case of commercial use requests, reviewing) documents to respond to a FOIA request. Direct costs include, for example, salaries of employees who perform the work and costs of conducting large-scale computer searches.

Duplicate means to copy records to be released to the FOIA requester. Copies can take the form of paper, audio-visual materials, or electronic records, among others.

Educational institution means a school that operates a program of scholarly research.

Non-commercial scientific institution means an institution that is not operated on a commercial basis and that operates solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

Representative of the news media means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.

Review means to examine a record to determine whether any portion of the record may be withheld and to process a record for disclosure, including by redacting it.

Search means to look for and retrieve records covered by a FOIA request, including by looking page-by-page or line-by-line to identify responsive material within individual records.

§ 1515.12 Fees in general.

CEQ shall charge fees that recoup the full allowable direct costs it incurs in responding to FOIA requests. CEQ may assess charges for time spent searching for records even if CEQ fails to locate the records or if the records are located and determined to be exempt from disclosure. In general, CEQ shall apply the following fee schedule, subject to §§ 1515.13 through 1515.15:

(a) *Manual searches.* Time devoted to manual searches shall be charged on the basis of the salary of the employee(s) conducting the search (basic hourly

rate(s) of pay for the employee(s), plus 16 percent).

(b) *Electronic searches.* Fees shall reflect the direct cost of conducting the search. This will include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for and printing records responsive to the FOIA request and operator/programmer salary attributable to the search.

(c) *Record reviews.* Time devoted to reviewing records shall be charged on the same basis as under paragraph (a) of this section, but shall only be applicable to the review of records located in response to commercial use requests.

(d) *Duplication.* Fees for copying paper records or for printing electronic records shall be assessed at a rate of $.15 per page. For other types of copies such as disks or audio visual tapes, CEQ shall charge the direct cost of producing the document(s). If total costs are expected to exceed $25, the FOIA Officer shall provide the requester with an estimate in writing and, in return, obtain from the requester a commitment to pay the estimated fee. This does not apply if the requester has indicated in advance a willingness to pay fees as high as those anticipated. If a requester wishes to limit costs, the FOIA Officer shall provide the requester an opportunity to reformulate the request in order to reduce costs. If the requester reformulates a request, it shall be considered a new request and the 20-day period described in § 1515.6(a) shall be deemed to begin when the FOIA Officer receives the request.

(e)(1) *Advance payments required.* The FOIA Officer may require a requester to make an advance deposit of up to the amount of the entire anticipated fee before the FOIA Officer begins to process the request if:

(i) The FOIA Officer estimates that the fee will exceed $250; or

(ii) The requester has previously failed to pay a fee in a timely fashion.

(2) When the FOIA Officer requires a requester to make an advance payment, the 20-day period described in § 1515.6(a) shall begin when the FOIA Officer receives the payment.

(f) *No assessment of fee.* CEQ shall not charge a fee to any requester if:

(1) The cost of collecting the fee would be equal to or greater than the fee itself; or

(2) After the effective date of these regulations CEQ fails to comply with a time limit under the Freedom of Information Act for responding to the request for records where no unusual or exceptional circumstances apply.

§ 1515.13 Fees for categories of requesters.

CEQ shall assess fees for certain categories of requesters as follows:

(a) *Commercial use requesters.* In responding to commercial use requests, CEQ shall assess fees that recover the full direct costs of searching for, reviewing, and duplicating records.

(b) *Educational and non-commercial scientific institutions.* CEQ shall provide records to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages. To qualify for inclusion in this fee category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scholarly research, not an individual goal.

(c) *Representatives of the news media.* CEQ shall provide records to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages.

(d) *All other requesters.* CEQ shall charge requesters who do not fall within paragraphs (a) through (c) of this section fees that recover the full direct cost of searching for and duplicating records, excluding charges for the first 100 pages of reproduction and the first two hours of search time.

§ 1515.14 Other charges.

CEQ may apply other charges, including the following:

(a) *Special charges.* CEQ shall recover the full cost of providing special services, such as sending records by express mail, to the extent that CEQ elects to provide them in that manner.

(b) *Interest charges.* CEQ may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the FOIA Officer sent the billing. Interest shall be charged at the rate prescribed in *31 U.S.C. 3717* and will accrue from the date of billing.

(c) *Aggregating requests.* When the FOIA Officer reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of avoiding fees, the FOIA Officer shall aggregate those requests and charge accordingly.

§ 1515.15 Payment and waiver.

(a) *Remittances.* Payment shall be made in the form of check or money order made payable to the Treasury of the United States. At the time the FOIA Officer notifies a requester of the applicable fees, the Officer shall inform the requester of where to send the payment.

(b) *Waiver of fees.* CEQ may waive all or part of any fee provided for in §§ 1515.12 and 1515.13 when the FOIA Officer deems that disclosure of the information is in the general public's interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. In determining whether a fee should be waived, the FOIA Officer may consider whether:

(1) The subject matter specifically concerns identifiable operations or activities of the government;

(2) The information is already in the public domain;

(3) Disclosure of the information would contribute to the understanding of the public-at-large as opposed to a narrow segment of the population;

(4) Disclosure of the information would significantly enhance the public's understanding of the subject matter;

(5) Disclosure of the information would further a commercial interest of the requester; and

(6) The public's interest is greater than any commercial interest of the requester.

§ 1515.16 Other rights and services.

Nothing in this subpart will be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

§§ 1515.17–1515.19 [Reserved]

Dated: August 5, 2010.

Nancy H. Sutley,

Chair, Council on Environmental Quality.

[FR Doc. 2010–19841 Filed 8–10–10; 8:45 am]

BILLING CODE 3125–W0–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 192, 193, and 195

[Docket No. PHMSA–2008–0301; Amdt. Nos. 192–114; 193–22; 195–94)

RIN 2137–AE41

Pipeline Safety: Periodic Updates of Regulatory References to Technical Standards and Miscellaneous Edits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: PHMSA is amending the Federal pipeline safety regulations to incorporate by reference all or parts of 40 new editions of voluntary consensus technical standards. This action allows pipeline operators to use current technologies, improved materials, and updated industry and management practices. Additionally, PHMSA is clarifying certain regulatory provisions and making several editorial corrections. These amendments do not require pipeline operators to take on any significant new pipeline safety initiatives.

DATES: The effective date of this final rule is October 1, 2010.

Incorporation by reference. The incorporation by reference of the publications listed in these amendments has been approved by the Director of the Federal Register as of October 1, 2010.

FOR FURTHER INFORMATION CONTACT:

For technical information: Mike Israni by phone at (202) 366–4571, or by e-mail at *mike.israni@dot.gov.*

For regulatory information: Cheryl Whetsel by phone at (202) 366–4431 or by e-mail at *cheryl.whetsel@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) directs Federal agencies to use technical standards and design specifications developed by voluntary consensus standard bodies instead of government-developed technical standards, when practicable. The Office of Management and Budget (OMB) Circular A–119: "Federal Participation in the Development and Use of Voluntary Consensus Standards," sets the policies on Federal use of voluntary consensus standards. As defined in OMB Circular A–119, voluntary consensus standards are technical standards developed or adopted by organizations, both domestic and international. These organizations use agreed upon procedures to update and revise their published standards every three to five years to reflect modern technology and best technical practices.

PHMSA's Office of Pipeline Safety employees participate in more than 25 national voluntary consensus standards committees. PHMSA reviews, and may adopt, standards that are applicable to pipeline design, construction, maintenance, inspection, and repair. Prior to adopting any standard, PHMSA reviews each new edition to determine whether it should be incorporated in whole or in part into the pipeline safety regulations. When PHMSA believes some aspect of a standard does not meet this directive, it will not incorporate the new edition. PHMSA has the ultimate responsibility to ensure the best interests of public safety are served. There are more than 60 standards and specifications incorporated by reference in 49 CFR part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; 49 CFR part 193, Liquefied Natural Gas Facilities: Federal Safety Standards; and 49 CFR part 195, Transportation of Hazardous Liquids by Pipeline.

Previous updates to incorporate industry standards by reference were published May 24, 1996, (61 FR 26121), June 6, 1996, (61 FR 2877), February 17, 1998, (63 FR 7721), June 14, 2004, (69 FR 32886), June 9, 2006, (71 FR 33402), February 1, 2007, (72 FR 4657), and April 14, 2009, (74 FR 17099).

II. Notice of Proposed Rulemaking

On July 22, 2009, PHMSA published a Notice of Proposed Rulemaking (NPRM) to incorporate by reference new, updated, or reaffirmed editions of voluntary consensus standards into the Federal pipeline safety regulations. PHMSA proposed to incorporate by reference all or parts of 40 technical standards and make editorial corrections to certain regulations. PHMSA did not propose to incorporate four new editions of ASTM International (ASTM) standards (ASTM D638, D2513, D2517, and F1055). Therefore, the gas pipeline safety regulations continue to reference standards found in ASTM D638 (2003 edition), ASTM D 2513 (1987 edition), ASTM D2513 (1999 edition), ASTM 2517 (2000 edition) and ASTM F1055 (1998 edition). In addition, PHMSA did not propose to incorporate the 2008 editions of the National Fire Protection Association (NFPA) NFPA 58: "Liquefied Petroleum Gas Code" (LP-Gas Code) and NFPA 59: "Utility Liquefied Petroleum Gas Plant Code (Utility LP-Gas Plant Code). Therefore, PHMSA will continue to reference the 2004 editions of NFPA 58 and 59 in part 192 of the Federal pipeline safety regulations.

III. Summary of Comments

PHMSA received a total of 19 comments in response to the NPRM. Several comments were from trade and standards associations including: The American Gas Association (AGA); the Interstate Natural Gas Association of America (INGAA); the National Propane Gas Association (NPGA); the American Petroleum Institute (API); the Oklahoma Independent Petroleum Association (OIPA); the Southern California Gas Association (SCGA); the National Fire Protection Association (NFPA) and the Gas Piping Technology Committee (GPTC). One state agency, the Iowa Utilities Board, filed a comment as well as the National Association of Pipeline Safety Representatives (NAPSR), an organization of state agency pipeline safety managers responsible for the administration of their state's pipeline safety programs. Five operators, Southern California Gas Company and San Diego Gas & Electric, Baltimore Gas and Electric Company, CenterPoint Energy Resources Corporation, and Distrigas of Massachusetts LLC submitted comments. Three private citizens also submitted comments.

PHMSA also met with representatives from NFPA during the comment period. A summary of this September 8, 2009, meeting is available in the docket (PHMSA–2008–0301).

The majority of the comments received were in opposition to a proposed change to § 192.11(c) altering the primacy of the NFPA 58 and 59 standards over part 192. The comments are summarized and discussed under each issue area below:

Comment Topic 1: Primacy of Part 192 over NFPA 58 and 59

Under the current version of § 192.11(c), if a conflict arises between NFPA 58 and 59 and part 192, NFPA 58 and 59 would prevail. However, since this primacy was established in 1996, some operators have been misinterpreting the meaning of "conflict." Operators are complying with the NFPA standards when the requirements of these NFPA standards and part 192 are in direct conflict; however, the misinterpretation arises when NFPA is silent or nonspecific on a subject covered in part 192. In these situations, some operators have misinterpreted § 192.11(c) to mean they do not need to comply with these additional requirements listed in part 192.

The NPRM had proposed to reverse this primacy so that part 192 would prevail if the two conflict. In the NPRM, PHMSA explained that NFPA 58 was originally developed as a design and installation code and, as such, did not cover ongoing corrosion control issues or operations and maintenance (O&M) activities. Recently, NFPA 58 adopted several O&M requirements; however, they are significantly less stringent than the requirements found in part 192. PHMSA believes that NFPA 58 currently fails to sufficiently address damage prevention, odorization, distribution valve maintenance, leak surveys, emergency plans, failure investigation, and public awareness. Because NFPA 58 and 59 currently

prevail, when there is a conflict in one of these areas with part 192, operators would be allowed to comply with a less stringent requirement. Additionally, propane gas does not safely dissipate when it leaks and as a result can represent a greater potential hazard to the public than natural gas. Therefore, it would be inappropriate to impose weaker standards on propane distribution facilities than on natural gas distribution facilities. Without a change to § 192.11(c), PHMSA believes that the NFPA's O&M requirements would actually decrease safety in areas where they conflict with part 192 requirements.

Nine commenters objected to this proposed change. Commenters requested an explanation of the misinterpretations referred to in the NPRM and suggested that the proposed change is substantive and therefore inappropriate for this type of rulemaking. Commenters maintained that petroleum gas systems are often installed by plumbers who may not be aware of part 192 requirements but are familiar with NFPA 58.

Commenters also stated that the NFPA 58 and NFPA 59 consensus standards were developed by industry, manufacturers, listing agencies, state and Federal regulators, and insurance professionals and that these standards are specific to the installation and utilization of liquefied petroleum gas (LPG). Commenters stated there are extensive differences between propane-air plants and pipeline transportation facilities and the physical properties of LPG are not compatible with the current regulations for natural gas systems.

One commenter supported the change noting that the O&M requirements are clearer in part 192 than NFPA 58 and, therefore, the primacy of part 192 over NFPA 58 and 59 would be beneficial.

According to the NFPA, the proposed change would create conflicts between NFPA 58 or 59 and part 192. The proposed change would affect inspection of pressure vessel relief valves, process piping design standards, welding standards and the use of threaded connections, polyethylene (PE) pipe in LPG systems above 30 psig, gray cast iron, and regulator configuration for smaller LPG systems. NFPA recommended that the reference to NFPA 58 and NFPA 59 in § 192.11 be revised to clarify that these NFPA standards are applicable to propane storage systems only and not to underground gas distribution systems. NFPA also recommended that § 192.11 specify which operating requirements of part 192 are applicable to propane storage systems, including operations, maintenance, qualification of pipeline personnel, and public awareness planning. NFPA suggested that the conflicts between its NFPA 58 and 59 standards and part 192 can be resolved through the NFPA standards updating process.

NPGA asserted that NFPA is better suited than PHMSA to develop petroleum gas regulations.

PHMSA response: Petroleum gas transportation requirements need to achieve the same level of safety as natural gas transportation requirements. PHMSA continues to have concerns regarding the level of safety required in NFPA 58 and 59 standards in certain subject areas. The newer editions of NFPA 58 have expanded the scope of covered facilities and have more conflicting requirements than the currently incorporated editions. PHMSA believes that the NFPA 58 and 59 committees should analyze the following topics in consideration of public safety: Internal valves on tank penetrations transporting propane, relief valves, equipment separation and location distances, facility cathodic protection, and requirements for "retroactive" application of the standards.

PHMSA will address the subject of NFPA 58 and 59 primacy under a separate rulemaking. In the interim, compliance with part 192 requirements has not changed. When a requirement exists in part 192 that does not exist in NFPA 58 or 59, operators are required to comply with it. A conflict only exists when an operator cannot comply with a requirement in NFPA 58 and 59 because it conflicts with a requirement in part 192. When a conflict exists, NFPA 58 or 59 continue to prevail.

Comment Topic 2: GPTC petition to amend § 192.557(c).

PHMSA proposed to amend § 192.557(c) in response to a petition by the GPTC to clarify that a previous pressure test would allow for a pipeline to operate at the higher maximum allowable operating pressure (MAOP). Several commenters stated that this explanation misstated the purpose of the change. Many commenters objected that this is a substantive change and therefore inappropriate for this type of rulemaking.

The Iowa Utilities Board (IUB) and the NAPSR stated that the amendment will not accomplish the purpose of the GPTC petition. The proposed change occurs in a section of the code that addresses pressure increments (§ 192.557(c)). The requirements of § 192.553(d) ("*Limitation on increase in maximum allowable operating pressure*"), would not be counteracted. To accomplish the purpose of the GPTC petition, additional code sections would need to be amended.

Sempra Energy and GPTC stated that they support the proposed change to § 192.557(c) but the language of the NPRM misstates the GPTC intent which is to clarify that a pressure test is not required to validate the new MAOP.

PHMSA response: PHMSA has removed the proposed change to § 192.557(c) from the final rule. PHMSA agrees that the proposed change may cause confusion with the requirements of § 192.553(d) which were amended after the GPTC petition was submitted. PHMSA may consider a revised GPTC petition in a separate rulemaking action.

Comment Topic 3: NFPA 58 and NFPA 59

Three commenters expressed concern regarding the proposal to not adopt the 2008 edition of NFPA 58. These commenters surmised that PHMSA's decision to not adopt the 2008 edition stemmed from concerns with Section 14.4 Small LP–Gas Systems and recommended that PHMSA adopt the 2008 edition of NFPA 58 excluding Section 14.4.

There were also objections to PHMSA's proposal to not adopt the latest edition of NFPA 59. These commenters believe the 2008 edition is superior to the 2004 edition. They stated that the 2008 edition included reorganization of the document to conform to the NFPA Manual of Style. This edition eliminated confusing language, reorganized the standard to logically group requirements, and expanded use of excerpts from NFPA 58 instead of referencing NFPA 58. The commenters stated that many stakeholders have worked extensively to develop the 2008 edition of the NFPA 59 consensus standard. They noted that the AGA Supplemental Gas Committee task force performed a great deal of work to review the NFPA standard and that NFPA ultimately adopted 62 of the 72 proposals the AGA task force submitted to the technical committee. The commenters asserted that safety measures are not decreased in the areas of damage prevention, odorization, distribution valve maintenance, operation and maintenance, and emergency and public awareness planning by moving from the 2004 edition to the 2008 edition.

NFPA encouraged PHMSA to work with the NFPA 59 committee in a manner similar to its work with the NFPA 58 committee to address relevant issues through the normal course of scheduled revisions or, for unforeseen

issues, through the Tentative Interim Amendment process.

PHMSA response: PHMSA appreciates the work of the NFPA 58 and 59 committees and their responsiveness to PHMSA's concerns. However, PHMSA is not changing the editions currently incorporated by reference (2004 editions of NFPA 58 and 59). The 2008 edition of NFPA 58 included changes in the requirements for small LPG operators which are in conflict with part 192 requirements. Further, the 2008 edition of NFPA 59 references NFPA 58. If we were to adopt the 2008 edition of NFPA 59, the referenced sections of NFPA 58 would also be incorporated by reference unless we were to prescribe otherwise. Therefore, PHMSA has decided not to adopt either of the new editions. PHMSA looks forward to working with the committees to improve public safety and resolve issues which may lead to the adoption of the newest editions in the next Periodic Updates of Regulatory References to Technical Standards.

Comment Topic 4: NFPA 59A

The NFPA maintained that incorporating both the 2001 and 2006 editions of NFPA 59A by reference would create confusion for operators. NFPA recommends that to address PHMSA's concern with Section 5.3 of the 2006 edition, PHMSA should adopt the 2006 edition and reference the 2001 edition solely for the requirements applicable to those specific subjects. This approach would recognize and capture the other improvements in the 2006 edition.

NFPA further stated that the 2001 edition of NFPA 59A incorporates by reference 70 other technical standards of which all but three have been superseded or removed. Some of the standards were discontinued and are no longer for sale. During the generation of an updated edition, the technical committee does not consider the interrelation of a provision in one edition with related provisions in a prior edition. Each edition stands on its own. Since 2006, when PHMSA incorporated NFPA 59A by reference in the pipeline safety regulations, PHMSA has incorporated different editions of the standards that are cross-referenced within NFPA 59A. This rulemaking does not address this conflict.

PHMSA response: PHMSA wishes to remind all who commented on proposed changes to NFPA 59A and part 193 that the process for changing a regulation is significantly different than developing a consensus standard process. PHMSA must assess the impact of new editions of NFPA 59A on the public and the environment. When revised safety standards are clearly an improvement to the public, the environment, and pipeline safety, the adoption of a standard may be more easily justified.

After NFPA 59A's 2006 edition was published, PHMSA noted that revisions to NFPA 59A lacked sufficient justification. In some instances, the historical basis for adopting a safety standard could not be explained. In these cases, PHMSA observed NFPA's committee work and concluded it would be premature to adopt revisions that were incomplete or could not be appropriately justified. For these reasons, PHMSA has infrequently adopted new provisions within NFPA 59A and has not changed its decision to not adopt the new edition in response to these comments.

PHMSA is supportive of NFPA's efforts on standards and safety research and believes its work is beneficial to the public. We encourage NFPA and its members to continuously improve its NFPA 59A standard and ensure that new revisions are complete, properly justified, and adequately explained to the public.

Comment Topic 5: ASTM D2513–87 and ASTM D2513–99

PHMSA proposed not to incorporate by reference ASTM D2513: Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing and Fittings (2007) edition at this time but will continue to reference the 1987 & 1999 editions. Southwest Gas and AGA commented that the 2007 edition of ASTM D2513 incorporates changes which occurred since 1999 including advances in manufacturing and installation of polyethylene (PE) pipe, recognition of applicability of more recent ASTM standards for fittings, and provisions for updated storage requirements. If the 2007 edition is not incorporated, both commenters recommended that PHMSA provide a Stay of Enforcement from Section A.1.5.7 in the 1999 edition of ASTM D2513 to recognize the safe, longer storage time of PE pipe. AGA noted that gas utility operators and their state regulators have already sought waivers to take advantage of the new standard. If they are not granted the waiver, they may have to dispose of a significant amount of polyethylene (PE) pipe that was purchased in response to the shortages that operators experienced in the aftermath of hurricane Katrina.

Southwest Gas recommended deleting the reference in § 192.7 to the 1987 edition of ASTM D2513 for § 192.63(a)(1). A 1993 amendment to § 192.63 stated that the reference was retained due to temperature marking of fittings. The 1999 edition of ASTM D2513 restored the temperature marking requirements for fittings.

PHMSA response: PHMSA has made no change in the response to these comments. PHMSA appreciates the work of the ASTM Committee F–17 and D20.10. There are important issues that are being finalized including the subject of NAPSR Resolution SR–2–01, marking of materials. The resolution of these issues will impact ASTM D638, D2513–87, D2513–99, D2517, and F1055 standards. These issues include but are not limited to the review of:

- Revisions of material categories.
- PENT test duration for PA–11 and PA–12 materials.
- Development process for new materials.
- Review of existing standards for re-grind, quality assurance, and quality control due to recent failures.
- Cyclic fatigue and long-term cyclic fatigue testing of plastic mechanical appurtenances.
- Need for new or modified regulations or standards due to the impact of new materials.
- Impact of findings from Standard Dimension Ratio and side wall fusion Research and Development programs.

PHMSA will address Southwest Gas and AGA's request for a Stay of Enforcement separately from this rulemaking. The special permit process offers operators an existing mechanism to request an extension from the current storage requirements for polyethylene (PE) pipe.

PHMSA has considered these comments but has not changed its decision to not adopt the more recent edition of ASTM D2513.

Comment Topic 6: LNGFIRE3

Technology & Management Systems commented on the proposal to replace GRI–89/0176 "LNGFIRE: A Thermal Radiation Model for LNG Fires" (June 29, 1990) with GTI -04/0032 LNGFIRE3: A Thermal Radiation Model for LNG Fires (2004). The commenter recommended that in consideration of fire research conducted in the past three years, PHMSA should reevaluate performance criteria for fire models and consider alternate models that have been scientifically assessed, verified, and validated to the Administrator's approval.

PHMSA response: The Gas Technology Institute (GTI) (formerly the Gas Research Institute) changed the title of this material. The contents of the software and the report have not changed. PHMSA's purpose for this

amendment is solely to reference the new title. The commenter's statements regarding performance criteria are beyond the scope of this rulemaking. PHMSA is updating the title of this standard in the regulation to reflect the title currently used by GTI.

Comment Topic 7: Web accessibility of standards.

The Oklahoma Independent Petroleum Association stated that the costs to smaller oil and gas operators to purchase the updated standards and to identify and assess all regulatory compliance requirements are burdensome. They requested that PHMSA place the applicable reference documents on its web site for easy access.

PHMSA response: PHMSA regrets that we are prohibited from posting the technical standards to our web site as most standards have copyright protection. All incorporated materials are available for inspection in the Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC, 20590–0001, 202–366–4595, or at the National Archives and Records Administration (NARA), 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

The incorporated materials are available from the respective organizations listed in § 192.7 (c)(1).

IV. Advisory Committee

On December 9, 2009, PHMSA discussed the proposed rule with the Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC). These are statutorily-mandated advisory committees that advise PHMSA about the technical feasibility, reasonableness and cost-effectiveness of its proposed regulations. At the meeting, PHMSA discussed the comments received in response to the NPRM. NFPA emphasized that small operators have difficulty determining which requirements of part 192 or NFPA 59A apply to them. The committee urged PHMSA to take action to work out the issues presented by NFPA, ASME, GPTC, and/or State Industry Regulatory Review Committee (SIRRC), a committee comprised of state and federal pipeline safety regulators, AGA and APGA formed to coordinate issues pertaining to part 192.

With the exception of NFPA's abstention, the committees voted unanimously that the NPRM was technically feasible, reasonable, practicable, and cost effective. Since the NPRM included proposed changes to the NFPA standards, the NFPA abstained from voting in accordance with its bylaws. A transcript of the meeting is available in the docket for this rulemaking.

V. Summary of Final Rule

This final rule accepts the following updated editions of technical standards in parts 192, 193, 195. PHMSA is also amending titles, dates, and references as applicable. Before describing each newly incorporated standard, PHMSA is providing additional information regarding the partial incorporation of NFPA 59A and the full incorporation of several API standards.

PHMSA will incorporate only those sections of NFPA 59A, "Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG)" (2006 edition) relating to ultrasonic inspection and seismic design requirements. PHMSA believes the NFPA 59A committee needs to reconcile differences relating to dispersion analyses for vapor releases from process and safety equipment; containers with liquid penetrations at grade; design spill cases for full and double containment containers; standards for impoundment sizing for snow accumulation, severe weather, emergency depressurization, and fuel bunkering. Therefore, except for specified sections in the 2006 edition mentioned above, PHMSA will continue to reference NFPA 59A (2001 edition).

ANSI/API Specification 5L and API Standard 1104

In a Direct Final Rule (74 FR 17099) published on April 14, 2009, PHMSA incorporated by reference the 2007 editions of ANSI/API Specification 5L, "Specification for Line Pipe" and API Standard 1104, "Welding of Pipelines and Related Facilities." However, it did not eliminate the use of the previously referenced editions of these standards. In this final rule, PHMSA eliminates the use of the previous editions of these standards, API Specification 5L (43rd edition and errata, 2004) and API Standard 1104 (19th edition, 1999, including errata October 31, 2001).

API Recommended Practice 5L1/ISO 3183 & API Recommended Practice 5LW

PHMSA is incorporating by reference API Recommended Practice 5L1/ISO 3183 "Specification for Line Pipe" (6th edition, 2002) into the newly-created § 195.207. This standard provides a standard for hazardous liquid operators for the transportation of certain API Specification 5L steel line pipe by railroad.

PHMSA is also incorporating API Recommended Practice 5LW (API RP 5LW), "Transportation of Line Pipe on Barges and Marine Vessels" (2nd edition, 1996) into Parts 192 and 195. This standard is referenced in § 192.65(a) and in the newly-created § 195.207(a). API RP 5LW provides a standard for transportation of certain API Specification 5L steel line pipe by ship or barge on both inland and marine waterways.

American Petroleum Institute (API)

- ANSI/API Specification 5L/ISO 3183, "Specification for Line Pipe" (44th edition, 2007), includes errata (January 2009) and addendum (February 2009).

Replaces incorporated by reference (IBR): API Specification 5L, "Specification for Line Pipe" (43rd edition and errata, 2004);

Referenced in 49 CFR 192.55(e); 192.112; 192.113; Item I, Appendix B to Part 192; 195.106(b)(1)(i); 195.106(e), 195.207(a).

- API Recommended Practice 5L1 "Recommended Practice for Railroad Transportation of Line Pipe," (6th Edition, 2002)

IBR for the first time in 49 CFR newly-created 195.207;

Referenced in 49 CFR 192.65(a)(1); 195.207.

- API Recommended Practice 5LW, "Transportation of Line Pipe on Barges and Marine Vessels" (2nd edition, 1996, effective March 1, 1997).

IBR for the first time;

Referenced in 49 CFR 192.65(b); 195.207(b).

- API Specification 6D/ISO 14313, "Specification for Pipeline Valves" (23rd edition (April 2008, effective October 1, 2008) and errata 3 (includes 1 & 2, February 2009).

Replaces IBR: API Specification 6D "Pipeline Valves" (22nd edition, January 2002);

Referenced in 49 CFR 192.145(a); 195.116(d).

- API Specification 12F, "Specification for Shop Welded Tanks for Storage of Production Liquids (11th edition, November 1, 1994, reaffirmed 2000, errata, February 2007).

Replaces IBR: 11th edition, 1994 (reaffirmed, 2000);

Referenced in 49 CFR 195.132(b)(1); 195.205(b)(2); 195.264(b)(1); 195.264(e)(1); 195.307(a); 195.565; 195.579(d).

- API Standard 510, "Pressure Vessel Inspection Code: In-Service Inspection,

Rating, Repair, and Alteration" (9th edition, June 2006).
Replaces IBR: 8th edition, 1997 including Addenda 1 through 4;
Referenced in 49 CFR 195.205(b)(3); 195.432(c).

• API Standard 620, "Design and Construction of Large, Welded, Low-Pressure Storage Tanks," (11th edition February 2008, addendum 1, March 2009).
Replaces IBR: 10th edition, 2002 including addendum 1;
Reference added in 49 CFR 193.2101(b), 193. 2321(b)(2).
Referenced in 49 CFR 195.132(b)(2); 195.205(b)(2); 195.264(b)(1); 195.264(e)(3); 195.307(b);

• API Standard 650, "Welded Steel Tanks for Oil Storage" (11th edition, June 2007, addendum 1, November 2008).
Replaces IBR: 10th edition, 1998 including Addenda 1–3;
Referenced in 49 CFR 195.132(b)(3); 195.205(b)(1); 195.264(b)(1); 195.264(e)(2); 195.307; 195.307(d); 195.565; 195.579(d).

• ANSI/API Recommended Practice 651, "Cathodic Protection of Aboveground Petroleum Storage Tanks" (3rd edition, January 2007).
Replaces IBR: 2nd edition, December 1997;
Referenced in 49 CFR 195.565; 195.579(d).

• ANSI/API Recommended Practice 652, "Linings of Aboveground Petroleum Storage Tank Bottoms" (3rd edition, October 2005).
Replaces IBR: 2nd edition, December 1997;
Referenced in 49 CFR 195.579(d).

• API Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction" (3rd edition, December 2001, includes addendum 1 (September 2003), addendum 2 (November 2005), addendum 3 (February 2008), and errata (April 2008).
Replaces IBR: 3rd edition, 2001 including addendum 1, 2003;
Referenced in 49 CFR 195.205(b)(1); 195.432(b).

• API Standard 1104, "Welding of Pipelines and Related Facilities" (20th edition November 2005, errata/addendum (July 2007) and errata 2 (2008)).
Replaces IBR: 19th edition, 1999, including errata October 31, 2001;
Referenced in 49 CFR 192.225; 192.227(a); 192.229(c)(1); 192.241(c); Item II, Appendix B; 195.222(a); 195.228(b); 195.214(a).

• API Recommended Practice 1130, "Computational Pipeline Monitoring for Liquids Pipeline Segment" (3rd edition, September 2007).
Replaces IBR: 2nd edition, 2002;
Referenced in 49 CFR 195.134; 195.444.

• API Standard 2000, "Venting Atmospheric and Low-Pressure Storage Tanks Nonrefrigerated and Refrigerated" (5th edition, April 1998, errata, November 15, 1999).
Replaces IBR: 5th edition, April 1998;
Referenced in 49 CFR 195.264(e)(2); 195.264(e)(3).

• API Recommended Practice 2003, "Protection Against Ignitions Arising Out of Static, Lightning, and Stray Currents" (7th edition, January 2008).
Replaces IBR: 6th edition, 1998;
Referenced in 49 CFR 195.405(a).

• API Publication 2026, "Safe Access/Egress Involving Floating Roofs of Storage Tanks in Petroleum Service" (2nd edition, April 1998, reaffirmed, June 2006).
Replaces IBR: 2nd edition, 1998;
Referenced in 49 CFR 195.405(b).

• API Recommended Practice 2350, "Overfill Protection for Storage Tanks in Petroleum Facilities" (3rd edition, January 2005).
Replaces IBR: 2nd edition, 1996;
Referenced in 49 CFR 195.428(c).

American Society of Civil Engineers (ASCE):

• ASCE/SEI 7–05, "Minimum Design Loads for Buildings and Other Structures" (2005 edition, includes supplement number 1 and errata)
Replaces IBR: 2002 edition;
Referenced in 49 CFR 193.2067(b)(1).

American Society for Testing and Materials (ASTM):

• ASTM A53/A53M–07 (2007), "Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless" (September 1, 2007).
Replaces IBR: 2004 edition;
Referenced in 49 CFR 192.113; Item I, Appendix B to Part 192; 195.106(e).

• ASTM A106/A106M–08 (2008), "Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service" (July 15, 2008).
Replaces IBR: 2004 edition;
Referenced in 49 CFR 192.113; Item I, Appendix B to Part 192; 195.106(e).

• ASTM A372/A372M–03 (reapproved 2008), "Standard Specification for Carbon and Alloy Steel Forgings for Thin-Walled Pressure Vessels" (March 1, 2008).
Replaces IBR: 2003 edition;
Referenced in 49 CFR 192.177(b)(1).

• ASTM A381–96 (Reapproved 2005), "Standard Specification for Metal-Arc-Welded Steel Pipe for Use with High-Pressure Transmission Systems" (October 1, 2005).
Replaces IBR: 1996 edition; reapproved 2001;
Referenced in 49 CFR 192.113, Item I, Appendix B to Part 192; 195.106(e).

• ASTM A671–06, "Standard Specification for Electric-Fusion-Welded Steel Pipe for Atmospheric and Lower Temperatures" (May 1, 2006).
Replaces IBR: 2004 edition;
Referenced in 49 CFR 192.113, Item I, Appendix B to Part 192; 195.106(e).

• ASTM A672–08, "Standard Specification for Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures" (May 1, 2008).
Replaces IBR: 1996 edition; reapproved 2001;
Referenced in 49 CFR 192.113, Item I, Appendix B to Part 192; 195.106(e).

• ASTM A691–98 (reapproved 2007), "Standard Specification for Carbon and Alloy Steel Pipe, Electric-Fusion-Welded for High-Pressure Service at High Temperatures" (November 1, 2007).
Replaces IBR: 1998 edition, reapproved 2002;
Referenced in 49 CFR 192.113, Item I, Appendix B to Part 192; 195.106(e).

ASME International (ASME)

• ANSI/ASME B16.1 –2005, "Gray Iron Pipe Flanges and Flanged Fittings: (Classes 25, 125, and 250)" (August 31, 2006).
Replaces IBR: ASME B16.1–1998 "Cast Iron Pipe Flanges and Flanged Fittings" 1998 edition;
Referenced in 49 CFR 192.147(c).

• ANSI/ASME B16.9 –2007, "Factory-Made Wrought Butt Welding Fittings" (December 7, 2007).
Replaces IBR: 2003 edition (February 2004);
Referenced in 49 CFR 195.118(a).

• ANSI/ASME B31.4 –2006, "Pipeline Transportation Systems for Liquid Hydrocarbons and Other Liquids" (October 20, 2006).
Replaces IBR: 2002 edition (October 2002);
Referenced in 49 CFR 195.452(h)(4)(i).

• ANSI/ASME B31.8 –2007, "Gas Transmission and Distribution Piping Systems" (November 30, 2007).
Replaces IBR: 2003 edition (February 2004);
Referenced in 49 CFR 192.619(a)(1)(i); 195.5(a)(1)(i); 195.406(a)(1)(i).

• 2007 ASME Boiler & Pressure Vessel Code, Section I: Rules for Construction of Power Boilers (2007 edition, July 1, 2007).

Replaces IBR: 2004 edition, including addenda through July 1, 2005;
Referenced in 49 CFR 192.153(b).

• 2007 ASME Boiler & Pressure Vessel Code, Section VIII, Division 1: Rules for Construction of Pressure Vessels (2007 edition, July 1, 2007).

Replaces IBR: 2004 edition, including addenda through July 1, 2005;
Referenced in 49 CFR 192.153 (a); 192.153(b); 192.165(b)(3); 193.2321; 195.307(e).

• 2007 ASME Boiler & Pressure Vessel Code, Section VIII, Division 2: Alternative Rules, Rules for Construction of Pressure Vessels (2007 edition, July 1, 2007).

Replaces IBR: 2004 edition, including addenda through July 1, 2005;
Referenced in 49 CFR 192.153(b); 192.165(b)(3); 193.2321; 195.307(e).

• 2007 ASME Boiler & Pressure Vessel Code, Section IX: Qualification Standard for Welding and Brazing Procedures, Welders, Brazers, and Welding and Brazing Operators (2007 edition, July 1, 2007).

Replaces IBR: 2004 edition, including addenda through July 1, 2005;
Referenced in 49 CFR 192.227(a); Item II, Appendix B to Part 192; 195.222(a).

Gas Technology Institute (GTI)

• GTI–04/0032 LNGFIRE3: A Thermal Radiation Model for LNG Fires (March 2004).

Replaces IBR: GRI–89/0176 "LNGFIRE: A Thermal Radiation Model for LNG Fires" (June 29, 1990);
Referenced in 49 CFR 193.2057(a).

Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS)

• MSS SP–44–2006, Standard Practice, "Steel Pipeline Flanges" (2006 edition).

Replaces IBR: 1996 edition reaffirmed 2001;
Referenced in 49 CFR 192.147(a).

NACE International (NACE)

• NACE SP0169–2007, Standard Practice, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems" (reaffirmed March 15, 2007).

Replaces IBR: NACE Standard RP0169–2002, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems;"
Referenced in 49 CFR 195.571; 195.573(a)(2).

• NACE SP0502–2008, Standard Practice "Pipeline External Corrosion Direct Assessment Methodology" (reaffirmed March 20, 2008).

Replaces IBR: NACE Standard RP0502–2002 "Pipeline External Corrosion Direct Assessment Methodology;"
Referenced in 49 CFR 192.923(b)(1); 192.925(b) Introductory text; 192.925(b)(1); 192.925(b)(1)(ii); 192.925(b)(2) Introductory text; 192.925(b)(3) Introductory text; 192.925(b)(3)(ii); 192.925(b)(iv); 192.925(b)(4) Introductory text; 192.925(b)(4)(ii); 192.931(d); 192.935(b)(1)(iv); 192.939(a)(2); 195.588.

National Fire Protection Association (NFPA)

• NFPA 30, "Flammable and Combustible Liquids Code" (2008 edition, approved August 15, 2007).

Replaces IBR: 2003 edition;
Referenced in 49 CFR 192.735(b); 195.264(b)(1).

• NFPA 59A, "Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG) (2006 edition, approved August 18, 2005).

Partially Replaces IBR: 2001 edition;
Referenced in 49 CFR 193.2101(b); 193.2321(b).

• NFPA 70 (2008), "National Electrical Code" (NEC 2008) (Approved August 15, 2007).

Replaces IBR: 2005 edition;
Referenced in 49 CFR 192.163(e); 192.189(c).

Plastics Pipe Institute, Inc. (PPI)

• PPI TR–3/2008 HDB/HDS/PDB/SDB/MRS Policies (2008),"Policies and Procedures for Developing Hydrostatic Design Basis (HDB), Pressure Design Basis (PDB), Strength Design Basis (SDB), and Minimum Required Strength (MRS) Ratings for Thermoplastic Piping Materials or Pipe" (May 2008).

Replaces IBR: 2004 edition;
Referenced in 49 CFR 192.121.

VI. Editorial Corrections and Clarifications

Part 192

Section 192.3

Section 192.3 defines terms used throughout Part 192. PHMSA will move the definitions, "active corrosion," "electrical survey" and "pipeline environment" from § 192.465(e) to § 192.3. This revision provides a broader applicability of these terms to part 192 because these terms are also found in part 192, subparts I and O.

Section 192.63

PHMSA corrects the notation to ASTM D2513 to ASTM D2513–87 in § 192.63 (a)(1) to clarify the version incorporated is the 1987 version and adds to the text "(incorporated by reference, *see* § 192.7)."

PHMSA also corrects the notation to ASTM D2513 to ASTM D2513–99 in §§ 192.123 (e)(2); 192.191(b); 192.281 (b)(2); 192.283 (a)(1)(i) and Item 1, Appendix B to clarify the version incorporated is the 1999 version and adds to the text "(Incorporated by reference, *see* § 192.7)."

Section 192.145

PHMSA revises paragraphs (d) and (e) to use the same language as ANSI/ASME B31.8, paragraph 831.11(c) in referring to shell components. The revisions to paragraph (d) clarify the elements of a "shell component."

PHMSA is also clarifying the materials allowed in certain valve components used in compressor stations in response to the GPTC petition. In paragraph (e), we clarify that cast iron, malleable iron, or ductile iron may be used in the valve ball or plug. These materials may not be used in the pressure holding shell components (*e.g.,* body, bonnet, cover, or end flange).

Section 192.711

When the repair time conditions were implemented for Pipeline Integrity Management in High Consequence Areas (HCA), this section was not modified to clarify that the repair times for pipelines covered by § 192.711 pertained only to non-integrity management repairs. We are revising this section to make that clearer.

Part 193

Section 193.2101

PHMSA revises § 193.2101 to incorporate by reference sections from the 2006 edition of NFPA 59A pertaining to the seismic design of stationary LNG storage tanks. Other sections from the 2001 edition of NFPA 59A continue to be incorporated by reference as designated in § 193.2013. Although NFPA 59A (2006) incorporates by reference the 1990 edition of API Standard 620 for seismic design PHMSA is instead incorporating by reference the most recent version of API Standard 620 (11th edition, addendum 1, 2009).

Section 193.2321

PHMSA clarifies the language in § 193.2321(a) to use the broader terminology for nondestructive testing. PHMSA revises § 193.2321(b) to incorporate the requirements in the 2006 edition of NFPA 59A's for the ultrasonic examination of LNG tank welds for storage tanks with an internal design pressure at or below 15 psig.

Part 195

Section 195.264

PHMSA adds to the text in 195.264(e)(2); 195.264(e)(3) "(Incorporated by reference, *see* § 195.3)."

Section 195.307

PHMSA revises paragraph (c) to reflect revised section numbering regarding pneumatic testing from 5.3 to 5.2 of API Standard 650.

Section 195.401

When the repair time conditions were implemented for Pipeline Integrity Management in High Consequence Areas (HCA), this section was not modified to clarify the repair times for pipelines covered by § 195.452 (pipelines that could affect an HCA). The requirement to repair a condition within a reasonable time period (unless an immediate hazard) applies to conditions on pipelines not covered by § 195.452. In this final rule, PHMSA revises this section to make those requirements clearer.

Section 195.432

PHMSA revises paragraph (b) to eliminate the reference to Section 4 of API Standard 653. All sections in API Standard 653 relating to inspection of in-service atmospheric and low-pressure steel aboveground breakout tanks are incorporated by reference.

Section 195.452

PHMSA revises paragraph (h)(4)(i) to reflect new section numbering as specified in the updated ANSI/ASME B31.4. The referenced section is changed from "451.7" to "451.6.2.2 (b)".

VII. Rulemaking Analyses and Notices

Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of the Federal Pipeline Safety Laws (49 U.S.C. 60101 *et seq.*). Section 60102 authorizes the Secretary of Transportation to issue regulations governing design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities. Section 60102(l) of the Federal Pipeline Safety Laws states that the Secretary shall, to the extent appropriate and practicable, update incorporated industry standards that have been adopted as part of the Federal pipeline safety regulations.

Privacy Act Statement

Anyone may search the electronic form of all comments received for any of our dockets. The Privacy Notice for comment submissions may be reviewed at *http://www.regulations.gov*. You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000 (65 FR 19477) or you may *visit http://DocketsInfo.dot.gov.*

Executive Order 12866—Regulatory Planning and Review and DOT Regulatory Policies and Procedures

The final rule is not a significant regulatory action under Section 3(f) of Executive Order 12866 (58 FR 51735) and, therefore, was not subject to review by the Office of Management and Budget. This final rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

PHMSA is incorporating by reference new editions of technical standards in the Federal pipeline safety regulations. The final rule is intended to enhance transportation safety and reduce the overall compliance burden on the regulated industry.

Industry standards developed and adopted by consensus generally are accepted and followed by the industry; thus, their incorporation by reference in the Federal pipeline safety regulations assures that the industry is not forced to comply with a different set of standards to accomplish the same safety goal. Requiring regulatory compliance with standards such as the ASME, ASTM and API takes advantage of established, well-defined and proven practices. Because we are adopting industry consensus standards we expect compliance costs associated with these regulatory changes to be minimal.

Executive Order 13132

PHMSA has analyzed this final rule under the principles and criteria in Executive Order 13132 ("Federalism"). The final rule does not have a substantial direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. The final rule does not impose substantial direct compliance costs on State and local governments. This final regulation does not preempt state law for intrastate pipelines. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Executive Order 13175

PHMSA analyzed this final rule according to Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). The final rule does not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs; thus, the funding and consultation requirements of Executive Order 13175 do not apply.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), PHMSA must consider whether rulemaking actions would have a significant economic impact on a substantial number of small entities. This final rule ensures that pipeline operators are using the most current editions of technical standards incorporated by reference. The final rule also improves the clarity of several regulations. PHMSA believes that this final rule impacts a substantial number of small entities but that this impact will be negligible. Based on the facts available about the expected impact of this rulemaking, I certify, under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that this final rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million (adjusted for inflation currently estimated to be $132 million) or more in any one year to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the final rule.

Paperwork Reduction Act

This final rule does not impose any new information collection requirements.

National Environmental Policy Act

PHMSA analyzed this final rule in accordance with the National Environmental Policy Act (42 U.S.C.4321–4375), the Council on Environmental Quality regulations (40 CFR parts 1500–1508), and DOT Order 5610.1C, and has determined that this action will not significantly affect the quality of the human environment. PHMSA examined alternatives in the NPRM and did not receive any comments on this preliminary analysis.

Executive Order 13211

Transporting gas affects the nation's available energy supply. However, this final rule is not a "significant" energy action under Executive Order 13211. It is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, the Administrator of the Office of Information and Regulatory Affairs has not designated this rule as a significant energy action.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 192

Incorporation by Reference, Natural Gas, Pipeline safety.

49 CFR Part 193

Incorporation by Reference, Liquefied Natural gas, Pipeline safety.

49 CFR Part 195

Anhydrous ammonia, Carbon Dioxide, Incorporation by Reference, Petroleum Pipeline safety.

■ In consideration of the foregoing, PHMSA is amending 49 CFR parts 192, 193, and 195 as follows:

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

■ 1. The authority citation for Part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60116, 60118 and 60137; and 49 CFR 1.53.

■ 2. In § 192.3, definitions for "Active corrosion", "Electrical survey" and "pipeline environment" are added in alphabetical order to read as follows:

§ 192.3 Definitions

* * * * *

Active corrosion means continuing corrosion that, unless controlled, could result in a condition that is detrimental to public safety.

* * * * *

Electrical survey means a series of closely spaced pipe-to-soil readings over pipelines which are subsequently analyzed to identify locations where a corrosive current is leaving the pipeline.

* * * * *

Pipeline environment includes soil resistivity (high or low), soil moisture (wet or dry), soil contaminants that may promote corrosive activity, and other known conditions that could affect the probability of active corrosion.

* * * * *

■ 3. In § 192.7, paragraph (c)(2) is revised to read as follows:

§ 192.7 What documents are incorporated by reference partly or wholly in this part?

* * * * *

(c) * * *

(2) *Documents incorporated by reference.*

Source and name of referenced material	49 CFR reference
A. Pipeline Research Council International (PRCI):	
(1) AGA Pipeline Research Committee, Project PR–3–805, "A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe," (December 22, 1989). The RSTRENG program may be used for calculating remaining strength.	§§ 192.485(c);.192.933(a)(1); 192.933(d)(1)(i).
B. American Petroleum Institute (API):	
(1) ANSI/API Specification 5L/ISO 3183 "Specification for Line Pipe" (44th edition, 2007), includes errata (January 2009) and addendum (February 2009).	§§ 192.55(e); 192.112; 192.113; Item I, Appendix B to Part 192.
(2) API Recommended Practice 5L1 "Recommended Practice for Railroad Transportation of Line Pipe," (6th Edition, July 2002).	§ 192.65(a)(1).
(3) API Recommended Practice 5LW, "Transportation of Line Pipe on Barges and Marine Vessels" (2nd edition, December 1996, effective March 1, 1997).	§ 192.65(b).
(4) ANSI/API Specification 6D, "Specification for Pipeline Valves" (23rd edition (April 2008, effective October 1, 2008) and errata 3 (includes 1 and 2, February 2009)).	§ 192.145(a).
(5) API Recommended Practice 80, "Guidelines for the Definition of Onshore Gas Gathering Lines," (1st edition, April 2000).	§§ 192.8(a); 192.8(a)(1); 192.8(a)(2); 192.8(a)(3); 192.8(a)(4).
(6) API Standard 1104, "Welding of Pipelines and Related Facilities" (20th edition, October 2005, errata/addendum, (July 2007) and errata 2 (2008)).	§§ 192.225; 192.227(a); 192.229(c)(1); 192.241(c); Item II, Appendix B.
(7) API Recommended Practice 1162, "Public Awareness Programs for Pipeline Operators," (1st edition, December 2003).	§§ 192.616(a); 192.616(b); 192.616(c).
(8) API Recommended Practice 1165 "Recommended Practice 1165 "Recommended Practice for Pipeline SCADA Displays," (API RP 1165) (First edition (January 2007)).	§ 192.631(c)(1).
C. American Society for Testing and Materials (ASTM):	
(1) ASTM A53/A53M–07, "Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless" (September 1, 2007).	§§ 192.113; Item I, Appendix B to Part 192.
(2) ASTM A106/A106M–08, "Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service" (July 15, 2008).	§§ 192.113; Item I, Appendix B to Part 192.
(3) ASTM A333/A333M–05 (2005) "Standard Specification for Seamless and Welded Steel Pipe for Low-Temperature Service".	§§ 192.113; Item I, Appendix B to Part 192.
(4) ASTM A372/A372M–03 (reapproved 2008), "Standard Specification for Carbon and Alloy Steel Forgings for Thin-Walled Pressure Vessels" (March 1, 2008).	§ 192.177(b)(1).
(5) ASTM A381–96 (reapproved 2005), "Standard Specification for Metal-Arc Welded Steel Pipe for Use With High-Pressure Transmission Systems" (October 1, 2005).	§§ 192.113; Item I, Appendix B to Part 192.
(6) ASTM A578/A578M–96 (re-approved 2001) "Standard Specification for Straight-Beam Ultrasonic Examination of Plain and Clad Steel Plates for Special Applications.".	§§ 192.112(c)(2)(iii).

Source and name of referenced material	49 CFR reference
(7) ASTM A671–06, "Standard Specification for Electric-Fusion-Welded Steel Pipe for Atmospheric and Lower Temperatures" (May 1, 2006).	§§ 192.113; Item I, Appendix B to Part 192.
(8) ASTM A672–08, "Standard Specification for Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures" (May 1, 2008).	§§ 192.113; Item I, Appendix B to Part 192.
(9) ASTM A691–98 (reapproved 2007), "Standard Specification for Carbon and Alloy Steel Pipe, Electric-Fusion-Welded for High-Pressure Service at High Temperatures" (November 1, 2007).	§§ 192.113; Item I, Appendix B to Part 192.
(10) ASTM D638–03 "Standard Test Method for Tensile Properties of Plastics."	§§ 192.283(a)(3); 192.283(b)(1).
(11) ASTM D2513–87 "Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings.".	§ 192.63(a)(1).
(12) ASTM D2513–99 "Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings.".	§§ 192.123(e)(2); 192.191(b); 192.281(b)(2); 192.283(a)(1)(i); Item 1, Appendix B to Part 192.
(13) ASTM D2517–00 "Standard Specification for Reinforced Epoxy Resin Gas Pressure Pipe and Fittings.".	§§ 192.191(a); 192.281(d)(1); 192.283(a)(1)(ii); Item I, Appendix B to Part 192.
(14) ASTM F1055–1998, "Standard Specification for Electrofusion Type Polyethylene Fittings for Outside Diameter Controller Polyethylene Pipe and Tubing.".	§ 192.283(a)(1)(iii).
D. ASME International (ASME):	
(1) ASME/ANSI B16.1–2005, "Gray Iron Pipe Flanges and Flanged Fittings: (Classes 25, 125, and 250)" (August 31, 2006).	§ 192.147(c).
(2) ASME/ANSI B16.5–2003, "Pipe Flanges and Flanged Fittings." (October 2004)	§§ 192.147(a); 192.279.
(3) ASME/ANSI B31G–1991 (Reaffirmed, 2004), "Manual for Determining the Remaining Strength of Corroded Pipelines.".	§§ 192.485(c); 192.933(a).
(4) ASME/ANSI B31.8–2007, "Gas Transmission and Distribution Piping Systems" (November 30, 2007).	§ 192.619(a)(1)(i).
(5) ASME/ANSI B31.8S–2004, "Supplement to B31.8 on Managing System Integrity of Gas Pipelines.".	§§ 192.903(c); 192.907(b); 192.911 Introductory text; 192.911(i); 192.911(k); 192.911(l); 192.911(m); 192.913(a) Introductory text; 192.913(b)(1); 192.917(a) Introductory text; 192.917(b); 192.917(c); 192.917(e)(1); 192.917(e)(4); 192.921(a)(1); 192.923(b)(1); 192.923(b)(2); 192.923(b)(3); 192.925(b) Introductory text; 192.925(b)(1); 192.925(b)(2); 192.925(b)(3); 192.925(b)(4); 192.927(b); 192.927(c)(1)(i); 192.929(b)(1); 192.929(b)(2); 192.933(a); 192.933(d)(1); 192.933(d)(1)(i); 192.935(a); 192.935(b)(1)(iv); 192.937(c)(1); 192.939(a)(1)(i); 192.939(a)(1)(ii); 192.939(a)(3); 192.945(a).
(6) 2007 ASME Boiler & Pressure Vessel Code, Section I, "Rules for Construction of Power Boilers 2007" (2007 edition, July 1, 2007).	§ 192.153(b).
(7) 2007 ASME Boiler & Pressure Vessel Code, Section VIII, Division 1, "Rules for Construction of Pressure Vessels 2" (2007 edition, July 1, 2007).	§§ 192.153(a); 192.153(b); 192.153(d); 192.165(b)(3).
(8) 2007 ASME Boiler & Pressure Vessel Code, Section VIII, Division 2, "Alternative Rules, Rules for Construction of Pressure Vessels" (2007 edition, July 1, 2007).	§§ 192.153(b); 192.165(b)(3).
(9) 2007 ASME Boiler & Pressure Vessel Code, Section IX, "Welding and Brazing Procedures, Welders, Brazers, and Welding and Brazing Operators" (2007 edition, July 1, 2007).	§§ 192.227(a); Item II, Appendix B to Part 192.
E. Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS):	
(1) MSS SP–44–2006, Standard Practice, "Steel Pipeline Flanges" (2006 edition) ...	§ 192.147(a).
(2) [Reserved].	
F. National Fire Protection Association (NFPA):	
(1) NFPA 30 (2008 edition, August 15, 2007), "Flammable and Combustible Liquids Code" (2008 edition; approved August 15, 2007).	§ 192.735(b).
(2) NFPA 58 (2004), "Liquefied Petroleum Gas Code (LP-Gas Code)."	§§ 192.11(a); 192.11(b); 192.11(c).
(3) NFPA 59 (2004), "Utility LP-Gas Plant Code."	§§ 192.11(a); 192.11(b); 192.11(c).
(4) NFPA 70 (2008), "National Electrical Code" (NEC 2008) (Approved August 15, 2007).	§§ 192.163(e); 192.189(c).
G. Plastics Pipe Institute, Inc. (PPI):	
(1) PPI TR–3/2008 HDB/HDS/PDB/SDB/MRS Policies (2008), "Policies and Procedures for Developing Hydrostatic Design Basis (HDB), Pressure Design Basis (PDB), Strength Design Basis (SDB), and Minimum Required Strength (MRS) Ratings for Thermoplastic Piping Materials or Pipe" (May 2008).	§ 192.121.
H. NACE International (NACE):	
(1) NACE Standard SP0502–2008, Standard Practice, "Pipeline External Corrosion Direct Assessment Methodology" (reaffirmed March 20, 2008).	§§ 192.923(b)(1); 192.925(b) Introductory text; 192.925(b)(1); 192.925(b)(1)(ii); 192.925(b)(2) Introductory text; 192.925(b)(3) Introductory text; 192.925(b)(3)(ii); 192.925(b)(3)(iv); 192.925(b)(4) Introductory text; 192.925(b)(4)(ii); 192.931(d); 192.935(b)(1)(iv); 192.939(a)(2).
I. Gas Technology Institute (GTI):	
(1) GRI 02/0057 (2002) "Internal Corrosion Direct Assessment of Gas Transmission Pipelines Methodology.".	§ 192.927(c)(2).

■ 4. In § 192.63, paragraph (a)(1) is revised to read as follows:

§ 192.63 Marking of materials.

(a) Except as provided in paragraph (d) of this section, each valve, fitting, length of pipe, and other component must be marked—

(1) As prescribed in the specification or standard to which it was manufactured, except that thermoplastic fittings must be marked in accordance with ASTM D2513–87 (incorporated by reference, *see* § 192.7);

* * * * *

■ 5. Section 192.65 is revised to read as follows:

§ 192.65 Transportation of pipe.

(a) *Railroad.* In a pipeline to be operated at a hoop stress of 20 percent or more of SMYS, an operator may not use pipe having an outer diameter to wall thickness ratio of 70 to 1, or more, that is transported by railroad unless:

(1) The transportation is performed in accordance with API Recommended Practice 5L1 (incorporated by reference, *see* § 192.7).

(2) In the case of pipe transported before November 12, 1970, the pipe is tested in accordance with Subpart J of this Part to at least 1.25 times the maximum allowable operating pressure if it is to be installed in a class 1 location and to at least 1.5 times the maximum allowable operating pressure if it is to be installed in a class 2, 3, or 4 location. Notwithstanding any shorter time period permitted under Subpart J of this Part, the test pressure must be maintained for at least 8 hours.

(b) *Ship or barge.* In a pipeline to be operated at a hoop stress of 20 percent or more of SMYS, an operator may not use pipe having an outer diameter to wall thickness ratio of 70 to 1, or more, that is transported by ship or barge on both inland and marine waterways unless the transportation is performed in accordance with API Recommended Practice 5LW (incorporated by reference, *see* § 192.7).

§ 192.121 [Amended].

■ 6. In § 192.121, under "*S*=", the words "PPI TR–3/2004" are removed and the words "PPI TR–3/2008" are added in their place.

■ 7. In § 192.123, paragraphs (e) introductory text, (e)(1) and (2) are revised to read as follows:

§ 192.123 Design limitations for plastic pipe.

* * * * *

(e) The design pressure for thermoplastic pipe produced after July 14, 2004 may exceed a gauge pressure of 100 psig (689 kPa) provided that:

(1) The design pressure does not exceed 125 psig (862 kPa);

(2) The material is a PE2406 or a PE3408 as specified within ASTM D2513–99 (incorporated by reference, *see* § 192.7);

* * * * *

■ 8. In § 192.145, the first sentence in paragraph (d) introductory text and paragraph (e) are revised to read as follows:

§ 192.145 Valves.

* * * * *

(d) No valve having shell (body, bonnet, cover, and/or end flange) components made of ductile iron may be used at pressures exceeding 80 percent of the pressure ratings for comparable steel valves at their listed temperature. * * *

(e) No valve having shell (body, bonnet, cover, and/or end flange) components made of cast iron, malleable iron, or ductile iron may be used in the gas pipe components of compressor stations.

■ 9. Section 192.191 is revised to read as follows:

§ 192.191 Design pressure of plastic fittings.

(a) Thermosetting fittings for plastic pipe must conform to ASTM D 2517, (incorporated by reference, *see* § 192.7).

(b) Thermoplastic fittings for plastic pipe must conform to ASTM D 2513–99, (incorporated by reference, *see* § 192.7).

■ 10. In *§* 192.281, paragraphs (a) and (b) are revised to read as follows:

§ 192.281 Plastic pipe

(a) *General.* A plastic pipe joint that is joined by solvent cement, adhesive, or heat fusion may not be disturbed until it has properly set. Plastic pipe may not be joined by a threaded joint or miter joint.

(b) *Solvent cement joints.* Each solvent cement joint on plastic pipe must comply with the following:

(1) The mating surfaces of the joint must be clean, dry, and free of material which might be detrimental to the joint.

(2) The solvent cement must conform to ASTM D2513–99, (incorporated by reference, *see* § 192.7).

(3) The joint may not be heated to accelerate the setting of the cement.

* * * * *

■ 11. In *§* 192.283, paragraph (a) is revised to read as follows:

§ 192.283 Plastic pipe: Qualifying joining procedures.

(a) *Heat fusion, solvent cement, and adhesive joints.* Before any written procedure established under § 192.273(b) is used for making plastic pipe joints by a heat fusion, solvent cement, or adhesive method, the procedure must be qualified by subjecting specimen joints made according to the procedure to the following tests:

(1) The burst test requirements of—

(i) In the case of thermoplastic pipe, paragraph 6.6 (sustained pressure test) or paragraph 6.7 (Minimum Hydrostatic Burst Test) or paragraph 8.9 (Sustained Static pressure Test) of ASTM D2513–99 (incorporated by reference, *see* § 192.7);

(ii) In the case of thermosetting plastic pipe, paragraph 8.5 (Minimum Hydrostatic Burst Pressure) or paragraph 8.9 (Sustained Static Pressure Test) of ASTM D2517 (incorporated by reference, *see* § 192.7); or

(iii) In the case of electrofusion fittings for polyethylene (PE) pipe and tubing, paragraph 9.1 (Minimum Hydraulic Burst Pressure Test), paragraph 9.2 (Sustained Pressure Test), paragraph 9.3 (Tensile Strength Test), or paragraph 9.4 (Joint Integrity Tests) of ASTM Designation F1055 (incorporated by reference, *see* § 192.7).

(2) For procedures intended for lateral pipe connections, subject a specimen joint made from pipe sections joined at right angles according to the procedure to a force on the lateral pipe until failure occurs in the specimen. If failure initiates outside the joint area, the procedure qualifies for use; and

(3) For procedures intended for non-lateral pipe connections, follow the tensile test requirements of ASTM D638 (incorporated by reference, *see* § 192.7), except that the test may be conducted at ambient temperature and humidity If the specimen elongates no less than 25 percent or failure initiates outside the joint area, the procedure qualifies for use.

* * * * *

■ 12. In § 192.465, paragraph (e) is revised to read as follows:

§ 192.465 External corrosion control: Monitoring

* * * * *

(e) After the initial evaluation required by §§ 192.455(b) and (c) and 192.457(b), each operator must, not less than every 3 years at intervals not exceeding 39 months, reevaluate its unprotected pipelines and cathodically protect them in accordance with this subpart in areas in which active corrosion is found. The operator must determine the areas of active corrosion by electrical survey. However, on distribution lines and where an electrical survey is impractical on transmission lines, areas of active

corrosion may be determined by other means that include review and analysis of leak repair and inspection records, corrosion monitoring records, exposed pipe inspection records, and the pipeline environment.

■ 13. Section 192.711 is revised to read as follows:

§ 192.711 Transmission lines: General requirements for repair procedures.

(a) *Temporary repairs.* Each operator must take immediate temporary measures to protect the public whenever:

(1) A leak, imperfection, or damage that impairs its serviceability is found in a segment of steel transmission line operating at or above 40 percent of the SMYS; and

(2) It is not feasible to make a permanent repair at the time of discovery.

(b) *Permanent repairs.* An operator must make permanent repairs on its pipeline system according to the following:

(1) Non integrity management repairs: The operator must make permanent repairs as soon as feasible.

(2) Integrity management repairs: When an operator discovers a condition on a pipeline covered under Subpart O–Gas Transmission Pipeline Integrity Management, the operator must remediate the condition as prescribed by § 192.933(d).

(c) *Welded patch.* Except as provided in § 192.717(b)(3), no operator may use a welded patch as a means of repair.

§§ 192.923, 192.925, 192.931, 192.935, and 192.939 [Amended]

■ 14. In 49 CFR part 192 the words "NACE RP0502–2002" or "NACE RP 0502–2002" are removed and the words "NACE SP0502–2008" are added in their place in the following places:

■ a. Section 192.923(b)(1);

■ b. Section 192.925(b) introductory text, 192.925(b)(1), 192.925 (b)(1)(ii), 192.925 (b)(2) introductory text, 192.925 (b)(3) introductory text, 192.925(b)(3)(ii), 192.925(b)(iv), 192.925(b)(4) introductory text, and 192.925(b)(4)(ii);

■ c. Section 192.931(d);

■ d. Section 192.935(b)(1)(iv); and

■ e. Section 192.939(a)(2).

Appendix B to Part 192 [Amended]

■ 15. In Appendix B to Part 192, in section I, the phrase "ASTM D2513" is revised to read "ASTM D2513–99"

PART 193—LIQUEFIED NATURAL GAS FACILITIES: FEDERAL SAFETY STANDARDS

■ 16. The authority citation for Part 193 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60103, 60104, 60108, 60109, 60110, 60113, 60118; and 49 CFR 1.53.

■ 17. In § 193.2013, paragraph (c) is revised to read as follows:

§ 193.2013 Incorporation by reference.

* * * * *

(c) Documents incorporated by reference.

Source and name of referenced material	49 CFR Reference
A. American Gas Association (AGA):	
(1) "Purging Principles and Practices" (3rd edition, 2001)	§§ 193.2513; 193.2517; 193.2615.
B. American Petroleum Institute (API):	
(1) API Standard 620 "Design and Construction of Large, Welded, Low-Pressure Storage Tanks" (11th edition February 2008, addendum 1, March 2009).	§§ 193.2101(b); 193.2321(b)(2).
C. American Society of Civil Engineers (ASCE):	
(1) ASCE/SEI 7–05 "Minimum Design Loads for Buildings and Other Structures" (2005 edition, includes supplement No. 1 and Errata).	§ 193.2067(b)(1).
D. ASME International (ASME):	
(1) 2007 ASME Boiler & Pressure Vessel Code, Section VIII, Division 1, "Rules for Construction of Pressure Vessels" (2007 edition, July 1, 2007).	§ 193.2321(a).
(2) 2007 ASME Boiler & Pressure Vessel Code, Section VIII, Division 2, "Alternative Rules, Rules for Construction of Pressure Vessels" (2007 edition, July 1, 2007).	§ 193.2321(a).
E. Gas Technology Institute (GTI) formerly the Gas Research Institute (GRI):	
(1) GTI–04/0032 LNGFIRE3: A Thermal Radiation Model for LNG Fires (March 2004).	§ 193.2057(a).
(2) GTI–04/0049 (April 2004) "LNG Vapor Dispersion Prediction with the DEGADIS 2.1: Dense Gas Dispersion Model For LNG Vapor Dispersion".	§ 193.2059.
(3) GRI–96/0396.5 "Evaluation of Mitigation Methods for Accidental LNG Releases, Volume 5: Using FEM3A for LNG Accident Consequence Analyses" (April 1997).	§ 193.2059.
F. National Fire Protection Association (NFPA):	
(1) NFPA 59A, (2001) "Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG)".	§§ 193.2019; 193.2051; 193.2057; 193.2059; 193.2101(a); 193.2301; 193.2303; 193.2401; 193.2521; 193.2639; 193.2801.
(2) NFPA 59A, "Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG)" (2006 edition, Approved August 18, 2005).	§§ 193.2101(b); 193.2321(b).

■ 18. In § 193.2057, paragraph (a) is revised to read as follows:

§ 193.2057 Thermal radiation protection.

* * * * *

(a) The thermal radiation distances must be calculated using Gas Technology Institute's (GTI) report or computer model GTI–04/0032 LNGFIRE3: A Thermal Radiation Model for LNG Fires (incorporated by reference, *see* § 193.2013). The use of other alternate models which take into account the same physical factors and have been validated by experimental test data may be permitted subject to the Administrator's approval.

* * * * *

■ 19. In § 193.2067, paragraph (b)(1) is revised to read as follows:

§ 193.2067 Wind forces.

* * * * *

(b) * * *

(1) For shop fabricated containers of LNG or other hazardous fluids with a capacity of not more than 70,000 gallons, applicable wind load data in ASCE/SEI 7–05 (incorporated by reference, *see* § 193.2013).

* * * * *

■ 20. Section 193.2101 is revised to read as follows:

§ 193.2101 Scope.

(a) Each LNG facility designed after March 31, 2000 must comply with requirements of this Part and of NFPA 59A (2001) (incorporated by reference, *see* § 193.2013). If there is a conflict between this Part and NFPA 59A, this Part prevails. Unless otherwise specified, all references to NFPA 59A in this Part are to the 2001 edition.

(b) Stationary LNG storage tanks must comply with Section 7.2.2 of NFPA 59A (2006) (incorporated by reference, *see* § 193.2013) for seismic design of field fabricated tanks. All other LNG storage tanks must comply with API Standard 620 (incorporated by reference, *see* § 193.2013) for seismic design.

■ 21. Section 193.2321 is revised to read as follows:

§ 193.2321 Nondestructive tests.

(a) The butt welds in metal shells of storage tanks with internal design pressure above 15 psig must be nondestructively examined in accordance with the ASME Boiler and Pressure Vessel Code (Section VIII Division 1) (incorporated by reference, *see* § 193.2013), except that 100 percent of welds that are both longitudinal (or meridional) and circumferential (or latitudinal) of hydraulic load bearing shells with curved surfaces that are subject to cryogenic temperatures must be nondestructively examined in accordance with the ASME Boiler and Pressure Vessel Code (Section VIII Division 1) (incorporated by reference, *see* § 193.2013).

(b) For storage tanks with internal design pressures at 15 psig or less, ultrasonic examinations of welds on metal containers must comply with the following:

(1) Section 7.3.1.2 of NFPA 59A (2006) (incorporated by reference, *see* § 193.2013);

(2) Appendices Q and C of API 620 Standard (incorporated by reference, *see* § 193.2013);

(c) Ultrasonic examination records must be retained for the life of the facility. If electronic records are kept, they must be retained in a manner so that they cannot be altered by any means; and

(d) The ultrasonic equipment used in the examination of welds must be calibrated at a frequency no longer than eight hours. Such calibrations must verify the examination of welds against a calibration standard. If the ultrasonic equipment is found to be out of calibration, all previous weld inspections that are suspect must be reexamined.

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

■ 22. The authority citation for Part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60116, 60118 and 60137; and 49 CFR 1.53.

■ 23. In § 195.3, paragraph (c) is revised to read as follows:

§ 195.3 Incorporation by reference.

* * * * *

(c) The full titles of publications incorporated by reference wholly or partially in this part are as follows. Numbers in parentheses indicate applicable editions:

Source and name of referenced material	49 CFR reference
A. Pipeline Research Council International, Inc. (PRCI):	
(1) AGA Pipeline Research Committee, Project PR–3–805, "A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe," (December 22, 1989). The RSTRENG program may be used for calculating remaining strength.	§§ 195.452(h)(4)(i)(B); 195.452(h)(4)(iii)(D); 195.587.
B. American Petroleum Institute (API):	
(1) ANSI/API Specification 5L/ISO 3183, "Specification for Line Pipe" (44th edition, October 2007, including errata (January 2009) and addendum (February 2009)).	§§ 195.106(b)(1)(i); 195.106(e).
(2) API Recommended Practice 5L1, "Recommended Practice for Railroad Transportation of Line Pipe" (6th edition, July 2002).	§ 195.207(a).
(3) API Recommended Practice 5LW, "Transportation of Line Pipe on Barges and Marine Vessels" (2nd edition, December 1996, effective March 1, 1997).	§ 195.207(b).
(4) ANSI/API Specification 6D, "Specification for Pipeline Valves" (23rd edition, April 2008, effective October 1, 2008) and errata 3 (includes 1 & 2 (2009).	§ 195.116(d).
(5) API Specification 12F, "Specification for Shop Welded Tanks for Storage of Production Liquids" (11th edition, November 1, 1994, reaffirmed 2000, errata, February 2007).	§§ 195.132(b)(1); 195.205(b)(2); 195.264(b)(1); 195.264(e)(1); 195.307(a); 195.565; 195.579(d).
(6) API Standard 510, "Pressure Vessel Inspection Code: In-Service Inspection, Rating, Repair, and Alteration" (9th edition, June 2006).	§§ 195.205(b)(3); 195.432(c).
(7) API Standard 620, "Design and Construction of Large, Welded, Low-Pressure Storage Tanks" (11th edition, February 2008, addendum 1 March 2009).	§§ 195.132(b)(2); 195.205(b)(2); 195.264(b)(1); 195.264(e)(3); 195.307(b).
(8) API Standard 650, "Welded Steel Tanks for Oil Storage" (11th edition, June 2007, addendum 1, November 2008).	§§ 195.132(b)(3); 195.205(b)(1); 195.264(b)(1);195.264(e)(2); 195.307(c); 195.307(d); 195.565; 195.579(d).
(9) ANSI/API Recommended Practice 651, "Cathodic Protection of Aboveground Petroleum Storage Tanks" (3rd edition, January 2007).	§§ 195.565; 195.579(d).
(10) ANSI/API Recommended Practice 652, "Linings of Aboveground Petroleum Storage Tank Bottoms" (3rd edition, October 2005).	§ 195.579(d).
(11) API Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction" (3rd edition, December 2001, includes addendum 1 (September 2003), addendum 2 (November 2005), addendum 3 (February 2008), and errata (April 2008)).	§§ 195.205(b)(1); 195.432(b).
(12) API Standard 1104, "Welding of Pipelines and Related Facilities" (20th edition, October 2005, errata/addendum (July 2007), and errata 2 December 2008)).	§§ 195.222(a); 195.228(b); 195.214(a).
(13) API Recommended Practice 1130, "Computational Pipeline Monitoring for Liquids: Pipeline Segment" (3rd edition, September 2007).	§§ 195.134; 195.444.
(14) API Recommended Practice 1162, "Public Awareness Programs for Pipeline Operators" (1st edition, December 2003).	§§ 195.440(a); 195.440(b); 195.440(c).
(15) API Recommended Practice 1165, "Recommended Practice for Pipeline SCADA Displays," (API RP 1165) First Edition (January 2007).	§ 195.446(c)(1).
(16) API Standard 2000, "Venting Atmospheric and Low-Pressure Storage Tanks Nonrefrigerated and Refrigerated" (5th edition, April 1998, errata, November 15, 1999).	§§ 195.264(e)(2); 195.264(e)(3).

Source and name of referenced material	49 CFR reference
(17) API Recommended Practice 2003, "Protection Against Ignitions Arising Out of Static, Lightning, and Stray Currents" (7th edition, January 2008).	§ 195.405(a).
(18) API Publication 2026, "Safe Access/Egress Involving Floating Roofs of Storage Tanks in Petroleum Service" (2nd edition, April 1998, reaffirmed June 2006).	§ 195.405(b).
(19) API Recommended Practice 2350, "Overfill Protection for Storage Tanks In Petroleum Facilities'" (3rd edition, January 2005).	§ 195.428(c).
(20) API 2510, "Design and Construction of LPG Installations" (8th edition, 2001)	§§ 195.132(b)(3); 195.205(b)(3); 195.264(b)(2); 195.264(e)(4); 195.307(e); 195.428(c); 195.432(c).
(21) API Recommended Practice 1168 "Pipeline Control Room Management," (API RP1168) First Edition (September 2008).	§ 195.446(c)(5), (f)(1).
C. ASME International (ASME):	
(1) ASME/ANSI B16.9–2007, "Factory-Made Wrought Buttwelding Fittings" (December 7, 2007).	§ 195.118(a).
(2) ASME/ANSI B31.4–2006, "Pipeline Transportation Systems for Liquid Hydrocarbons and Other Liquids" (October 20, 2006).	§ 195.452(h)(4)(i).
(3) ASME/ANSI B31G–1991 (Reaffirmed; 2004), "Manual for Determining the Remaining Strength of Corroded Pipelines.".	§§ 195.452(h)(4)(i)(B); 195.452(h)(4)(iii)(D).
(4) ASME/ANSI B31.8–2007, "Gas Transmission and Distribution Piping Systems" (November 30, 2007).	§ 195.5(a)(1)(i); 195.406(a)(1)(i).
(5) 2007 ASME Boiler & Pressure Vessel Code, Section VIII, Division 1 "Rules for Construction of Pressure Vessels" (2007 edition, July 1, 2007).	§ 195.124; 195.307(e).
(6) 2007 ASME Boiler & Pressure Vessel Code, Section VIII, Division 2 "Alternate Rules, Rules for Construction of Pressure Vessels" (2007 edition, July 1, 2007).	§ 195.307(e).
(7) 2007 ASME Boiler & Pressure Vessel Code, Section IX: "Qualification Standard for Welding and Brazing Procedures, Welders, Brazers, and Welding and Brazing Operators," (2007 edition, July 1, 2007).	§ 195.222(a).
D. Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS):	
(1) MSS SP–75–2004, "Specification for High Test Wrought Butt Welding Fittings."	§ 195.118(a).
(2) [Reserved]	
E. American Society for Testing and Materials (ASTM):	
(1) ASTM A53/A53M–07, "Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated Welded and Seamless" (September 1, 2007).	§ 195.106(e).
(2) ASTM A106/A106M–08, "Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service" (July 15, 2008).	§ 195.106(e).
(3) ASTM A333/A 333M–05, "Standard Specification for Seamless and Welded Steel Pipe for Low-Temperature Service.".	§ 195.106(e).
(4) ASTM A381–96 (Reapproved 2005), "Standard Specification for Metal-Arc-Welded Steel Pipe for Use With High-Pressure Transmission Systems" (October 1, 2005).	§ 195.106(e).
(5) ASTM A671–06, "Standard Specification for Electric-Fusion-Welded Steel Pipe for Atmospheric and Lower Temperatures" (May 1, 2006).	§ 195.106(e).
(6) ASTM A672–08, "Standard Specification for Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures" (May 1, 2008).	§ 195.106(e).
(7) ASTM A691–98 (reapproved 2007), "Standard Specification for Carbon and Alloy Steel Pipe Electric-Fusion-Welded for High-Pressure Service at High Temperatures.".	§ 195.106(e).
F. National Fire Protection Association (NFPA):	
(1) NFPA 30, "Flammable and Combustible Liquids Code" (2008 edition, approved August 15, 2007).	§ 195.264(b)(1).
(2) [Reserved].	
G. NACE International (NACE):	
(1) NACE SP0169–2007, Standard Practice, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems" (reaffirmed March 15, 2007).	§§ 195.571; 195.573(a)(2).
(2) NACE SP0502–2008, Standard Practice, "Pipeline External Corrosion Direct Assessment Methodology" (reaffirmed March 20, 2008).	§ 195.588.

* * * * *

■ 24. In § 195.116, paragraph (d) is revised to read as follows:

§ 195.116 Valves.

* * * * *

(d) Each valve must be both hydrostatically shell tested and hydrostatically seat tested without leakage to at least the requirements set forth in Section 11 of API Standard 6D (incorporated by reference, *see* § 195.3).

* * * * *

■ 25. Add § 195.207 to subpart D to read as follows:

§ 195.207 Transportation of pipe.

(a) *Railroad.* In a pipeline operated at a hoop stress of 20 percent or more of SMYS, an operator may not use pipe having an outer diameter to wall thickness ratio of 70 to 1, or more, that is transported by railroad unless the transportation is performed in accordance with API Recommended Practice 5L1 (incorporated by reference, *see* § 195.3).

(b) *Ship or barge.* In a pipeline operated at a hoop stress of 20 percent or more of SMYS, an operator may not use pipe having an outer diameter to wall thickness ratio of 70 to 1, or more, that is transported by ship or barge on both inland and marine waterways, unless the transportation is performed in accordance with API Recommended Practice 5LW (incorporated by reference, *see* § 195.3).

■ 26. In § 195.264, paragraph (e) is revised to read as follows:

§ 195.264 Impoundment, protection against entry, normal/emergency venting or pressure/vacuum relief for aboveground breakout tanks.

* * * * *

(e) For normal/emergency relief venting and pressure/vacuum-relieving devices installed on aboveground breakout tanks after October 2, 2000, compliance with paragraph (d) of this section requires the following for the tanks specified:

(1) Normal/emergency relief venting installed on atmospheric pressure tanks built to API Specification 12F (incorporated by reference, *see* § 195.3) must be in accordance with Section 4, and Appendices B and C, of API Specification 12F (incorporated by reference, *see* § 195.3).

(2) Normal/emergency relief venting installed on atmospheric pressure tanks (such as those built to API Standard 650 or its predecessor Standard 12C) must be in accordance with API Standard 2000 (incorporated by reference, *see* § 195.3).

(3) Pressure-relieving and emergency vacuum-relieving devices installed on low pressure tanks built to API Standard 620 (incorporated by reference, *see* § 195.3) must be in accordance with section 9 of API Standard 620 (incorporated by reference, *see* § 195.3) and its references to the normal and emergency venting requirements in API Standard 2000 (incorporated by reference, *see* § 195.3).

(4) Pressure and vacuum-relieving devices installed on high pressure tanks built to API Standard 2510 (incorporated by reference, *see* § 195.3) must be in accordance with sections 7 or 11 of API Standard 2510 (incorporated by reference, s*ee* § 195.3).

■ 27. In § 195.307, paragraphs (a) and (c) are revised to read as follows:

§ 195.307 Pressure testing aboveground breakout tanks.

(a) For aboveground breakout tanks built into API Specification 12F and first placed in service after October 2, 2000, pneumatic testing must be in accordance with section 5.3 of API Specification 12 F (incorporated by reference, *see* § 195.3).

* * * * *

(c) For aboveground breakout tanks built to API Standard 650 (incorporated by reference, *see* § 195.3) and first placed in service after October 2, 2000, testing must be in accordance with Section 5.2 of API Standard 650 (incorporated by reference, *see* § 195.3).

* * * * *

■ 28. In § 195.401, paragraph (b) is revised to read as follows:

§ 195.401 General requirements.

* * * * *

(b) An operator must make repairs on its pipeline system according to the following requirements:

(1) *Non Integrity management repairs.* Whenever an operator discovers any condition that could adversely affect the safe operation of its pipeline system, it must correct the condition within a reasonable time. However, if the condition is of such a nature that it presents an immediate hazard to persons or property, the operator may not operate the affected part of the system until it has corrected the unsafe condition.

(2) *Integrity management repairs.* When an operator discovers a condition on a pipeline covered under § 195.452, the operator must correct the condition as prescribed in § 195.452(h).

* * * * *

■ 29. In § 195.432, paragraph (b) is revised to read as follows:

§ 195.432 Inspection of in-service breakout tanks.

* * * * *

(b) Each operator must inspect the physical integrity of in-service atmospheric and low-pressure steel aboveground breakout tanks according to API Standard 653 (incorporated by reference, *see* § 195.3). However, if structural conditions prevent access to the tank bottom, the bottom integrity may be assessed according to a plan included in the operations and maintenance manual under § 195.402(c)(3).

* * * * *

■ 30. In § 195.452, paragraphs (h)(4)(i) introductory text is revised to read as follows:

§ 195.452 Pipeline integrity management in high consequence areas.

* * * * *

(h) * * *

(4) * * *

(i) *Immediate repair conditions.* An operator's evaluation and remediation schedule must provide for immediate repair conditions. To maintain safety, an operator must temporarily reduce operating pressure or shut down the pipeline until the operator completes the repair of these conditions. An operator must calculate the temporary reduction in operating pressure using the formula in Section 451.6.2.2 (b) of ANSI/ASME B31.4 (incorporated by reference, *see* § 195.3). An operator must treat the following conditions as immediate repair conditions:

* * * * *

■ 31. Section 195.571 is revised to read as follows:

§ 195.571 What criteria must I use to determine the adequacy of cathodic protection?

Cathodic protection required by this Subpart must comply with one or more of the applicable criteria and other considerations for cathodic protection contained in paragraphs 6.2 and 6.3 of NACE SP 0169 (incorporated by reference, *see* § 195.3).

■ 32. In § 195.573, paragraph (a)(2) is revised to read as follows:

§ 195.573 What must I do to monitor external corrosion control?

(a) * * *

(2) Identify not more than 2 years after cathodic protection is installed, the circumstances in which a close-interval survey or comparable technology is practicable and necessary to accomplish the objectives of paragraph 10.1.1.3 of NACE SP 0169 (incorporated by reference, *see* § 195.3).

* * * * *

■ 33. In § 195.588, paragraphs (b)(1), (b)(2) introductory text, (b)(2)(iii), (b)(3) introductory text, (b)(4) introductory text, (b)(4)(ii), (b)(4)(iv), (b)(5) introductory text, and (b)(5)(ii) are revised to read as follows:

§ 195.588 What standards apply to direct assessment?

* * * * *

(b) * * *

(1) *General.* You must follow the requirements of NACE SP0502 (incorporated by reference, *see* § 195.3). Also, you must develop and implement a External Corrosion Direct Assessment (ECDA) plan that includes procedures addressing pre-assessment, indirect examination, direct examination, and post-assessment.

(2) *Pre-assessment.* In addition to the requirements in Section 3 of NACE SP0502 (incorporated by reference, *see* § 195.3), the ECDA plan procedures for pre-assessment must include—

* * * * *

(iii) If you utilize an indirect inspection method not described in Appendix A of NACE SP0502 (incorporated by reference, *see* § 195.3), you must demonstrate the applicability, validation basis, equipment used, application procedure, and utilization of data for the inspection method.

(3) *Indirect examination.* In addition to the requirements in Section 4 of NACE SP0502 (incorporated by reference, *see* § 195.3), the procedures for indirect examination of the ECDA regions must include—

* * * * *

(4) *Direct examination.* In addition to the requirements in Section 5 of NACE

SP0502 (incorporated by reference, *see* § 195.3), the procedures for direct examination of indications from the indirect examination must include—

* * * * *

(ii) Criteria for deciding what action should be taken if either:

(A) Corrosion defects are discovered that exceed allowable limits (Section 5.5.2.2 of NACE SP0502 (incorporated by reference, *see* § 195.3) provides guidance for criteria); or

(B) Root cause analysis reveals conditions for which ECDA is not suitable (Section 5.6.2 of NACE SP0502 (incorporated by reference, *see* § 195.3) provides guidance for criteria);

* * * * *

(iv) Criteria that describe how and on what basis you will reclassify and re-prioritize any of the provisions specified in Section 5.9 of NACE SP0502 (incorporated by reference, *see* § 195.3).

(5) *Post assessment and continuing evaluation.* In addition to the requirements in Section 6 of NACE SP 0502 (incorporated by reference, *see* § 195.3), the procedures for post assessment of the effectiveness of the ECDA process must include—

* * * * *

(ii) Criteria for evaluating whether conditions discovered by direct examination of indications in each ECDA region indicate a need for reassessment of the pipeline segment at an interval less than that specified in Sections 6.2 and 6.3 of NACE SP0502 (*see* appendix D of NACE SP0502) (incorporated by reference, *see* § 195.3).

■ 34. In Appendix C to part 195, paragraph I. A. introductory text is revised to read as follows:

Appendix C to Part 195—Guidance for Implementation of an Integrity Management Program

* * * * *

I. * * *

A. The rule defines a High Consequence Area as a high population area, an other populated area, an unusually sensitive area, or a commercially navigable waterway. The Office of Pipeline Safety (OPS) will map these areas on the National Pipeline Mapping System (NPMS). An operator, member of the public or other government agency may view and download the data from the NPMS home page *http://www.npms.phmsa.gov/.* OPS will maintain the NPMS and update it periodically. However, it is an operator's responsibility to ensure that it has identified all high consequence areas that could be affected by a pipeline segment. An operator is also responsible for periodically evaluating its pipeline segments to look for population or environmental changes that may have occurred around the pipeline and to keep its program current with this information. (Refer to § 195.452(d)(3).)

* * * * *

Issued in Washington, DC, on August 3, 2010, under authority delegated in 49 CFR part 1.

Cynthia L. Quarterman,

Administrator.

[FR Doc. 2010–19643 Filed 8–10–10; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 594

[Docket No. NHTSA 2010–0035; Notice 2]

RIN 2127–AK70

Schedule of Fees Authorized by 49 U.S.C. 30141

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This document adopts fees for Fiscal Year 2011 and until further notice, as authorized by 49 U.S.C. 30141, relating to the registration of importers and the importation of motor vehicles not certified as conforming to the Federal motor vehicle safety standards (FMVSS). These fees are needed to maintain the registered importer (RI) program.

We are increasing the fees for the registration of a new RI from $760 to $795 and the annual fee for renewing an existing registration from $651 to $670. The fee to reimburse Customs for conformance bond processing costs will decrease from $10.23 to $9.93 per bond. We are decreasing the fees for the importation of a vehicle covered by an import eligibility decision made on an individual model and model year basis. For vehicles determined eligible based on their substantial similarity to a U.S. certified vehicle, the fee will decrease from $198 to $158. For vehicles determined eligible based on their capability of being modified to comply with all applicable FMVSS, the fee will also decrease from $198 to $158. The fee for the inspection of a vehicle will remain $827. The fee for processing a conformity package will increase to $17 from $14. If the vehicle has been entered electronically with Customs through the Automated Broker Interface (ABI) and the RI has an e-mail address, the fee for processing the conformity package will continue to be $6, provided the fee is paid by credit card. However, if NHTSA finds that the information in the entry or the conformity package is incorrect, the processing fee will be $57, representing a $9 increase in the fee that is currently charged when there are one or more errors in the ABI entry or omissions in the statement of conformity.

DATES: The amendments established by this final rule will become effective on October 1, 2010. Petitions for reconsideration must be received by NHTSA not later than September 27, 2010.

ADDRESSES: Petitions for reconsideration of this final rule should refer to the docket and notice numbers identified above and be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590. It is requested, but not required, that 10 copies of the petition be submitted. The petition must be received not later than 45 days after publication of this final rule in the **Federal Register**. Petitions filed after that time will be considered petitions filed by interested persons to initiate rulemaking pursuant to 49 U.S.C. Chapter 301.

The petition must contain a brief statement of the complaint and an explanation as to why compliance with the final rule is not practicable, is unreasonable, or is not in the public interest. Unless otherwise specified in the final rule, the statement and explanation together may not exceed 15 pages in length, but necessary attachments may be appended to the submission without regard to the 15-page limit. If it is requested that additional facts be considered, the petitioner must state the reason why they were not presented to the Administrator within the prescribed time. The Administrator does not consider repetitious petitions and unless the Administrator otherwise provides, the filing of a petition does not stay the effectiveness of the final rule.

FOR FURTHER INFORMATION CONTACT: Clint Lindsay, Office of Vehicle Safety Compliance, NHTSA (202–366–5291). For legal issues, you may call Nicholas Englund, Office of Chief Counsel, NHTSA (202–366–5263).

SUPPLEMENTARY INFORMATION:

Introduction

This rule was preceded by a notice of proposed rulemaking (NPRM) that NHTSA published on May 7, 2010 (75 FR 25169).

The National Traffic and Motor Vehicle Safety Act, as amended by the

Imported Vehicle Safety Compliance Act of 1988, and recodified at 49 U.S.C. 30141–30147 ("the Act"), provides for fees to cover the costs of the importer registration program, the cost of making import eligibility decisions, and the cost of processing the bonds furnished to Customs. Certain fees became effective on January 31, 1990, and have been in effect, with modifications, since then. On June 24, 1996, we published a notice in the **Federal Register** at 61 FR 32411 that discussed the rulemaking history of 49 CFR Part 594 and the fees authorized by the Act. The reader is referred to that notice for background information relating to this rulemaking action.

We last amended the fee schedule in 2008. See final rule published on September 24, 2008 at 73 FR 54981. Those fees apply to Fiscal Years 2009 and 2010.

The fees adopted in this final rule are based on time expenditures and costs associated with the tasks for which the fees are assessed. They reflect the increase in hourly costs in the past two fiscal years attributable to the approximately 4.78 and 2.42 percent raises (including the locality adjustment for Washington, DC) in salaries of employees on the General Schedule that became effective on January 1, 2009, and on January 1, 2010, respectively.

Comments

There were no comments in response to the notice of proposed rulemaking.

Requirements of the Fee Regulation

Section 594.6—Annual Fee for Administration of the Importer Registration Program

Section 30141(a)(3) of Title 49, U.S. Code provides that RIs must pay the annual fee the Secretary of Transportation establishes "* * * to pay for the costs of carrying out the registration program for importers * * *." This fee is payable both by new applicants and by existing RIs. To maintain its registration, each RI, at the time it submits its annual fee, must also file a statement affirming that the information it furnished in its registration application (or in later submissions amending that information) remains correct. 49 CFR 592.5(f).

In compliance with the statutory directive, we reviewed the existing fees and their bases in an attempt to establish fees that would be sufficient to recover the costs of carrying out the registration program for importers for at least the next two fiscal years. The initial component of the Registration Program Fee is the fee attributable to processing and acting upon registration applications. We will increase this fee from $295 to $320 for new applications. We have also determined that the fee for the review of the annual statement submitted by existing RIs who wish to renew their registrations will be increased from $186 to $195. These fee adjustments reflect our time expenditures in reviewing both new applications and annual statements with accompanying documentation, as well as the inflation factor attributable to Federal salary increases and locality adjustments in the two years since the regulation was last amended.

We must also recover costs attributable to maintenance of the registration program that arise from the need for us to review a registrant's annual statement and to verify the continuing validity of information already submitted. These costs also include anticipated costs attributable to the possible revocation or suspension of registrations and reflect the amount of time that we have devoted to those matters in the past two years.

Based upon our review of these costs, the portion of the fee attributable to the maintenance of the registration program is approximately $475 for each RI, an increase of $10. When this $475 is added to the $320 representing the registration application component, the cost to an applicant comes to $795, which is the fee we are adopting. This represents an increase of $35 over the existing fee. When the $475 is added to the $195 representing the annual statement component, the total cost to an RI renewing its registration comes to $670, which represents an increase of $19.

Section 594.6(h) enumerates indirect costs associated with processing the annual renewal of RI registrations. The provision states that these costs represent a *pro rata* allocation of the average salary and benefits of employees who process the annual statements and perform related functions, and "a *pro rata* allocation of the costs attributable to maintaining the office space, and the computer or word processor." The indirect costs that were previously calculated and are now being applied at $20.31 per man-hour (73 FR 54983, Sep. 24, 2008) are being increased by $0.36, to $20.67. This increase is based on the difference between enacted budgetary costs within the Department of Transportation for the last two fiscal years, which were higher than the estimates used when the fee schedule was last amended, and takes account of further projected increases over the next two fiscal years.

Sections 594.7, 594.8—Fees To Cover Agency Costs in Making Importation Eligibility Decisions

Section 30141(a)(3) also requires RIs to pay other fees the Secretary of Transportation establishes to cover the costs of "* * * (B) making the decisions under this subchapter." This includes decisions on whether the vehicle sought to be imported is substantially similar to a motor vehicle that was originally manufactured for importation into and sale in the United States and certified by its original manufacturer as complying with all applicable FMVSS, and whether the vehicle is capable of being readily altered to meet those standards. Alternatively, where there is no substantially similar U.S.-certified motor vehicle, the decision is whether the safety features of the vehicle comply with, or are capable of being altered to comply with, the FMVSS based on destructive test information or such other evidence that NHTSA deems to be adequate. These decisions are made in response to petitions submitted by RIs or manufacturers, or on the Administrator's own initiative.

The fee for a vehicle imported under an eligibility decision made in response to a petition is payable in part by the petitioner and in part by other importers. The fee to be charged for each vehicle is the estimated *pro rata* share of the costs in making all the eligibility decisions in a fiscal year. Inflation and General Schedule raises must also be taken into account in the computation of costs.

The agency believes that the volume of petition-based imports for the next two fiscal years should not be projected on the basis of any single year. The agency estimates the number of vehicles that will be imported under an import eligibility petition in each year for Fiscal Years 2011 and 2012 will equal the average number of such imports over that past five years. Further, the agency estimates the number of import eligibility petitions that will be filed in each year for Fiscal Years 2011 and 2012 will equal the average number of petitions filed each year since 2000. Based on these estimates, we project that 554 vehicles would be imported under petition-based eligibility decisions and that 25 petition-based import eligibility decisions would be made.

Based on these estimates, we project that for Fiscal Years 2011 and 2012, the agency's costs for processing these 25 petitions will be $95,479. The petitioners will pay $8,125 of that amount in the processing fees that accompanied the filing of their

petitions, leaving the remaining $87,354 to be recovered from the importers of the 554 vehicles imported under petition-based import eligibility decisions. Dividing $87,354 by 554 yields a *pro rata* fee of $158 for each vehicle imported under an eligibility decision that resulted from the granting of a petition. We are therefore decreasing the *pro rata* share of petition costs that are to be assessed against the importer of each vehicle by $40, from $198 to $158. The same $158 fee would be paid regardless of whether the vehicle was petitioned under 49 CFR 593.6(a), based on the substantial similarity of the vehicle to a U.S.-certified model, or was petitioned under 49 CFR 593.6(b), based on the safety features of the vehicle complying with, or being capable of being modified to comply with, all applicable FMVSS.

We are not increasing the current fee of $175 that covers the initial processing of a "substantially similar" petition. We are also maintaining the existing fee of $800 to cover the initial costs for processing petitions for vehicles that have no substantially similar U.S.-certified counterparts.

In the event that a petitioner requests an inspection of a vehicle, the fee for such an inspection will remain $827 for vehicles that are the subject of either type of petition.

The importation fee varies depending upon the basis on which the vehicle is determined to be eligible. For vehicles covered by an eligibility decision on the agency's own initiative (other than vehicles imported from Canada that are covered by import eligibility numbers VSA–80 through 83, for which no eligibility decision fee is assessed), the fee remains $125. NHTSA determined that the costs associated with previous eligibility decisions on the agency's own initiative will be fully recovered by October 1, 2010. We will apply the fee of $125 per vehicle only to vehicles covered by determinations made by the agency on its own initiative on or after October 1, 2010.

Section 594.9—Fee for Reimbursement of Bond Processing Costs and Costs for Processing Offers of Cash Deposits or Obligations of the United States in Lieu of Sureties on Bonds

Section 30141(a)(3) also requires an RI to pay any other fees the Secretary of Transportation establishes "* * * to pay for the costs of—(A) processing bonds provided to the Secretary of the Treasury * * *." Under Section 30141(d), the bond is provided at the time a nonconforming vehicle is imported to ensure that the vehicle will be brought into compliance within 120 days, as required by 49 CFR 591.8(d)(1), or if the vehicle is not brought into compliance within such time, that it be exported, without cost to the United States, or abandoned to the United States. See Section 30141(d)(1)(B).

The Department of Homeland Security (Customs) administers the functions associated with the processing of these bonds. The statute contemplates that we will make a reasonable determination of the cost that Customs incurs in processing the bonds. In essence, the cost to Customs is based upon an estimate of the time that a GS–9, Step 5 employee spends on each entry, which Customs has judged to be 20 minutes.

Based on General Schedule salary and locality raises that were effective in January 2009 and 2010 and the inclusion of costs for benefits, we are decreasing the processing fee by $0.30, from $10.23 per bond to $9.93. This decrease reflects the fact that GS–9 salaries were increased by a smaller amount than we previously projected when we last amended the fee schedule in 2008. This fee will reflect the direct and indirect costs that are actually associated with processing the bonds.

In lieu of sureties on a DOT conformance bond, an importer may offer United States money, United States bonds (except for savings bonds), United States certificates of indebtedness, Treasury notes, or Treasury bills (collectively referred to as "cash deposits") in an amount equal to the amount of the bond. 49 CFR 591.10(a). The receipt, processing, handling, and disbursement of the cash deposits that have been tendered by RIs cause the agency to consume a considerable amount of staff time and material resources. NHTSA has concluded that the expense incurred by the agency to receive, process, handle, and disburse cash deposits may be treated as part of the bond processing cost, for which NHTSA is authorized to set a fee under 49 U.S.C. 30141(a)(3)(A). We first established a fee of $459 for each vehicle imported on and after October 1, 2008, for which cash deposits or obligations of the United States are furnished in lieu of a conformance bond. See final rule published on July 11, 2008 at 73 FR 39890.

The agency considered its direct and indirect costs in calculating the fee for the review, processing, handling, and disbursement of cash deposits submitted by importers and RIs in lieu of sureties on a DOT conformance bond. We are increasing the fee $55, from $459 to $514. The factors that the agency has taken into account for this fee include time expended by agency personnel, the increase in General Schedule salary raises that were effective in January 2009 and 2010, and increased contractor and overhead costs.

Section 594.10—Fee for Review and Processing of Conformity Certificate

Each RI is currently required to pay $14 per vehicle to cover the costs the agency incurs in reviewing a certificate of conformity. We have found that these costs have increased to an average of $17 per vehicle because of increased contractor and overhead costs. Based on these costs, we are increasing the fee charged for vehicles for which a paper entry and fee payment is made, from $14 to $17, a difference of $3 per vehicle. However, if an RI enters a vehicle through the ABI system, has an e-mail address to receive communications from NHTSA, and pays the fee by credit card, the cost savings that we realize allow us to significantly reduce the fee to $6. We are maintaining the fee of $6 per vehicle if all the information in the ABI entry is correct.

Errors in ABI entries not only eliminate any time savings, but also require additional staff time to be expended in reconciling the erroneous ABI entry information with the conformity data that is ultimately submitted. Our experience with these errors has shown that staff members must examine records, make time-consuming long distance telephone calls, and often consult supervisory personnel to resolve the conflicts in the data. We have calculated this staff and supervisory time, as well the telephone charges, to amount to approximately $57 for each erroneous ABI entry. Adding this to the $6 fee for the review of conformity packages on automated entries yields a total of $63, representing a $9 increase in the fee that is currently charged when there are one or more errors in the ABI entry or omissions in the statement of conformity.

Statutory Basis for the Final Rule and Effective Date

NHTSA is required under 49 U.S.C. 30141(e) to "review and make appropriate adjustments at least every 2 years in the amounts of the fees" relating to the registration of importers, the processing of bonds, and making decisions concerning the importation of nonconforming vehicles. The statute further requires the agency to "establish the fees for each fiscal year before the beginning of that year." This final rule implements the statutory provisions. In the NPRM, we proposed to make this rule effective October 1, 2010, and did not receive any comments on this issue.

Accordingly, the effective date of this final rule is October 1, 2010.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, Oct. 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

NHTSA 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 not significant. Accordingly, the Office of Management and Budget has not reviewed this rulemaking document under Executive Order 12886. Based on the level of the fees and the volume of affected vehicles, NHTSA currently anticipates that the costs of the final rule would be so minimal as not to warrant preparation of a full regulatory evaluation. The action does not involve any substantial public interest or controversy. There would be no substantial effect upon State and local governments. There would be no substantial impact upon a major transportation safety program. A regulatory evaluation analyzing the economic impact of the final rule establishing the registered importer program, adopted on September 29, 1989, was prepared, and is available for review in the docket.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBFEFA) of 1996, whenever an agency is required to publish a notice of proposed rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a). No regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

The agency has considered the effects of this rulemaking under the Regulatory Flexibility Act, and certifies that the adopted amendments will not have a significant economic impact upon a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. 605(b)). The adopted amendments will primarily affect entities that currently modify nonconforming vehicles and which are small businesses within the meaning of the Regulatory Flexibility Act; however, the agency has no reason to believe that these companies would be unable to pay the fees adopted in this rulemaking action. In most instances, these fees would not be changed or be only modestly increased (and in some instances decreased) from the fees previously being paid by these entities. Moreover, consistent with prevailing industry practices, these fees should be passed through to the ultimate purchasers of the vehicles that are altered and, in most instances, sold by the affected registered importers. The cost to owners or purchasers of nonconforming vehicles that are altered to conform to the FMVSS may be expected to increase (or decrease) to the extent necessary to reimburse the registered importer for the fees payable to the agency for the cost of carrying out the registration program and making eligibility decisions, and to compensate Customs for its bond processing costs.

Governmental jurisdictions will not be affected at all since they are generally neither importers nor purchasers of nonconforming motor vehicles.

C. Executive Order 13132 (Federalism)

Executive Order 13132 on "Federalism" requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications." Executive Order 13132 defines the term "policies that have federalism implications" to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, NHTSA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

The amendments adopted in this final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132. Moreover, NHTSA is required by statute to impose fees for the administration of the RI program and to review and make necessary adjustments in those fees at least every two years. Thus, the requirements of section 6 of the Executive Order do not apply to this rulemaking action.

D. National Environmental Policy Act

NHTSA has analyzed this action for purposes of the National Environmental Policy Act. The action would not have a significant effect upon the environment because it is solely concerned with the adjustment of fees associated with the agency's vehicle importation program. On account of those fee adjustments, the annual volume of motor vehicles imported through registered importers is not anticipated to vary significantly from that existing before promulgation of the rule.

E. Executive Order 12778 (Civil Justice Reform)

Pursuant to Executive Order 12988 "Civil Justice Reform," this agency has considered whether the amendments adopted in this final rule will have any

retroactive effect. NHTSA concludes that those amendments will not have any retroactive effect. Judicial review of the final rule may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

F. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with the base year of 1995). Before promulgating a rule for which a written assessment is needed, Section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted. Because this final rule will not require the expenditure of resources beyond $100 million annually, this action is not subject to the requirements of Sections 202 and 205 of the UMRA.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act 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. Under the Paperwork Reduction Act 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. Part 594 includes collections of information for which NHTSA has obtained OMB Clearance No. 2127–0002, a consolidated collection of information for "Importation of Vehicles and Equipment Subject to the Federal Motor Vehicle Safety, Bumper and Theft Prevention Standards," approved through 11/30/2010. This final rule would not affect the burden hours associated with Clearance No. 2127–0002 because we are only adjusting the fees associated with participating in the registered importer program. These proposed new fees will not impose new collection of information requirements or otherwise affect the scope of the program.

H. Executive Order 13045

Executive Order 13045 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 NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives considered by us. This rulemaking is not economically significant and does not concern an environmental, health, or safety risk.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs the agency to provide Congress, through the OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

In this final rule, we are adjusting the fees associated with the registered importer program. We are making no substantive changes to the program nor do we adopt any technical standards. For these reasons, Section 12(d) of the NTTAA would not apply.

J. Privacy Act

Anyone is able to search the electronic form of all submissions received into any of our dockets by the name of the individual submitting the comment or petition (or signing the comment or petition, 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 (Volume 65, Number 70; Pages 19477–78).

K. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN that appears in the heading on the first page of this document to find this action in the Unified Agenda.

In consideration of the foregoing, Part 594, Schedule of Fees Authorized by 49 U.S.C. 30141, in Title 49 of the Code of Federal Regulations is amended as follows:

List of Subjects in 49 CFR part 594

Imports, Motor vehicle safety, Motor vehicles.

PART 594—SCHEDULE OF FEES AUTHORIZED BY 49 U.S.C. 30141

■ 1. The authority citation for part 594 continues to read as follows:

Authority: 49 U.S.C. 30141, 31 U.S.C. 9701; delegation of authority at 49 CFR 1.50.

■ 2. Amend § 594.6 by:
■ (a) Revising the introductory text of paragraph (a);
■ (b) Revising paragraph (b);
■ (c) Revising the first sentence of paragraph (d);
■ (d) Revising the second sentence of paragraph (h); and
■ (e) Revising paragraph (i) to read as follows:

§ 594.6 Annual fee for administration of the registration program.

(a) Each person filing an application to be granted the status of a Registered Importer pursuant to part 592 of this chapter on or after October 1, 2010, must pay an annual fee of $795, as calculated below, based upon the direct and indirect costs attributable to:

* * * * *

(b) That portion of the initial annual fee attributable to the processing of the application for applications filed on and after October 1, 2010, is $320. The sum of $320, representing this portion, shall not be refundable if the application is denied or withdrawn.

* * * * *

(d) That portion of the initial annual fee attributable to the remaining activities of administering the registration program on and after October 1, 2010, is set forth in paragraph (i) of this section. * * *

* * * * *

(h) * * * This cost is $20.67 per man-hour for the period beginning October 1, 2010.

(i) Based upon the elements and indirect costs of paragraphs (f), (g), and (h) of this section, the component of the initial annual fee attributable to administration of the registration program, covering the period beginning October 1, 2010, is $475. When added to the costs of registration of $320, as set forth in paragraph (b) of this section, the costs per applicant to be recovered through the annual fee are $795. The annual renewal registration fee for the period beginning October 1, 2010, is $670.

■ 3. Amend § 594.7 by revising the first sentence of paragraph (e) to read as follows:

§ 594.7 Fee for filing petitions for a determination whether a vehicle is eligible for importation.

* * * * *

(e) For petitions filed on and after October 1, 2010, the fee payable for seeking a determination under paragraph (a)(1) of this section is $175. * * *

* * * * *

■ 4. Amend § 594.8 by revising the first sentence of paragraph (b) and the first sentence of (c) to read as follows:

§ 594.8 Fee for importing a vehicle pursuant to a determination by the Administrator.

* * * * *

(b) If a determination has been made pursuant to a petition, the fee for each vehicle is $158. * * *

(c) If a determination has been made on or after October 1, 2010, pursuant to the Administrator's initiative, the fee for each vehicle is $125. * * *

■ 5. Amend § 594.9 by revising paragraph (c) and (e) to read as follows:

§ 594.9 Fee for reimbursement of bond processing costs and costs for processing offers of cash deposits or obligations of the United States in lieu of sureties on bonds.

* * * * *

(c) The bond processing fee for each vehicle imported on and after October 1, 2010, for which a certificate of conformity is furnished, is $9.93.

* * * * *

(e) The fee for each vehicle imported on and after October 1, 2010, for which cash deposits or obligations of the United States are furnished in lieu of a conformance bond, is $514.

■ 6. Amend § 594.10 by revising paragraph (d) to read as follows:

§ 594.10 Fee for review and processing of conformity certificate.

* * * * *

(d) The review and processing fee for each certificate of conformity submitted on and after October 1, 2010 is $17. However, if the vehicle covered by the certificate has been entered electronically with the U.S. Department of Homeland Security through the Automated Broker Interface and the registered importer submitting the certificate has an e-mail address, the fee for the certificate is $6, provided that the fee is paid by a credit card issued to the registered importer. If NHTSA finds that the information in the entry or the certificate is incorrect, requiring further processing, the processing fee shall be $57.

Marilena Amoni,

Associate Administrator for The National Center for Statistics and Analysis.

[FR Doc. 2010–19771 Filed 8–10–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0910051338–0151–02]

RIN 0648–XY03

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Implementation of Trip Limit for Witch Flounder and Removal of Trip Limit for Pollock

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

ACTION: Temporary rule; inseason adjustment of landing limits.

SUMMARY: This action implements a landing limit for witch flounder and removes the trip limit for pollock for Northeast (NE) multispecies vessels fishing under common pool regulations for the 2010 fishing year (FY). This action also corrects a previously published cod trip limit for common pool vessels fishing under a limited access Handgear A permit. This action is authorized by the regulations implementing Amendment 16 and Framework Adjustment 44 (FW 44) to the NE Multispecies Fishery Management Plan (FMP) and is intended to decrease the likelihood of harvest exceeding the subcomponent of the annual catch limit (ACL) for witch flounder allocated to the common pool (common pool sub-ACL) and underharvesting the sub-ACL for pollock during FY 2010 (May 1, 2010, through April 30, 2011). This action is being taken to optimize the harvest of NE regulated multispecies under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Changes to the pollock and cod Handgear A trip limits are effective August 6, 2010, through April 30, 2011. The witch flounder trip limit is effective August 9, 2010, through April 30, 2011.

FOR FURTHER INFORMATION CONTACT: Brett Alger, Fishery Management Specialist, (978) 675–2153, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing possession and landing limits for vessels fishing under common pool regulations are found at 50 CFR 648.86. The regulations authorize vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies day-at-sea (DAS), or fishing under a NE multispecies Small Vessel or Handgear A or B category permit, to fish for and retain NE multispecies, under specified conditions. The vessels fishing in the common pool are allocated a sub-ACL equivalent to that portion of the commercial groundfish ACL that is not allocated to the 17 approved NE multispecies sectors for FY 2010. The final rule implementing FW 44 (75 FR 18356, April 9, 2010) established ACLs for FY 2010, including the common pool sub-ACL for witch flounder of 25 mt. A subsequent emergency rule published on July 20, 2010 (75 FR 41996), increased the ACL for pollock based on the results of a new stock assessment, and changed the FY 2010 common pool sub-ACL from 62 mt to 375 mt. Currently, there is no landing limit for witch flounder, and the landing limit for pollock is 1,000 lb (453.6 kg) per DAS up to 10,000 lb (4,535.9 kg) per trip.

The regulations at § 648.86(o) authorize the Administrator, Northeast (NE) Region, NMFS (Regional Administrator) to increase or decrease the trip limits for vessels in the common pool to prevent over-harvesting or under-harvesting the common pool sub-ACL. Exceeding the common pool sub-ACL prior to April 30, 2011, would likely require drastic trip limit reductions and/or imposition of differential DAS counting for the remainder of FY 2010 to minimize the overage, and would trigger accountability measures (AMs) in FY 2011, including differential DAS counting, to prevent future overages.

Initial Vessel Monitoring System (VMS) and dealer reports indicate that

approximately 93.5 percent of the witch flounder common pool sub-ACL has been harvested as of August 4, 2010. Analysis of historic landings of witch flounder indicates that a trip limit of 130 lb (59.0 kg) per trip will result in achieving the sub-ACL without exceeding it. Historically, 80 percent of trips that land witch flounder land less than 500 lb (226.8 kg), and 78 percent of those trips land less than 200 lb (90.7 kg). Therefore, this trip limit is expected to allow vessels to land witch flounder that are caught incidentally, but prevent trips with large landings of witch flounder which have been having a significant impact on the overall catch rate. This possession limit is expected to prevent the common pool from exceeding the sub-ACL for witch flounder while still allowing vessels an opportunity to fish for all other NE multispecies.

As a result of the recent sub-ACL increase for pollock, the current rate of harvest would leave a substantial portion of the sub-ACL unharvested by the common pool in FY 2010. Initial VMS and dealer reports indicate that approximately 7.3 percent of the increased pollock allocation has been harvested as of August 4, 2010. Given the available sub-ACL and current trip limit of 1,000 lb (453.6 kg) per DAS, up to 10,000 lb (4,535.9 kg) per trip, projections indicate complete removal of the trip limit is warranted to allow greater harvest of the common pool sub-ACL by the end of the FY (April 30, 2011).

An inseason action that published on July 30, 2010 (75 FR 44924), reduced the common pool landing limit for Gulf of Maine (GOM) cod by 75 percent, and made a proportional adjustment to the trip limit for all stocks of cod for vessels with a limited access Handgear A permit from 300 lb (136.1 kg) per trip, to 75 lb (340 kg) per trip. However, the regulations at § 648.82(b)(6), specify the "Handgear A cod trip limit shall be adjusted proportionally to the trip limit for GOM cod (rounded up to the nearest 50 lb (22.7 kg))." Therefore, the new limit should have been rounded up to 100 lb per trip.

Based on this information, the Regional Administrator is removing the pollock trip limit for all common pool vessels, and the cod limit for Handgear A vessels is corrected to 100 lb (45.4 kg) per trip effective August 6, 2010, through April 30, 2011. In addition, the Regional Administrator is imposing a 130–lb (59.0–kg) per trip limit on witch flounder for all common pool vessels effective August 9, 2010, through April 30, 2011.

Catch will be closely monitored through dealer-reported landings, VMS catch reports, and other available information. Further inseason adjustments to increase or decrease the trip limits, as well as differential DAS measures, may be considered, based on updated catch data and projections. Conversely, if the common pool sub-ACL is projected to be under-harvested by the end of FY 2010, in-season adjustments to increase the trip limit will be considered.

Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), there is good cause to waive prior notice and opportunity for public comment, as well as the delayed effectiveness for this action, because notice, comment, and a delayed effectiveness would be impracticable and contrary to the public interest. The regulations under § 648.86(o) grant the RA the authority to adjust NE multispecies trip limits to prevent over-harvesting or under-harvesting the common pool sub-ACLs. This action implements a trip limit for witch flounder and removes the trip limit for pollock, in order to ensure that the common pool sub-ACLs are not overharvested or underharvested, respectively, and that the biological and economic objectives of the FMP are met.

It is important to take this action immediately because, based on current data and projections, continuation of the status quo trip limits will result in reaching the common pool sub-ACL for witch flounder prior to the end of the FY and under-harvesting the sub-ACL for pollock. Exceeding any of the common pool sub-ACLs prior to the end of the FY on April 30, 2011, would likely result in lower trip limits and differential DAS counting for the remainder of FY 2010 to minimize the amount of over harvest, and would result in AMs to be put in place for the common pool in FY 2011. These restrictions could result in the loss of yield of other valuable species of groundfish caught by vessels in the common pool.

The information that is the basis for this action includes ACLs updated after May 1, 2010, and recent catch data. The time necessary to provide for prior notice and comment, and delayed effectiveness for this action would prevent NMFS from implementing a reduced trip limit in a timely manner. A resulting delay in the trip limit changes of these two stocks could result in less revenue for the fishing industry and be counter to the objective of achieving optimum yield.

The Regional Administrator's authority to decrease or increase trip limits for the common pool to help ensure that the common pool sub-ACL for all NE multispecies are harvested, but not exceeded, was considered and open to public comment during the development of FW 44. Therefore, any negative effect the waiving of public comment and delayed effectiveness may have on the public is mitigated by these factors.

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

Dated: August 6, 2010.

Carrie Selberg,

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

[FR Doc. 2010–19851 Filed 8–6–09; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 154
Wednesday, August 11, 2010

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0779; Directorate Identifier 2009–SW–84–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France (ECF) Model AS350B3 and EC130 B4 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the specified ECF model helicopters. This proposed AD results from a mandatory continuing airworthiness information (MCAI) AD issued by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community. The MCAI AD states that a dormant failure of one of the two contactors 53Ka or 53Kb can occur following certain modifications. Failure of a contactor can prevent switching from "IDLE" mode to "FLIGHT" mode during autorotation training making it impossible to execute a power recovery and compelling the pilot to continue the autorotation to the ground. This condition, if not corrected, can lead to an unintended touchdown to the ground during a practice autorotation at a flight-idle power setting, damage to the helicopter, and injury to the occupants.

DATES: We must receive comments on this proposed AD by September 10, 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.

You may get the service information identified in this proposed AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, TX 75053–4005, telephone (800) 232–0323, fax (972) 641–3710, or at *http://www.eurocopter.com.*

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

FOR FURTHER INFORMATION CONTACT: DOT/FAA Southwest Region, Ed Cuevas, ASW–112, Aviation Safety Engineer, Rotorcraft Directorate, Safety Management Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5355, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written data, views, or arguments about this proposed AD. Send your comments to an address listed in the **ADDRESSES** section of this proposal. Include "Docket No. FAA–2010–0779; Directorate Identifier 2009–SW–84–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

EASA, which is the Technical Agent for the Member States of the European Community, has issued EASA AD No. 2009–0256, dated December 2, 2009, to correct an unsafe condition for the specified Eurocopter model helicopters.

The MCAI AD states that analysis shows a dormant failure of one of the two contactors 53Ka or 53Kb can occur following the modification of the Model AS350B3 by MOD 073254 and modification of the Model EC130 B4 by MOD 073773. Failure of a contactor can prevent switching from "IDLE" mode to "FLIGHT" mode during autorotation training making it impossible to execute a power recovery and compelling the pilot to continue the autorotation to the ground. This condition, if not corrected, can lead to an unintended touchdown to the ground during a practice autorotation at a flight-idle power setting, damage to the helicopter, and injury to the occupants.

You may obtain further information by examining the MCAI AD and any related service information in the AD docket.

Related Service Information

ECF has issued Alert Service Bulletin (ASB) No. 05.00.61 for the Model AS350B3 helicopters and ASB No. 05A009, for the Model EC130 B4 helicopters. Both ASB's are dated November 16, 2009. Both ASBs specify a functional check of the two contactors 53Ka and 53Kb, which are used to switch from "IDLE" mode to "FLIGHT" mode or vice versa. The ASBs also specify repetitive checking of the contactors for correct opening and closing to detect this dormant failure. ECF states that it will be preparing a modification, which will cancel the ASBs, in the very near future. Once the manufacturer develops corrective terminating actions, we anticipate further rulemaking.

FAA's Evaluation and Unsafe Condition Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, their technical representative, has notified us

of the unsafe condition described in the MCAI AD. We are proposing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs. This proposed AD would require, before the next autorotation training or on or before 100 hours time-in-service (TIS), whichever occurs first, and thereafter at intervals not to exceed 600 hours TIS, inspecting the pilot's and co-pilot's throttle twist grips for proper operation of the contactors, which provide for changes between the "IDLE and "FLIGHT" positions of the throttle twist grip control.

Differences Between This AD and the MCAI AD

We refer to flying hours as hours TIS. Also, we refer to maintenance actions as inspections rather than checks.

Costs of Compliance

We estimate that this proposed AD would affect about 116 of the Model EC130B4 helicopter and 231 of the Model AS350 B3 helicopters for a total of 347 helicopters of U.S. registry. We also estimate that it would take about ½ work-hour to inspect each helicopter and ½ work-hour to replace a microswitch. The average labor rate is $85 per work-hour. Required parts would cost about $538 for the T3933–3 microswitch. Based on these figures, we estimate the cost of the proposed AD on U.S. operators would be $21,714, assuming 4 microswitches are replaced on the Model EC130 B4 helicopters and 8 microswitches are replaced on the Model AS350B3 helicopters.

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 product(s) identified in this rulemaking action.

Regulatory Findings

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

Therefore, I certify this proposed AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Eurocopter France: Docket No. FAA–2010–0779; Directorate Identifier 2009–SW–84–AD.

Comments Due Date

(a) We must receive your comments by September 10, 2010.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to Model EC130 B4 and AS350B3 helicopters, certificated in any category, with the ARRIEL 2B1 engine with the two-channel Full Authority Digital Engine Control (FADEC), and with new twist grip modification (MOD) 073254 for the Model AS350B3 helicopter or MOD 073773 for the Model EC130 B4 helicopter, installed.

Reason

(d) The mandatory continuing airworthiness information (MCAI) AD states that analysis shows a "dormant failure" of one of the two contactors, 53Ka or 53Kb, can occur following the introduction of MOD 073254 or MOD 073773. Failure of a contactor can prevent switching from "IDLE" mode to "FLIGHT" mode during autorotation training making it impossible to recover from the practice autorotation and compelling the pilot to continue the autorotation to the ground. This condition, if not corrected, can lead to an unintended touchdown to the ground at a flight-idle power setting during a practice autorotation, damage to the helicopter, and injury to the occupants.

Actions and Compliance

(e) Before the next practice autorotation or on or before 100 hours time-in-service (TIS), whichever occurs first, unless accomplished previously, and thereafter at intervals not to exceed 600 hours TIS:

(1) Inspect for the proper operation of contactors 53Ka and 53Kb by rotating the pilot and co-pilot throttle twist grip controls between the "IDLE" and "FLIGHT" position in accordance with the Accomplishment Instructions, paragraph 2.B.2, of Eurocopter Alert Service Bulletin (ASB) No. 05.00.61, dated November 16, 2009, for the Model AS350B3 helicopters or ASB No. 05A009, dated November 16, 2009, for the Model EC130 B4 helicopters, as appropriate for your model helicopter.

(2) Test the pilot and co-pilot throttle twist grip controls for proper functioning. If the throttle twist grip controls are not functioning properly, repair the controls.

Differences Between This AD and the MCAI AD

(f) We refer to flight hours as hours TIS. Also, we refer to maintenance actions as inspections rather than checks.

Other Information

(g) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, ATTN: DOT/FAA Southwest Region, Ed Cuevas, ASW–112, Aviation Safety Engineer, Rotorcraft Directorate, Safety Management Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5355, fax (817) 222–5961, has the authority to approve AMOCs for this AD, if requested, using the procedures found in 14 CFR 39.19.

Related Information

(h) MCAI AD No. 2009–0256, dated December 2, 2009, contains related information.

Joint Aircraft System/Component (JASC) Code

(i) The JASC Code is 7697: Engine Control System Wiring.

Issued in Fort Worth, Texas, on August 3, 2010.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2010–19814 Filed 8–10–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0780; Directorate Identifier 2009–SW–68–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GmbH (ECD) Model MBB–BK 117 C–2 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) for ECD Model MBB–BK 117 C–2 helicopters. This proposed AD results from a mandatory continuing airworthiness information (MCAI) AD issued by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community. The MCAI AD states there was an in-flight incident in which a dynamic weight broke off the control lever leading to considerable vibrations. A visual inspection revealed that the threaded bolt of the control lever had broken off. The proposed actions are intended to prevent separation of dynamic weights, severe vibration, and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by September 10, 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.

You may get the service information identified in this proposed AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527.

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

FOR FURTHER INFORMATION CONTACT: DOT/FAA Southwest Region, Sharon Miles, ASW–111, Aviation Safety Engineer, Rotorcraft Directorate, Regulations and Guidance Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written data, views, or arguments about this proposed AD. Send your comments to an address listed in the **ADDRESSES** section of this proposal. Include "Docket No. FAA–2010–0780; Directorate Identifier 2009–SW–68–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On March 14, 2007, we issued AD 2006–26–51, Amendment 39–14961 (72 FR 13679, March 23, 2007). That AD required actions intended to address an unsafe condition on the Model MBB–BK 117 C–2 helicopters. Since we issued AD 2006–26–51, the manufacturer has modified the control lever and dynamic weights, which when installed on the helicopter will constitute terminating action for the requirements in AD 2006–26–51.

EASA, which is the technical agent for the Member States of the European Community, has issued EASA AD No. 2007–0237, dated August 31, 2007, to correct an unsafe condition for the Model MBB–BK 117 C–2 helicopters. The MCAI AD states: "EASA was informed by the manufacturer of an in-flight incident in which a dynamic weight broke off the control lever subsequently leading to considerable vibrations. A visual inspection revealed that the threaded bolt of the control lever had broken off."

You may obtain further information by examining the MCAI AD and service information in the AD docket.

Related Service Information

ECD has issued ECD Alert Service Bulletin MBB BK117 C–2–64A–002, Revision 2, dated August 6, 2007. The actions described in the MCAI AD are intended to correct the same unsafe condition as that identified in the service information.

FAA's Evaluation and Unsafe Condition Determination

This helicopter has been approved by the aviation authority of the Federal Republic of Germany and is approved for operation in the United States. Pursuant to our bilateral agreement with the Federal Republic of Germany, EASA, their Technical Agent, has notified us of the unsafe condition described in the MCAI AD. We are proposing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of this same type design.

Differences Between the AD and the MCAI AD

We refer to flight hours as hours time-in-service. We do not refer to a date of October 31, 2007, for replacing the levers because the date has passed.

Costs of Compliance

We estimate that this proposed AD would affect 41 helicopters of U.S. registry. We also estimate that it would take about 20 work-hours per helicopter to inspect and replace the tail rotor control lever. The average labor rate is $85 per work-hour. Required parts would cost about $10,316 per helicopter. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $492,656 or $12, 016 per helicopter, assuming the control lever is replaced on the entire fleet.

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 product(s) identified in this rulemaking action.

Regulatory Findings

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

Therefore, I certify this proposed AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–14961 (72 FR 13679, dated March 23, 2007) and adding the following new AD:

Eurocopter Deutschland GmbH: Docket No. FAA–2010–0780; Directorate Identifier 2009–SW–68–AD.

Comments Due Date

(a) We must receive your comments by September 10, 2010.

Other Affected ADs

(b) This AD supersedes AD 2006–26–51, Amendment 39–14961, Docket No. FAA 2006–26721, Directorate Identifier 2006–SW–28–AD.

Applicability

(c) This AD applies to Model MBB–BK 117 C–2 helicopters with a tail rotor control lever B642M1009103, installed, certificated in any category.

Reason

(d) The mandatory continued airworthiness information (MCAI) AD states: "EASA was informed by the manufacturer of an in-flight incident in which a dynamic weight broke off the control lever subsequently leading to considerable vibrations. A visual inspection revealed that the threaded bolt of the control lever had broken off." This AD requires actions that are intended to prevent separation of dynamic weights, severe vibration, and subsequent loss of control of the helicopter.

Actions and Compliance

(e) Before further flight, unless already done, mark the position of the weights, remove the split pins, remove the weights, and visually inspect the tail rotor control lever in the area around the split pin bore for score marks, notching, scratching, or a crack. Inspect by following the Accomplishment Instructions, paragraph 3.A.(1) through 3.A.(3) and Figure 1, of Eurocopter Alert Service Bulletin MBB BK 117 C–2–64A–002, Revision 2, dated August 6, 2007 (ASB).

(1) If done previously, within the next 8 hours time-in-service (TIS) or before reaching 25 hours TIS after the last inspection, and thereafter at intervals not to exceed 8 hours TIS, repeat the visual inspection of the tail rotor control lever as required by paragraph (e) of this AD.

(2) If you find a score mark, a notch, or a scratch that exceeds the maintenance manual limits, or find a crack, before further flight:

(i) Replace the tail rotor control lever with an airworthy tail rotor control lever; and

(ii) Reidentify the tail rotor head, head assembly, and drive system with the new part numbers by following the Accomplishment Instructions, paragraph 3.B.(1) through 3.B.(8) and 3.C.(1) through 3.C.(2), of the ASB.

(f) Within 100 hours TIS, unless already done, replace the control levers and reidentify the tail rotor head, head assembly, and drive system with the new part numbers by following the Accomplishment Instructions, paragraph 3.B.(1) through 3.B.(8) and 3.C.(1) through 3.C.(2), of the ASB.

(g) Replacing the control levers and reidentifying the part numbers is terminating action for the requirements of this AD.

Differences Between the FAA AD and the MCAI AD

(h) We refer to flight hours as hours TIS. We do not refer to a date of October 31, 2007, for replacing the levers because the date has passed.

Other Information

(i) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, ATTN: DOT/FAA Southwest Region, Sharon Miles, ASW–111, Aviation Safety Engineer, Rotorcraft Directorate, Regulations and Guidance Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5122, fax (817) 222–5961, has the authority to approve AMOCs for this AD, if requested, using the procedures found in 14 CFR 39.19.

(j) Special flight permits are prohibited.

Related Information

(k) MCAI EASA Airworthiness Directive No. 2006–0237, dated August 31, 2007, which supersedes EASA Emergency AD 2007–0189–E, dated July 12, 2007, contains related information.

Joint Aircraft System/Component (JASC) Code

(l) The JASC Code is 6400: Tail rotor system-control lever.

Issued in Fort Worth, Texas, on August 3, 2010.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2010–19817 Filed 8–10–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0781; Directorate Identifier 2007–SW–49–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS–365N2, AS 365 N3, and SA–365N1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the specified Eurocopter France model helicopters. This proposed AD would require replacing the aluminum tail rotor (T/R) blade pitch control shaft with a steel T/R blade pitch control shaft. This proposed AD is prompted by an incident involving a Eurocopter France Model AS–365N2 helicopter on which there was a loss of control of the T/R due to a broken shaft. The actions specified by this proposed AD are intended to prevent failure of the T/R blade pitch control shaft, loss of T/R control, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before October 12, 2010.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this proposed AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, TX 75053–4005, telephone (800) 232–0323, fax (972) 641–3710, or at *http://www.eurocopter.com*.

You may examine the comments to this proposed AD in the AD docket on the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5126, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to the address listed under the caption **ADDRESSES**. Include the docket number "FAA–2010–0781, Directorate Identifier 2007–SW–49–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of the docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent or signed the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located in Room W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No. 2007–0220, dated August 13, 2007, to correct an unsafe condition for Eurocopter AS 365 N2, AS 365 N3, and SA 365 N1 helicopters, all serial numbers, equipped with an aluminum T/R blade pitch control shaft, part number (P/N) 365A33.6161.20 or P/N 365A33.6161.21. The EASA advises of an incident in which the pilot of a Model AS 365 N2 helicopter encountered a loss of control of the T/R, but executed an uneventful run-on landing. A subsequent investigation revealed that the T/R blade pitch control shaft, P/N 365A33.6161.21, had broken in the main section of the shaft sliding area, which appeared to be damaged by peening. The origin of the crack, which developed under fatigue loading, could not be determined. However, accidental damage (i.e., shock impact), is believed to have caused the initiation of a crack.

Related Service Information

Eurocopter has issued Alert Service Bulletin No. 01.00.59, dated June 21, 2007, which specifies removing any T/R blade pitch control shaft, P/N 365A33.6161.20 or P/N 365A33.6161.21, and replacing it with a steel T/R blade pitch control shaft, P/N 365A33.6214.20. The EASA classified this alert service bulletin as mandatory and issued EASA AD No. 2007–0220, dated August 13, 2007, to ensure the continued airworthiness of these helicopters.

FAA's Evaluation and Unsafe Condition Determination

These products have been approved by the aviation authority of France, and are approved for operation in the United States. Pursuant to our bilateral agreement with France, the EASA, their technical representative, has notified us of the unsafe condition described in the EASA AD. We are proposing this AD because we evaluated all information provided by the EASA and determined the unsafe condition exists and is likely to exist or develop on other products of these same type designs. This proposed AD would require, within 100 hours time-in-service, removing any aluminum T/R blade pitch control shaft, P/N 365A33.6161.20 or P/N 365A33.6161.21, and replacing it with a steel T/R blade pitch control shaft, P/N 365A33.6214.20. The actions would be required to be accomplished by following specified portions of the alert service bulletin described previously.

Differences Between This Proposed AD and the EASA AD

Our proposed AD differs from the EASA AD in that we require compliance within 100 hours time-in-service instead of no later than December 31, 2007, since that date has passed.

Costs of Compliance

We estimate that this proposed AD would affect 36 helicopters of U.S. registry and the proposed actions would take approximately 12 work hours per helicopter to accomplish at an average labor rate of $85 per work hour. Required parts would cost approximately $3,525. Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators to be $163,620 to replace the aluminum T/R blade pitch control shaft on the entire fleet, or $4,545 per helicopter.

Regulatory Findings

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

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

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

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

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

We prepared an economic evaluation of the estimated costs to comply with

this proposed AD. See the AD docket to examine the economic evaluation.

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.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. FAA–2010–0781; Directorate Identifier 2007–SW–49–AD.

Applicability: Model AS–365N2, AS 365 N3, and SA–365N1 helicopters, with an aluminum tail rotor (T/R) blade pitch control shaft, part number (P/N) 365A33.6161.20 or P/N 365A33.6161.21, installed, certificated in any category.

Compliance: Required within 100 hours time-in-service, unless accomplished previously.

To prevent failure of the T/R blade pitch control shaft, loss of T/R control, and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove the aluminum T/R blade pitch control shaft, P/N 365A33.6161.20 or P/N 365A33.6161.21, and replace it with a steel T/R blade pitch control shaft, P/N 365A33.6214.20, in accordance with the Accomplishment Instructions, Operational Procedure, paragraphs 2.B.1. through 2.B.3., of Eurocopter Alert Service Bulletin No. 01.00.59, dated June 21, 2007.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Safety Management Group, Rotorcraft Directorate, FAA, ATTN: Jim Grigg, Aviation Safety Engineer, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5126, fax (817) 222–5961.

(c) The Joint Aircraft System/Component (JASC) Code is 6500: Tail Rotor Drive System.

Note: The subject of this AD is addressed in European Aviation Safety Agency AD No. 2007–0220, dated August 13, 2007.

Issued in Fort Worth, Texas, on August 2, 2010.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2010–19823 Filed 8–10–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0761; Directorate Identifier 2010–NM–069–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This proposed AD would require installing two warning level indicator lights on the P2–2 center instrument panel in the flight compartment for certain airplanes. For a certain other airplane, this proposed AD would require activating the cabin altitude warning and takeoff configuration warning lights. For all airplanes, this proposed AD also would require revising the airplane flight manual to remove certain requirements included by previous AD actions, to require new pressure altitude limitations for certain airplanes, and to advise the flightcrew of the following changes: revised emergency procedures to use when a cabin altitude warning or rapid depressurization occurs, and revised cabin pressurization procedures for normal operations. This proposed AD results from a design change in the cabin altitude warning system that would address the identified unsafe condition. We are proposing this AD to prevent failure of the flightcrew to recognize and react to a valid cabin altitude warning horn, which could result in incapacitation of the flightcrew due to hypoxia (lack of oxygen in body), and consequent loss of control of the airplane.

DATES: We must receive comments on this proposed AD by September 27, 2010.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Jeffrey W. Palmer, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6472; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0761; Directorate Identifier 2010–NM–069–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The Model 737 cabin altitude warning is an intermittent horn that sounds when cabin altitude exceeds 10,000 feet. The same intermittent warning horn sound is utilized by the takeoff configuration warning system (TCWS) to warn of unsafe airplane configuration for takeoff. The TCWS warning functionality is inhibited by air/ground logic when the airplane is in flight. However, the Model 737 cabin altitude warning system design does not currently incorporate a dedicated means of positively identifying the warning horn as a cabin altitude warning or a takeoff configuration warning. There are approximately 25 known instances where flightcrews have misinterpreted a valid cabin altitude warning as a takeoff configuration warning.

Failure of the flightcrew to recognize and react to a valid cabin altitude warning horn could result in incapacitation of the flightcrew due to hypoxia (lack of oxygen in body), and consequent loss of control of the airplane. To address this unsafe condition, we issued the following ADs.

On November 7, 2003, we issued related AD 2003–03–15 R1, Amendment 39–13366 (68 FR 64802, November 17, 2003), for various The Boeing Company and McDonnell Douglas Corporation transport category airplanes. That AD requires revising the airplane flight manual (AFM) to advise the flightcrew to don oxygen masks as a first and immediate step when the cabin altitude warning occurs. We issued that AD to prevent incapacitation of the flightcrew due to lack of oxygen, which could result in loss of control of the airplane.

On June 15, 2006, we issued related AD 2006–13–13, Amendment 39–14666 (71 FR 35781, June 22, 2006). (A correction of that AD was published in the **Federal Register** on July 3, 2006 (71 FR 37980).) That AD applies to all Model 737 airplanes. That AD requires revising the AFM to advise the flightcrew of improved procedures for pre-flight setup of the cabin pressurization system, as well as improved procedures for interpreting and responding to the cabin altitude/configuration warning horn. That AD resulted from reports that airplanes had failed to pressurize, and that the flightcrews failed to react properly to the cabin altitude warning horn. We issued that AD to prevent failure of the airplane to pressurize and subsequent failure of the flightcrew to recognize and react to a valid cabin altitude warning horn, which could result in incapacitation of the flightcrew due to hypoxia (lack of oxygen in body) and consequent loss of airplane control.

On October 24, 2008, we issued related AD 2008–23–07, Amendment 39–15728 (73 FR 66512, November 10, 2008), for all Model 737 airplanes. That AD requires revising the AFM to include a new flightcrew briefing that must be done before the first flight of the day and following any change in flightcrew members, and to advise the flightcrew of this additional briefing. That AD resulted from continuing reports that flightcrews have failed to recognize and react properly to the cabin altitude warning horn. We issued that AD to prevent failure of the flightcrew to recognize and react properly to a valid cabin altitude warning horn, which could result in incapacitation of the flightcrew due to hypoxia (lack of oxygen in body) and consequent loss of airplane control.

The preambles to AD 2006–13–13 and AD 2008–23–07 explain that the revisions to the AFM required by those ADs are considered to be interim action. The manufacturer had advised us that it was developing a design change in the cabin altitude warning system that would address the identified unsafe condition(s), and that once this design change was developed, approved, and available, the FAA might consider additional rulemaking. The manufacturer now has developed such a modification, and we have determined that further rulemaking is necessary; this proposed AD follows from that determination. We can better ensure long-term continued operational safety by modifications or design changes to remove the source of the problem, rather than by AFM revisions alone.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 737–31A1325, dated January 11, 2010 (for Model 737–100, –200, –200C, –300, –400, and –500 series airplanes). This service bulletin describes procedures for installing two warning level indicator lights on the P2–2 center instrument panel in the flight compartment. This installation includes changing three wire bundles.

We have also reviewed Boeing Alert Service Bulletin 737–31A1398, dated January 7, 2010 (for Model 737–400 series airplane, variable number PW234). This service bulletin describes procedures for activating the cabin altitude warning and takeoff configuration warning lights. The activation includes changing the wiring in the W066 wire bundle and removing the INOP markers from the cabin altitude warning and takeoff configuration warning lights.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This proposed AD would require accomplishing the actions specified in the service information described previously. The proposed AD would also require revising the AFM to remove certain requirements included by previous AD actions, to require new pressure altitude limitations for certain airplanes, and to advise the flightcrew of the following changes: revised emergency procedures to use when a cabin altitude warning or rapid depressurization occurs, and revised cabin pressurization procedures for normal operations.

Costs of Compliance

We estimate that this proposed AD would affect 741 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

TABLE—ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Installation of warning indicator lights	20	$85	$2,738	$4,438	740	$3,284,120
Activation of the cabin altitude warning system/takeoff configuration warning lights	1	85	0	85	1	85
AFM revision	1	85	0	85	741	62,985

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866,

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2010–0761; Directorate Identifier 2010–NM–069–AD.

Comments Due Date

(a) We must receive comments by September 27, 2010.

Affected ADs

(b) This AD affects the ADs identified in paragraphs (b)(1), (b)(2), and (b)(3) of this AD. This AD does not supersede the requirements of these ADs.

(1) AD 2008–23–07, Amendment 39–15728.

(2) AD 2006–13–13, Amendment 39–14666.

(3) AD 2003–03–15 R1, Amendment 39–13366.

Applicability

(c) This AD applies to the airplanes, certificated in any category, identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes identified in Boeing Alert Service Bulletin 737–31A1325, dated January 11, 2010.

(2) The Boeing Company Model 737–400 series airplanes identified in Boeing Alert Service Bulletin 737–31A1398, dated January 7, 2010.

Subject

(d) Air Transport Association (ATA) of America Code 31: Instruments.

Unsafe Condition

(e) This AD results from a design change in the cabin altitude warning system that would address the identified unsafe condition. The Federal Aviation Administration is issuing this AD to prevent failure of the flightcrew to recognize and react properly to a valid cabin altitude warning horn, which could result in incapacitation of the flightcrew due to hypoxia (lack of oxygen in body) and consequent loss of airplane control.

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.

Installation of Warning Indicator Lights

(g) For airplanes identified in Boeing Alert Service Bulletin 737–31A1325, dated January 11, 2010: Within 36 months after the effective date of this AD, install two warning level indicator lights on the P2–2 center instrument panel in the flight compartment, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–31A1325, dated January 11, 2010.

Activation of Warning Indicator Lights

(h) For airplanes identified in Boeing Alert Service Bulletin 737–31A1398, dated January 7, 2010: Within 36 months after the effective date of this AD, activate the cabin altitude warning and takeoff configuration warning lights, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–31A1398, dated January 7, 2010.

Airplane Flight Manual (AFM) Revisions

(i) Before further flight after doing the installation or activation of the warning lights required by paragraph (g) or (h) of this AD, do the actions specified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD.

(1) Revise the Limitations Section of the applicable Boeing 737 AFM by doing the actions specified in paragraphs (i)(1)(i) and (i)(1)(ii) of this AD.

(i) Delete the "CABIN ALTITUDE WARNING TAKEOFF BRIEFING" added by AD 2008–23–07.

(ii) Add the following statement. This may be done by inserting a copy of this AD into the applicable AFM.

"For airplanes approved for maximum takeoff and landing altitudes above 8,400 feet pressure altitude, change the limitation for Maximum Takeoff and Landing pressure altitude as follows: With the CABIN ALTITUDE and TAKEOFF CONFIG lights installed and operative on those airplanes without the High Altitude Landing switch installed, maximum takeoff and landing altitude is limited to 9,000 feet pressure altitude."

(2) Revise the Emergency Procedures Section of the applicable Boeing 737 AFM by doing the actions specified in paragraphs (i)(2)(i), (i)(2)(ii), (i)(2)(iii), and (i)(2)(iv) of this AD.

(i) Delete the procedure "WARNING HORN—CABIN ALTITUDE OR CONFIGURATION" added by AD 2006–13–13.

(ii) Delete the procedure entitled "CABIN ALTITUDE WARNING OR RAPID DEPRESSURIZATION" added by AD 2006–13–13.

(iii) If the procedure entitled "CABIN ALTITUDE (Airplanes with the CABIN ALTITUDE lights installed)" is currently contained in the applicable Boeing 737 AFM, delete the procedure entitled "CABIN ALTITUDE (Airplanes with the CABIN ALTITUDE lights installed)."

(iv) Add the following statement. This may be done by inserting a copy of this AD into the applicable AFM.

"*CABIN ALTITUDE WARNING OR RAPID DEPRESSURIZATION (required by this ad)*

Condition: The CABIN ALTITUDE warning light illuminates or the intermittent warning horn sounds in flight above 10,000 ft MSL.

RECALL:	
Oxygen Masks and Regulators.	On, 100%
Crew Communications	Establish
REFERENCE:	
Pressurization Mode Selector.	Manual
Outflow Valve Switch	Close
Passenger Oxygen (If Required).	On
Descent (If Required)	Initiate

(3) Revise the Normal Procedures Section of the applicable Boeing 737 AFM by doing the actions specified in paragraphs (i)(3)(i) and (i)(3)(ii) of this AD.

(i) Delete the "CABIN ALTITUDE WARNING TAKEOFF BRIEFING" procedure added by AD 2008–23–07.

(ii) Add the following statement. This may be done by inserting a copy of this AD into the applicable AFM.

"For normal operations, the pressurization mode selector should be in AUTO prior to takeoff. (Required by this AD)"

Note 1: When statements identical to those specified in paragraphs (i)(1)(ii), (i)(2)(iv), and (i)(3)(ii) of this AD have been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copies of this AD may be removed from the AFM.

Terminating Action for Affected ADs

(j) Accomplishment of the requirements of this AD terminates the specified requirements of the ADs identified in paragraphs (j)(1), (j)(2), and (j)(3) of this AD, for only the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) AD 2008–23–07: All requirements of that AD.

(2) AD 2006–13–13: All requirements of that AD.

(3) AD 2003–03–15 R1: The requirements specified in paragraph (a), Table 2, and Figures 2 and 3 of that AD.

Special Flight Permit

(k) Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jeffrey W. Palmer, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6472; fax (425) 917–6590. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

Issued in Renton, Washington, on July 28, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–19834 Filed 8–10–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0796; Directorate Identifier 2010–NM–007–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 767–300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Model 767–300 series airplanes. This proposed AD would require repetitive inspections for cracks in the fuselage skin and backup structure at the lower very high frequency (VHF) antenna cutout at station 1197 + 99 between stringers 39L and 39R, and corrective actions if necessary. Certain repairs would terminate certain inspection requirements. This proposed AD results from reports of cracking found in the section 46 fuselage lower skin around the periphery of the VHF antenna baseplate at station 1197 + 99. We are proposing this AD to detect and correct fatigue cracks in the fuselage skin and internal backup structure, which could result in rapid decompression of the airplane.

DATES: We must receive comments on this proposed AD by September 27, 2010.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton,

Washington 98057–3356; telephone 425–917–6577; fax 425–917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0796; Directorate Identifier 2010–NM–007–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have been advised that two operators reported cracks found in the section 46 fuselage lower skin around the periphery of the VHF antenna baseplate at station 1197 + 99. One operator reported 5 cracks, with a maximum length of 11 inches, found on an airplane that had accumulated 38,804 total flight hours and 34,929 total flight cycles. Another operator reported a maximum crack length of 9.5 inches found on an airplane that had accumulated 60,467 total flight hours and 29,185 total flight cycles. Boeing investigation has revealed that the fuselage skin and internal backup structural cracks are attributed to fatigue. This fatigue is the result of bending loads in the skin caused by vibration of the antenna in flight. No operator reported crack findings for the backup structure. Fatigue cracks in the fuselage skin and internal backup structure, if not corrected, could result in rapid decompression of the airplane.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 767–53–0207, dated December 17, 2009. The service bulletin describes procedures for repetitive inspections for cracks in the fuselage skin and backup structure at the lower VHF antenna cutout at station 1197 + 99, between stringers 39L and 39R. The inspections include an external detailed inspection of the fuselage skin at the lower aft VHF antenna cutout, and an internal detailed inspection of the backup structure.

Corrective actions include repairing fuselage skin cracks, which would eliminate the need to repeat the external detailed inspection; and repairing or replacing cracked backup structure parts.

In the service bulletin, the compliance time for the external detailed inspection is before the accumulation of 25,000 total flight cycles, or within 3,000 flight cycles after the date on the service bulletin, whichever occurs later. The compliance time for the internal detailed inspection is before the accumulation of 25,000 total flight cycles, or within 3,000 flight cycles after the date on the service bulletin, whichever occurs later; or the inspection may be deferred for an additional 6,000 flight cycles if no fuselage skin cracks are found during the external detailed inspection.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined that the unsafe condition described previously is likely to exist or develop in other products of the same type design. This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD would affect 93 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Inspections	3	$85	$255	93	$23,715

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866,

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2010–0796; Directorate Identifier 2010–NM–007–AD.

Comments Due Date

(a) We must receive comments by September 27, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 767–300 series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 767–53–0207, dated December 17, 2009.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Unsafe Condition

(e) This AD results from reports of cracking found in the section 46 fuselage lower skin around the periphery of the very high frequency (VHF) antenna baseplate at station 1197 + 99. The Federal Aviation Administration is issuing this AD to detect and correct fatigue cracks in the fuselage skin and internal backup structure, which could result in rapid decompression of the airplane.

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.

Inspections

(g) Inspect for cracks in the fuselage skin and backup structure at the lower VHF antenna cutout at station 1197 + 99, between stringers 39L and 39R, by doing an external detailed inspection, with the antenna removed, of the fuselage structure at the lower aft VHF antenna cutout, and an internal detailed inspection of the backup structure. Do the inspections in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 767–53–0207, dated December 17, 2009 (“the service bulletin”). Do the inspections at the applicable time specified in paragraph 1.E., “Compliance,” of the service bulletin, except, where the service bulletin specifies a compliance after the date on the service bulletin, this AD requires compliance within the specified time after the effective date of this AD.

(1) If no crack is found, repeat the external detailed inspection, without removing the antenna, at intervals not to exceed 3,000 flight cycles.

(2) If any crack is found in the fuselage, repair before further flight, in accordance with the service bulletin. Accomplishment of this repair terminates the repetitive external detailed inspections of the fuselage skin required by this AD.

(3) If any crack is found in the backup structure, before further flight, repair or replace the cracked part(s), in accordance with the service bulletin.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone 425–917–6577; fax 425–917–6590. Information may be e-mailed 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.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Issued in Renton, Washington, on August 4, 2010.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–19832 Filed 8–10–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Parts 124 and 126

[Public Notice: 7116]

RIN 1400–AC68

Amendment to the International Traffic in Arms Regulations: Dual Nationals and Third-Country Nationals Employed by End-Users

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State is proposing to amend the International Traffic in Arms Regulations (ITAR) to update the policies regarding end-user employment of dual nationals and third-country nationals.

DATES: *Comment Due Date:* The Department of State will accept comments on this proposed rule until September 10, 2010.

ADDRESSES: Interested parties may submit comments within 30 days of the date of the publication by any of the following methods:

- *E-mail: DDTCResponseTeam@state.gov* with an appropriate subject line.
- *Mail:* PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Office of Defense Trade Controls Policy, ATTN: Regulatory Change—Nationals, Bureau of Political Military Affairs, U.S. Department of State, Washington, DC 20522–0112.
- Persons with access to the Internet may also view this notice by searching for its RIN on the U.S. Government regulations Web site at *http://regulations.gov/index.cfm.*

FOR FURTHER INFORMATION CONTACT: Director Charles B. Shotwell, Office of Defense Trade Controls Policy, Department of State, Telephone (202) 663–1282 or Fax (202) 261–8199; E-mail *DDTCResponseTeam@state.gov.* ATTN: Regulatory Change, Nationals.

SUPPLEMENTARY INFORMATION: This is part of the President’s Export Control Reform effort. The Department of State is amending Parts 124 and 126 of the ITAR to reflect new policy regarding end-user employment of dual-nationals and third-country nationals.

As a result of the President’s Task Force on Export Control Reform, the previous policy regarding the treatment of dual nationals and foreign nationals was reconsidered. The current requirement for the provision of additional information within a license to cover dual national and third-country national foreign employees has created a tremendous administrative burden on approved end-users and has evolved into a human rights issue, which has become a focus of contention between the U.S. and allies and friends without a commensurate gain in national security. Based on available intelligence and law enforcement information, and given the current licensing requirements regarding access by dual or third country national employees, most diversions of U.S. Munitions List (USML) items appears to occur outside the scope of approved licenses, not within foreign companies or organizations providing access to properly screened dual national or third country national employees. This amendment will place the affirmative responsibility upon the foreign company, government, or international organization, with the understanding

that by accepting the USML defense article, they must comply with the provisions of U.S. laws and regulations to prevent the possible diversion of U.S. defense articles and technology. This change, by no means, reduces the due diligence requirements of the applicant to ensure, to the best of their ability, that the end-use and end-user are consistent with the approved authorization. The Department views due diligence as a requirement for security clearances or other effective screening procedures as a condition for access to ITAR-controlled defense articles and technology.

Regulatory Analysis and Notices

Administrative Procedure Act

This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures contained in 5 U.S.C. 553 and 554.

Regulatory Flexibility Act

Since this amendment is not subject to the provisions of 5 U.S.C. 553(b), it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This amendment does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This amendment 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. Therefore, in accordance with Executive Order 13132, it is determined that this amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this amendment.

Executive Order 12866

This amendment is exempt from review under Executive Order 12866, but has been reviewed internally by the Department of State to ensure consistency with the purposes thereof.

Executive Order 12988

The Department of State has reviewed the proposed amendment in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirement of Section 5 of Executive Order 13175 does not apply to this rulemaking.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Parts 124 and Part 126

Arms and munitions, Exports.

For the reasons set out in the preamble, the Department of State, proposes to amend 22 CFR parts 124 and 126 as follows:

PART 124—AGREEMENTS, OFF-SHORE PROCUREMENT AND OTHER DEFENSE SERVICES

1. The authority citation for part 124 continues to read as follows:

Authority: Sec. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR 1977 Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261

2. In § 124.8, paragraph (5) is revised to read as follows:

§ 124.8 Clauses required both in manufacturing license agreements and technical assistance agreements.

* * * * *

(5) The technical data or defense service exported from the United States in furtherance of this agreement and any defense article which may be produced or manufactured from such technical data or defense service may not be transferred to a foreign person except pursuant to § 126.18 or as specifically authorized in this agreement unless the prior written approval of the Department of State has been obtained.

* * * * *

§ 126.16 [Removed]

3. Section 124.16 is removed.

PART 126—LICENSE FOR THE EXPORT OF DEFENSE ARTICLES

4. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p.79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918; 59 FR 28205, 3 CFR, 1994 Comp. p. 899; Sec. 1225, Pub. L. 108–375.

§§ 126.16 and 126.17 [Reserved]

5. Sections 126.16 and 126.17 are reserved.

6. Section 126.18 is added to read as follows:

§ 126.18 Exemptions Regarding Intra-company Transfers to Employees who are Dual Nationals or Third-Country Nationals.

(a) Subject to the requirements of paragraphs (b) and (c) of this section, no approval is needed from the Directorate of Defense Trade Controls (DDTC) for the transfer of defense articles, including technical data, within a foreign business entity, foreign governmental entity, or international organization that is an approved end-user or consignee for those defense articles (including technical data), including the transfer to dual nationals or third country nationals who are bona fide, regular employees, directly employed by the foreign business entity, foreign governmental entity, or international organization. The transfer of defense articles pursuant to this section must take place completely within the physical territories of the country where the end-user is located or the consignee operates, and be within the scope of an approved export license, other export authorization, or license exemption.

(b) The provisions of § 127.1(b) are applicable to any transfer under this section. As a prerequisite to receiving any defense article, any foreign business entity, foreign governmental entity, or international organization, as a "foreign person" within the meaning of § 120.16, that receives a defense article, including technical data, is responsible for implementing effective procedures to prevent diversion to destinations, entities, or for purposes other than those authorized by the applicable export license or other authorization (e.g., written approval or exemption) and

must comply with U.S. laws and regulations (including the ITAR).

(c) (1)Pursuant to paragraph (b) of this section, the end-users or consignees can meet the above conditions, prior to access to defense articles, by requiring:

(i) A security clearance approved by the host nation government for its employees, or

(ii) The end-user or consignee have in place a process to screen its employees and to have executed a Non-Disclosure Agreement that provides assurances that the employee will not transfer any information to persons or entities unless specifically authorized by the consignee or end-user.

(2) The end-user or consignee must screen its employees for substantive contacts with restricted or prohibited countries listed in § 126.1. Substantive contacts include, but are not limited to, recent or regular travel to such countries, recent or continuing contact with agents and nationals of such countries, continued allegiance to such countries, or acts otherwise indicating a risk of diversion. Though nationality does not, in and of itself, prohibit access to defense articles or defense services, an employee that has substantive contacts with persons from countries listed in § 126.1(a) shall be presumed to raise a risk of diversion, unless DDTC determines otherwise. End-users and consignees must maintain a technology security/clearance plan that details its procedures for screening employees for such substantive contacts and maintain records of such screening. The technology security/clearance plan and screening records will be available to DDTC or its agents upon request.

Dated: July 8, 2010.

Ellen O. Tauscher,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2010–19833 Filed 8–10–10; 8:45 am]

BILLING CODE 4710–25–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2008–0871; FRL–9188–4]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Transportation Conformity Regulations; Withdrawal of Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed rule.

SUMMARY: On June 18, 2010 (75 FR 34669), EPA published a proposed rule to approve revisions to the Maryland State Implementation Plan (SIP). The revisions amended Maryland's transportation conformity regulations and general conformity regulations. EPA's approval did not include Maryland's regulation regarding conflict resolution associated with conformity determinations (COMAR 26.11.26.06). EPA has determined that it cannot proceed with approval of these SIP revisions until and unless it also approves Maryland's regulation regarding conflict resolution associated with conformity determinations. Therefore, EPA is withdrawing its proposed rule to approve Maryland's conformity regulations. This withdrawal action is being taken under section 110 of the Clean Air Act.

DATES: The proposed rule published June 18, 2010 (75 FR 34669) is withdrawn as of August 11, 2010.

ADDRESSES: EPA has established docket number EPA–R03–OAR–2008–0871 for this action. The index to the docket is available electronically at *http://www.regulations.gov* and in hard copy at Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Martin Kotsch, (215) 814–3335, or by e-mail at *kotsch.martin@epa.gov.*

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 2, 2010.

W. C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2010–19804 Filed 8–10–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA R03–OAR–2009–0606; FRL–9186–7]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Administrative and Non-Substantive Changes to Existing Delaware SIP Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Delaware consisting of administrative and non-substantive changes to the Delaware air pollution control regulations which EPA has previously approved as part of the Delaware State Implementation Plan (SIP). In the Final 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 action, 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.

DATES: Comments must be received in writing by September 10, 2010.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2009–0606 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: frankford.harold@epa.gov.*

C. *Mail:* EPA–R03–OAR–2009–0606, Harold A. Frankford, Air Protection Division, Mailcode 3AP00, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. 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–R03–OAR–2009–0606. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which

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

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108, or by e-mail at *frankford.harold@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication. 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.

Dated: July 26, 2010.

Shawn M. Garvin,

Regional Administrator, Region III.

[FR Doc. 2010–19572 Filed 8–10–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2010–0170; FRL–9186–3]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the Missouri State Implementation Plan (SIP) submitted by the state on June 17, 2009. The purpose of these revisions is to rescind the rule *More Restrictive Emission Limitations for Particulate Matter in South St. Louis Area* and to approve revisions to the rule *Restriction of Emission of Particulate Matter from Industrial Processes* which makes corrections and clarifications, and adds exemptions to the rule. EPA is proposing approval of the SIP provisions pursuant to section 110 of the Clean Air Act (CAA).

DATES: Comments on this proposed action must be received in writing by September 10, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2010–0170, by mail to Amy Bhesania, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Amy Bhesania at (913) 551–7147, or by e-mail at *bhesania.amy@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant 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 action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts 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: July 21, 2010.

William Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 2010–19570 Filed 8–10–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2009–0913; FRL–9186–4]

Approval and Promulgation of Implementation Plans; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the State Implementation Plan (SIP) and Operating Permits Program to revise the state definition of volatile organic compounds; clarify language and incorporate rules related to construction permits to incorporate application fees and include a mechanism to use construction permits to accomplish other permitting needs; and clarify language related to open fires and explicitly include an exemption for fires used for religious activities. Approval of these revisions will ensure consistency between the state and Federally-approved rules.

DATES: Comments on this proposed action must be received in writing by September 10, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2009–0913, by mail to Chrissy Wolfersberger, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chrissy Wolfersberger at 913–551–7864

or by e-mail at *Wolfersberger.chris@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving revisions to the state's SIP and Operating Permits Program as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant 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 action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts 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: *July 21, 2010.*

William Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 2010–19568 Filed 8–10–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61 and 64

[WC Docket No. 10–141; FCC 10–127]

Electronic Tariff Filing System (ETFS)

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on extending the electronic tariff filing requirement for incumbent local exchange carriers to all carriers that file tariffs and related documents. Additionally, the Commission seeks comment on the appropriate time frame for implementing this proposed requirement. The Commission also seeks comment on the proposal that the Chief of the Wireline Competition Bureau administer the adoption of this extended electronic filing requirement. Also, the Commission seeks comment on proposed rule changes to implement mandatory electronic tariff filing.

DATES: Comments are due on or before September 10, 2010 and reply comments are due on or before September 27, 2010. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before October 12, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit comments, identified by WC Docket No. 10–141 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.
- In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via e-mail to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Pamela Arluk at (202) 418–1520 or Lynne Hewitt Engledow at (202) 418–1520, Wireline Competition Bureau, Pricing Policy Division. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an e-mail to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking (NPRM) in WC Docket No. 10–141, FCC 10–127, adopted July 15, 2010, and released July 15, 2010. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.

○ For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or

overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

○ All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. The filing hours are Monday through Friday, 8 a.m. to 7 p.m.

○ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

○ U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *fcc504@fcc.gov*; phone: (202) 418–0530 or (202) 418–0432 (TTY).

In addition, one copy of each pleading must be sent to each of the following:

○ The Commission's duplicating contractor, Best Copy and Printing, Inc, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; Web site: *http://www.bcpiweb.com*; phone: 1–800–378–3160; and

○ Pamela Arluk, Pricing Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5–A131, Washington, DC 20554; e-mail: *pamela.arluk@fcc.gov* or telephone number (202) 418–1520; and

○ Lynne Hewitt Engledow, Pricing Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5–A361, Washington, DC 20554; e-mail: *lynne.engledow@fcc.gov* or telephone number (202) 418–1520.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI through its Web site: *http://www.bcpiweb.com,* by e-mail at *fcc@bcpiweb.com*, by telephone at (202) 488–5300 or (800) 378–3160 (voice), (202) 488–5562 (TTY), or by facsimile at (202) 488–5563.

Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with § 1.49 and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in the NPRM in order to facilitate our internal review process.

Initial Paperwork Reduction Act of 1995 Analysis

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due October 12, 2010.

Comments on the proposed information collection requirements should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

OMB Control Number: 3060–XXXX.

Title: Electronic Tariff Filing System (ETFS).

Form Number(s): N/A.

Type of Review: New information collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents and responses: Estimated 1,500 respondents and 1,500 responses.

Estimated Time per Response: 1 hour (average time per response).

Obligation to Respond: Required to obtain or retain benefits.

Frequency of Response: Annual and on occasion reporting requirements.

Total Annual Burden: 1,500 hours.

Total Annual Cost: $150,000.

Privacy Act Impact Assessment: No impact.

Nature of Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission is requesting review and approval of a new information collection requiring all tariff filing entities to use the Federal Communications Commission's Electronic Tariff Filing System (ETFS) to file their tariffs and related documents.

Currently, incumbent local exchange carriers (LECs) file their tariffs and associated documents electronically, using ETFS. ETFS has improved the usefulness of tariff filings for both filers and the public and made the entire tariff filing process more transparent. By contrast, competitive LECs currently do not file tariffs and associated documents electronically. In the Notice of Proposed Rulemaking (NPRM), in WC Docket No. 10–141, we initiate a rulemaking proceeding to consider extending the existing electronic filing requirement to all tariff filing entities. In particular, to create a more open, transparent and efficient flow of information to the public, we consider whether the benefits of using the ETFS for incumbent LEC tariff filings would also be obtained if all tariff filers filed electronically.

Additionally, the Commission seeks comment on the appropriate time frame for implementing this proposed requirement. Relevant rule modifications are also proposed in the NPRM. The Commission also seeks comment on the proposal that the Chief of the Wireline Competition Bureau administer the adoption of this extended electronic filing requirement. We believe such action will benefit the

public and carriers by creating a central system providing online access to all carrier tariffs and related documents filed with the Commission.

I. Introduction

1. Currently, incumbent local exchange carriers (LECs) file their tariffs and associated documents electronically, using the Electronic Tariff Filing System (ETFS). ETFS has improved the usefulness of tariff filings for both filers and the public and made the entire tariff filing process more transparent. By contrast, competitive LECs do not file tariffs and associated documents electronically. In this NPRM, we initiate a rulemaking proceeding to consider extending the existing electronic filing requirement to all tariff filing entities, consistent with the public interest. In particular, to create a more open, transparent and efficient flow of information to the public, we consider whether the benefits of using the ETFS for incumbent LEC tariff filings would also be obtained if all tariff filers filed electronically. As discussed below, we propose rule modifications that expand the electronic tariff filing requirement to all tariff filers. We believe such action will benefit the public and carriers by creating a central system providing online access to all carrier tariffs filed with the Commission.

II. Background

2. In adopting the Telecommunications Act of 1996 (1996 Act), Congress sought to establish "a pro-competitive, de-regulatory national policy framework" for the telecommunications industry. Consistent with that goal, section 402(b)(1)(A)(iii) of the 1996 Act added section 204(a)(3) to the Communications Act of 1934, as amended, providing for streamlined tariff filings by local exchange carriers. On September 6, 1996, in an effort to meet the goals of the 1996 Act, the Commission released the *Tariff Streamlining NPRM,* 61 FR 49,987, September 24, 1996, proposing measures to implement the tariff streamlining requirements of section 204(a)(3). Among other suggestions, the Commission proposed requiring LECs to file tariffs electronically. The Commission also tentatively concluded that electronic tariff filing would reduce burdens on carriers and the Commission, facilitate access to tariffs and associated documents by the public, make all tariff information available to state and other federal regulators, and facilitate the compilation of aggregate carrier data for industry analysis purposes.

3. The Commission began implementing the electronic filing of tariffs on January 31, 1997, when it released the *Streamlined Tariff Order.* The *Streamlined Tariff Order* established rules implementing the 1996 Act's tariff streamlining provisions and also required LECs to file tariffs and associated documents electronically in accordance with requirements established by the Common Carrier Bureau (Bureau). On November 17, 1997, the Bureau made this electronic system, known as the Electronic Tariff Filing System, available for voluntary filing by incumbent LECs. The Bureau also announced that the use of ETFS would become mandatory for all incumbent LECs in 1998.

4. On May 28, 1998, in the *ETFS Order,* 63 FR 35,539, June 30, 1998, the Bureau established July 1, 1998, as the date after which incumbent LECs would be required to use ETFS to file tariffs and associated documents. The *ETFS Order* also revised the Commission's rules to establish other requirements necessary to implement the Commission's electronic tariff filing program. Specifically, the revised rules required incumbent LECs to electronically file complete tariff Base Documents, tariff revisions, applications for special permission, supporting information, and Tariff Review Plans (TRPs) via ETFS. Although the *Tariff Streamlining NPRM* proposed mandatory electronic filing by all local exchange carriers, the Bureau limited the scope of the *ETFS Order* to incumbent LECs. The Commission deferred consideration of establishing mandatory electronic filing for non-incumbent LECs until the conclusion of a proceeding considering the mandatory detariffing of interstate long distance services.

5. On October 31, 1996, the Commission released the *Detariffing Order,* which ordered mandatory detariffing of most interstate, domestic, interexchange services of nondominant interexchange carriers (IXCs). In deciding to detariff these services, the Commission found that tariffs "are not necessary to ensure that the rates, practices, and classifications of nondominant interexchange carriers for interstate, domestic, interexchange services are just and reasonable and not unjustly or unreasonably discriminatory" and are not necessary for the protection of consumers. The Commission, however, permitted some exceptions to mandatory detariffing, in which nondominant carriers could still file tariffs.

6. In addition, nondominant carriers continue to file tariffs for other services that were unaffected by the *Detariffing Order.* For example, domestic operator service providers (OSPs) must file informational tariffs pursuant to the Communications Act and the Commission's rules. Moreover, subject to certain exceptions and limitations, competitive LECs are permitted to tariff interstate access charges if the charges are no higher than the rate charged for such services by the competing incumbent LEC. In contrast to tariff filings by incumbent LECs, tariff filings by nondominant carriers are currently submitted via diskette, CD–ROM and/or paper, which are cumbersome and costly for the carrier, the Commission, and make it difficult for interested parties to review the documents.

III. Discussion

7. With this document we initiate a rulemaking proceeding to examine whether mandatory electronic filing of tariffs and associated documents should be extended to all tariff filing entities. As discussed below, we propose rules that extend the electronic filing requirement to all tariff filers. We believe this proposed action is in the public interest.

8. We solicit comment on our proposal that mandatory electronic tariff filing should be required for all tariff filers. Specifically, we propose that all tariff filers must follow the Commission's rules for electronic tariff filing and file via ETFS their tariffs, tariff revisions, base documents, and associated documents, including applications for special permission. In addition, we expect that all carriers would have the capabilities to file tariffs electronically and that such a requirement would not impose an undue burden on small or rural carriers. We invite interested parties to comment and propose alternative means to accomplish these goals.

9. We believe that electronic filing of all tariffs and associated documents would facilitate the administration of those tariffs. We also believe that the expected benefits of electronic tariff filing by incumbent LECs outlined in the *Tariff Streamlining NPRM* will also be realized by requiring electronic filing of all tariffs and associated documents. These anticipated benefits include: Reducing burdens on carriers and the Commission; facilitating access to tariffs and associated documents by the public; increasing the ease in which interested parties can review all tariffs; making all tariff information available to state and other federal regulators; and facilitating the compilation of aggregate carrier data for industry analysis purposes. We believe that including all tariffs on ETFS

will improve public access to these filings and will greatly enhance the transparency and efficiency of the tariff filing process. We invite interested parties to comment on these anticipated benefits. Additionally, we propose that international dominant carriers filing pursuant to section 61.28 of the Commission's rules should be subject to electronic filing. We seek comment on this proposal.

10. Requirements applicable to carriers filing tariffs electronically are different from those that apply to carriers filing tariffs via diskette, CD ROM and/or paper. By requiring electronic filing of all tariffs, the same rules will apply to all tariff filers, which will help ensure that interested parties have notice of the type of filing being made and will be able to more easily review those filings. In that regard, we invite interested parties to comment on expanding the applicability of sections 61.14, 61.15, and 61.16 of the Commission's rules in that manner.

11. Section 61.15 also requires the inclusion of a filer's FCC Registration Number (FRN) with each electronic tariff filing. We propose that consistent with this rule, each letter of transmittal must contain the filing carrier's FRN. If more than one carrier participates in the tariff, the FRN for the filing carrier and the FRNs for each individual carrier that participates in the tariff should be included in the letter of transmittal. This will ensure that it is clear to Commission staff and the public which carriers are participating in the tariff. We also propose that the use of consecutive transmittal numbers for letters of transmittal pursuant to the proposed revision of section 61.15 facilitates the Commission's ability to electronically match the mandatory tariff filing fee with the appropriate carrier's filing. We seek comment on these proposals and appropriate alternatives.

12. We also invite specific comment on the use of transmittal numbers if mandatory electronic filing is required; for carriers converting from non-electronic filing, should the transmittal numbers continue sequentially from the last non-electronic tariff or associated document transmission or should transmittal numbers start anew at the number one, with the implementation of mandatory electronic filing? We also invite comment on the numbering of special permission applications pursuant to section 61.17. If mandatory electronic filing is required, should the first special permission application filed electronically for a carrier start with number one or should the special permission application continue to be numbered sequentially from the last non-electronically filed special permission request?

13. Currently, sections 61.52 and 61.54 of our rules, which require specific formatting and composition of tariffs, apply only to dominant carriers. Because we will be requiring all carriers to file tariffs electronically, we believe that it may be beneficial for the public and Commission staff to have consistent formatting of all tariffs. Accordingly, we propose that all carriers should be required to comply with the formatting and composition requirements of our rules. This would ensure that all tariffs have a basic uniformity that will facilitate an ease of review for customers and other entities examining such tariffs. However, we recognize that this modification may create a burden for nondominant carriers that have not been subject to such requirements in the past. Accordingly, we seek comment on this proposal and invite specific comment on whether requiring all carriers to comply with sections 61.52 and 61.54 would place an undue burden on carriers that have not been required to comply with such requirements in the past. Moreover, we propose amending the notice requirements of section 61.58 to add a provision that nondominant carriers who are eligible to file pursuant to the streamlining requirements of section 204(a)(3), but choose not to, must file tariffs on at least one days' notice. This addition to section 61.58 would permit us to remove section 61.23 as duplicative, and instead require all carriers to comply with the general notice requirements of section 61.58. We seek comment on this proposed modification to our rules and any appropriate alternatives.

14. A number of nondominant carriers operate under a "doing business as" or d/b/a name. Such a practice can be confusing to Commission staff and parties searching for tariff documents. Section 61.54 of the Commission's rules requires the "exact name of the carrier" be used to "identify the carrier issuing the tariff publication." We propose to clarify that this rule requires carriers to use their legal names in tariffs and associated documents when filing via ETFS. If carriers use a d/b/a name in addition to their legal name, we propose that the d/b/a name be noted on the Title page of the tariff other than with the "exact name of the carrier." We seek comment on this proposal and any alternative means by which to address such confusion.

15. We note that ETFS has been available for use since November 17, 1997 and its use has been mandatory for incumbent LECs since July 1, 1998. Given that ETFS has been used by the public for more than a decade, we seek comment on the amount of time parties believe all tariff filers will need before they can comply with the mandatory tariff filing requirement. Specifically, we seek comment on how long after an order requiring electronic filing for all tariff filers should filers be required to use ETFS for all tariff and associated document filing. We propose that all tariff filers must use ETFS for all tariff and associated document filing 120 days after a final order in this docket implementing such a requirement (or summary thereof) is published in the **Federal Register**. We also propose that affected carriers must file their currently effective tariffs on ETFS no later than 120 days after a final order in this docket (or summary thereof) is published in the **Federal Register**, which will be the carrier's Base Document. Once the initial Base Documents are filed on ETFS, all future tariff revisions would also be required to be filed electronically on ETFS. After that 120-day period, we propose that the electronic version of the currently effective tariffs on ETFS will replace all prior tariffs, and those previously filed will be considered null and void. Similarly, we propose that tariffs previously filed with the Commission that are not replaced by an electronic version on ETFS will also be considered null and void. After that 120-day period, we also propose that all tariff filers will no longer be permitted to file diskette, CD–ROM and/or paper copies of tariffs and associated documents that otherwise would be filed with the Secretary, the Chief of the Pricing Policy Division of the Wireline Competition Bureau, and the Commission's commercial contractor. We seek comment on these proposals and any suggested alternatives.

16. We propose that the Chief of the Wireline Competition Bureau should be responsible for administering the adoption of electronic tariff filing requirements for all tariff filers. This is consistent with the *Streamlined Tariff Order*. We seek comment on this proposal. We also seek comment on the proposed rule modifications in Appendix A and we believe that these proposed requirements are in the public interest for the reasons stated herein.

17. For consistency and administrative clarity we propose changes to additional sections in part 61 of the Commission's rules as shown in Appendix A of the NPRM. For example, we propose consolidating the requirements for letters of transmittal and cover letters in section 61.15 of the Commission's rules, and therefore,

propose to delete sections 61.21 and 61.33 of our rules because those rules would be duplicative of section 61.15. We believe that these proposed changes are necessary to accomplish the numerous goals anticipated with the implementation of mandatory electronic tariff filing for all tariff filing entities. We seek comment on these proposed changes. Finally, we invite comment on other considerations and alternatives interested parties believe relevant to extending the electronic tariff filing requirement to all tariff filing entities.

IV. Procedural Matters

A. Initial Regulatory Flexibility Analysis

18. As required by the Regulatory Flexibility Act of 1980, as amended (RFA) *see* 5 U.S.C. 603, the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities that might result from this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided above. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Notice and IRFA (or summaries thereof) will be published in the **Federal Register.**

1. Need for, and Objectives of, the Proposed Rules

19. Today, the Commission adopts a Notice of Proposed Rulemaking (NPRM) to consider extending the requirement to file tariff and associated documents electronically via the Electronic Tariff Filing System to all tariff filing entities. In the NPRM the Commission seeks comment on the proposal to extend this requirement to all tariff filing entities and on the expected benefits of doing such. Additionally, the Commission seeks comment on the appropriate time frame for implementing this proposed requirement. The Commission also seeks comment on the proposal that the Chief of the Wireline Competition Bureau administer the adoption of this extended electronic filing requirement.

2. Legal Basis

20. The legal basis for any action that may be taken pursuant to the NPRM is contained in sections 1, 4(i), 201–205, and 226(h)(1)(A) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201–205, and 226(h)(1)(A).

3. Description and Estimate of the Number of Small Entities To Which the Proposed Rules May Apply

21. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act. A "small-business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration.

22. Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,005 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,005 carriers, an estimated 918 have 1,500 or fewer employees and 87 have more than 1,500 employees. In addition, 16 carriers have reported that they are Shared-Tenant Service Providers, and all 16 are estimated to have 1,500 or fewer employees. In addition, 89 carriers have reported that they are Other Local Service Providers. Of the 89, all 89 have 1,500 or fewer employees and none has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

23. Interexchange Carriers (IXCs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 300 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 300 companies, an estimated 268 have 1,500 or fewer employees and 32 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

24. Operator Service Providers (OSPs). Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 28 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 27 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities.

4. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

25. Should the Commission decide to expand mandatory electronic filing to competitive LECs, the associated rules potentially would modify the reporting and recordkeeping requirements of these entities. The NPRM proposed that tariff filers must follow the Commission's rules for electronic tariff filing and file via ETFS their tariffs, tariff revisions, base documents and associated documents, including applications for special permission. Moreover, in order to provide uniformity for tariff filings, the NPRM would propose to extend certain procedural requirements to all tariff filing entities, including: Specific formatting and composition requirements, the use of FCC registration numbers and the use of transmittal numbers. We seek comment on the possible burden these requirements would place on small entities. Also, we seek comment on whether a special approach toward any possible compliance burdens on small entities might be appropriate. Entities, especially small businesses, are encouraged to quantify the costs and benefits of any reporting requirement that may be established in this proceeding.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

26. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."

27. The NPRM seeks comment from all interested parties. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined in the NPRM. The Commission believes that most carriers are familiar with the Electronic Tariff Filing System, if not currently using it. As such, the Commission believes the burden on small entities will be minimal. In addition, to assist tariff filers that have not used ETFS previously, including small entity filers, the Commission is seeking comment on the amount of time filers will need to transition from paper filing to using ETFS.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

28. None.

B. Paperwork Reduction Act Analysis

29. The NPRM contains proposed information collection requirements. As part of the continuing effort to reduce paperwork burdens, we invite the general public and the OMB to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from the date of publication of this NPRM in the **Federal Register**. Comments should address: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (2) the accuracy of the Commission's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

C. Ex Parte Presentations

30. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules.

List of Subjects

47 CFR Part 61

Communications common carriers, Tariffs, Telecommunications, Telephone.

47 CFR Part 64

Communications common carriers, Tariffs, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 61 and 64 as follows:

PART 61—TARIFFS

1. The authority citation for part 61 continues to read as follows:

Authority: Secs. 1, 4(i), 4(j), 201–205 and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 154(j), 201–205 and 403, unless otherwise noted.

2. Section 61.3 is amended by redesignating paragraphs (t) through (y) as paragraphs (u) through (z) and by adding paragraph (t) to read as follows:

§ 61.3 Definitions.

* * * * *

(t) *Incumbent Local Exchange Carrier.* "Incumbent Local Exchange Carrier" or ILEC" has the same meaning as that term is defined in 47 U.S.C. 251(h).

* * * * *

3. Section 61.13 is amended by revising paragraphs (a) and (b) to read as follows:

§ 61.13 Scope.

(a) This applies to all tariff publications of issuing carriers required to file tariff publications electronically, and any tariff publication that a carrier chooses to file electronically.

(b) All issuing carriers that file tariffs are required to file tariff publications electronically.

* * * * *

4. Section 61.14 is amended by revising paragraphs (b) and (e) to read as follows:

§ 61.14 Method of filing publications.

* * * * *

(b) In addition, except for issuing carriers filing tariffing fees electronically, for all tariff publications requiring fees as set forth in part 1, subpart G of this chapter, issuing carriers must submit the original of the cover letter (without attachments), FCC Form 159, and the appropriate fee to the address set forth in § 1.1105 of this chapter.

* * * * *

(e) Carriers that are required to file publications electronically must comply with the format requirements set forth in §§ 61.52 and 61.54.

5. Section 61.15 is revised to read as follows:

§ 61.15 Letters of transmittal and cover letters.

(a) All tariff publications filed with the Commission electronically must be accompanied by a letter of transmittal. All letters of transmittal filed with the Commission must be numbered consecutively by the issuing carrier beginning with Number 1. All letters of transmittal must also:

(1) Concisely explain the nature and purpose of the filing;

(2) Specify whether supporting information is required for the new tariff or tariff revision, and specify the Commission rule or rules governing the supporting information requirements for that filing;

(3) Contain a statement indicating the date and method of filing of the original of the transmittal as required by § 61.14(b);

(4) Include the FCC Registration Number (FRN) of the carrier(s) on whose behalf the cover letter is submitted. See subpart W of part 1 of this title.

(b) Local exchange carriers filing tariffs electronically pursuant to the notice requirements of section 204(a)(3) of the Communications Act shall display prominently, in the upper right hand corner of the letter of transmittal, a statement that the filing is made pursuant to that section and whether the tariff is filed on 7 or 15 days notice.

(c) Any carrier filing a new or revised tariff made on 15 days' notice or less shall include in the letter of transmittal the name, room number, street address, telephone number, and facsimile number of the individual designated by the filing carrier to receive personal or facsimile service of petitions against the filing as required under § 1.773(a)(4) of this chapter.

(d) International carriers must certify that they are authorized under Section 214 of the Communications Act of 1934, as amended, to provide service, and reference the FCC file number of that authorization.

(e) In addition to the requirements set forth in paragraph (a) of this section, any incumbent local exchange carrier choosing to file an Access Tariff under § 61.39 must include in the transmittal:

(1) A summary of the filing's basic rates, terms and conditions;

(2) A statement concerning whether any prior Commission facility authorization necessary to the implementation of the tariff has been obtained; and

(3) A statement that the filing is made pursuant to § 61.39.

(f) In addition to the requirements set forth in paragraph (a) of this section, any price cap local exchange carrier filing a price cap tariff must include in the letter of transmittal a statement that the filing is made pursuant to § 61.49.

(g) The letter of transmittal must specifically reference by number any special permission necessary to implement the tariff publication. Special permission must be granted prior to the filing of the tariff publication and may not be requested in the transmittal letter.

(h)(1) The letter of transmittal must be substantially in the following format:

_____

(Exact name of carrier in full)

_____

(Post Office Address)

_____

(Date)

_____

Transmittal No.

Secretary, Federal Communications Commission; Washington, DC 20554

Attention: Wireline Competition Bureau

The accompanying tariff (or other publication) issued by ____, and bearing FCC No. ____, effective ____, 20 __, is sent to you for filing in compliance with the requirements of the Communications Act of 1934, as amended. (Here give the additional information required.)

_____

(Name of issuing officer or agent)

_____

(Title)

(2) A separate letter of transmittal may accompany each publication, or the above format may be modified to provide for filing as many publications as desired with one transmittal letter.

(i) All submissions of documents other than a new tariff or revisions to an existing tariff, such as Base Documents or Tariff Review Plans, must be accompanied by a cover letter that concisely explains the nature and purpose of the filing. Publications submitted under this paragraph are not required to submit a tariffing fee.

6. Section 61.16 is amended by revising paragraphs (a) and (b) to read as follows:

§ 61.16 Base documents.

(a) The Base Document is a complete tariff which incorporates all effective revisions, as of the last day of the preceding month. The Base Document should be submitted with a cover letter as specified in § 61.15(i) and identified as the *Monthly Updated Base Document.*

(b) Initially, issuing carriers that currently have tariffs on file with the commission must file a Base Document within five days of the initiation of mandatory electronic filing.

* * * * *

7. Section 61.17 is revised to read as follows:

§ 61.17 Applications for special permission.

(a) All issuing carriers that file applications for special permission, associated documents, such as transmittal letters, requests for special permission, and supporting information, shall file those documents electronically.

(b) Applications for special permission must contain:

(1) A detailed description of the tariff publication proposed to be put into effect;

(2) A statement citing the specific rules and the grounds on which waiver is sought;

(3) A showing of good cause; and

(4) The appropriate Illustrative tariff pages the issuing carrier wishes to either revise or add as new pages to its tariff.

(c) An application for special permission must be addressed to "Secretary, Federal Communications Commission, Washington, DC 20554." The Electronic Tariff Filing System will accept filings 24 hours a day, seven days a week. The official filing date of a publication received by the Electronic Tariff Filing System will be determined by the date and time the transmission ends. If the transmission ends after the close of a business day, as that term is defined in § 1.4(e)(2) of this chapter, the filing will be date and time stamped as of the opening of the next business day.

(d) In addition, except for issuing carriers filing tariffing fees electronically, for special permission applications requiring fees as set forth in part 1, subpart G of this chapter, issuing carriers must submit the original of the application letter (without attachments), FCC Form 159, and the appropriate fee to the address set forth in § 1.1105 of this chapter.

(e) In addition, if an issuing carrier applies for special permission to revise joint tariffs, the application must state that it is filed on behalf of all carriers participating in the affected service. Applications must be numbered consecutively in a series separate from FCC tariff numbers and Letters of Transmittal, bear the signature of the officer or agent of the carrier, and be in the following format:

Application No. _____

(Date) _____

Secretary

Federal Communications Commission

Washington, DC 20554.

Attention: Wireline Competition Bureau

(here provide the statements required by section 61.17(b)).

(Exact name of carrier) _____

(Name of officer or agent) _____

(Title of officer or agent) _____

(f) If approved, the issuing carrier must comply with all terms and use all authority specified in the grant. If a carrier elects to use less than the authority granted, it must apply to the Commission for modification of the original grant. If a carrier elects not to use the authority granted within sixty days of its effective date, the original grant will be automatically cancelled by the Commission.

8. Section 61.20 is revised to read as follows:

§ 61.20 Method of filing publications.

(a) All issuing carriers that file tariffs shall file all tariff publications and associated documents, such as transmittal letters, requests for special permission, and supporting information, electronically in accordance with the requirements set forth in § 61.13 through § 61.17.

(b) In addition, except for issuing carriers filing tariffing fees

electronically, for all tariff publications requiring fees as set forth in part 1, subpart G of this chapter, issuing carriers must submit the original of the cover letter (without attachments), FCC Form 159, and the appropriate fee to the address set forth in § 1.1105 of this chapter.

§§ 61.21 through 61.23 [Removed and Reserved]

9. Remove and reserve §§ 61.21 through 61.23.

§§ 61.32 and 61.33 [Removed and Reserved]

10. Remove and reserve §§ 61.32 and 61.33.

11. Section 61.38 is revised to read as follows:

§ 61.38 Supporting information to be submitted with letters of transmittal.

(a) *Scope.* This section applies to dominant carriers whose gross annual revenues exceed $500,000 for the most recent 12 month period of operations or are estimated to exceed $500,000 for a representative 12 month period. Incumbent Local exchange carriers serving 50,000 or fewer access lines in a given study area that are described as subset 3 carriers in § 69.602 of this chapter may submit Access Tariff filings for that study area pursuant to either this section or § 61.39. However, the Commission may require any issuing carrier to submit such information as may be necessary for a review of a tariff filing. This section (other than the preceding sentence of this paragraph) shall not apply to tariff filings proposing rates for services identified in § 61.42 (d), (e), and (g).

(b) *Explanation and data supporting either changes or new tariff offerings.* The material to be submitted for a tariff change which affects rates or charges or for a tariff offering a new service, must include an explanation of the changed or new matter, the reasons for the filing, the basis of ratemaking employed, and economic information to support the changed or new matter.

(1) For a tariff change the issuing carrier must submit the following, including complete explanations of the bases for the estimates.

(i) A cost of service study for all elements for the most recent 12 month period;

(ii) A study containing a projection of costs for a representative 12 month period;

(iii) Estimates of the effect of the changed matter on the traffic and revenues from the service to which the changed matter applies, the issuing carrier's other service classifications, and the carrier's overall traffic and revenues. These estimates must include the projected effects on the traffic and revenues for the same representative 12 month period used in (b)(1)(ii) of this section.

(2) For a tariff filing offering a new service, the issuing carrier must submit the following, including complete explanations of the bases for the estimates.

(i) A study containing a projection of costs for a representative 12 month period; and

(ii) Estimates of the effect of the new matter on the traffic and revenues from the service to which the new matter applies, the issuing carrier's other service classifications, and the issuing carrier's overall traffic and revenues. These estimates must include the projected effects on the traffic and revenues for the same representative 12 month period used in paragraph (b)(2)(i) of this section.

(3) [Reserved]

(4) For a tariff that introduces a system of density pricing zones, as described in § 69.123 of this chapter, the issuing carrier must, before filing its tariff, submit a density pricing zone plan including, *inter alia,* documentation sufficient to establish that the system of zones reasonably reflects cost-related characteristics, such as the density of total interstate traffic in central offices located in the respective zones, and receive approval of its proposed plan.

(c) *Working papers and statistical data.* (1) Concurrently with the filing of any tariff change or tariff filing for a service not previously offered, the issuing carrier must file the working papers containing the information underlying the data supplied in response to paragraph (b) of this section, and a clear explanation of how the working papers relate to that information.

(2) All statistical studies must be submitted and supported in the form prescribed in § 1.363 of this chapter.

(d) *Form and content of additional material to be submitted with certain rate increases.* In the circumstances set out in paragraphs (d)(1) and (2) of this section, the issuing carrier must submit all additional cost, marketing and other data underlying the working papers to justify a proposed rate increase. The issuing carrier must submit this information in suitable form to serve as the carrier's direct case in the event the rate increase is set by the Commission for investigation.

(1) Rate increases affecting single services or tariffed items.

(i) A rate increase in any service or tariffed item which results in more than $1 million in additional annual revenues, calculated on the basis of existing quantities in service, without regard to the percentage increase in such revenues; or

(ii) A single rate increase in any service or tariffed item, or successive rate increases in the same service or tariffed item within a 12 month period, either of which results in:

(A) At least a 10 percent increase in annual revenues from that service or tariffed item, and

(B) At least $100,000 in additional annual revenues, both calculated on the basis of existing quantities in service.

(2) Rate increases affecting more than one service or tariffed item.

(i) A general rate increase in more than one service or tariffed item occurring at one time, which results in more than $1 million in additional revenues calculated on the basis of existing quantities in service, without regard to the percentage increase in such revenues; or

(ii) A general rate increase in more than one service or tariffed item occurring at one time, or successive general rate increases in the same services or tariffed items occurring within a 12 month period, either of which results in:

(A) At least a 10 percent increase in annual revenues from those services or tariffed items, and

(B) At least $100,000 in additional annual revenues, both calculated on the basis of existing quantities in service.

(e) *Submission of explanation and data by connecting carriers.* If the changed or new matter is being filed by the issuing carrier at the request of a connecting carrier, the connecting carrier must provide the data required by paragraphs (b) and (c) of this section on the date the issuing carrier files the tariff matter with the Commission.

(f) *Copies of explanation and data to customers.* Concurrently with the filing of any rate for special construction (or special assembly equipment and arrangements) developed on the basis of estimated costs, the issuing carrier must transmit to the customer a copy of the explanation and data required by paragraphs (b) and (c) of this section.

(g) On each page of cost support material submitted pursuant to this section, the issuing carrier shall indicate the transmittal number under which that page was submitted.

12. Section 61.39 is revised to read as follows:

§ 61.39 Optional supporting information to be submitted with letters of transmittal for Access Tariff filings by incumbent local exchange carriers serving 50,000 or fewer access lines in a given study area that are described as subset 3 carriers in § 69.602.

(a) *Scope.* This section provides for an optional method of filing for any incumbent local exchange carrier that is described as subset 3 carrier in § 69.602 of this chapter, which elects to issue its own Access Tariff for a period commencing on or after April 1, 1989, and which serves 50,000 or fewer access lines in a study area as determined under § 36.611(a)(8) of this chapter. However, the Commission may require any issuing carrier to submit such information as may be necessary for review of a tariff filing. This section (other than the preceding sentence of this paragraph) shall not apply to tariff filings of price cap local exchange carriers.

(b) *Explanation and data supporting tariff changes.* The material to be submitted to either a tariff change or a new tariff which affects rates or charges must include an explanation of the filing in the transmittal as required by § 61.15. The basis for ratemaking must comply with the following requirements. Except as provided in paragraph (b)(5) of this section, it is not necessary to submit this supporting data at the time of filing. However, the incumbent local exchange carrier should be prepared to submit the data promptly upon reasonable request by the Commission or interested parties.

(1) For a tariff change, the incumbent local exchange carrier that is a cost schedule carrier must propose Tariff Sensitive rates based on the following:

(i) For the first period, a cost of service study for Traffic Sensitive elements for the most recent 12 month period with related demand for the same period.

(ii) For subsequent filings, a cost of service study for Traffic Sensitive elements for the total period since the incumbent local exchange carrier's last annual filing, with related demand for the same period.

(2) For a tariff change, the incumbent local exchange carrier that is an average schedule carrier must propose Traffic Sensitive rates based on the following:

(i) For the first period, the incumbent local exchange carrier's most recent annual Traffic Sensitive settlement from the National Exchange Carrier Association pool.

(ii) For subsequent filings, an amount calculated to reflect the Traffic Sensitive average schedule pool settlement the carrier would have received if the carrier had continued to participate, based upon the most recent average schedule formulas approved by the Commission.

(3) For a tariff change, the incumbent local exchange carrier that is a cost schedule carrier must propose Common Line rates based on the following:

(i) For the first biennial filing, the common line revenue requirement shall be determined by a cost of service study for the most recent 12-month period. Subscriber line charges shall be based on cost and demand data for the same period. Carrier common line rates shall be determined by the following formula:

$$\frac{CCL\ \text{Rev Req}}{\text{CCL MOU}_b * (1+h/2)^2}$$

Where:

$$h = \frac{CCL\ \text{MOU}_1}{\text{CCL MOU}_0} - 1$$

And where:

CCL Rev Req = carrier common line revenue requirement for the most recent 12-month period;
$CCL\ MOU_b$ = carrier common line minutes of use for the most recent 12-month period;
$CCL\ MOU_1$ = $CCL\ MOU_b$; and
$CCL\ MOU_0$ = carrier common line minutes of use for the 12-month period preceding the most recent 12-month period.

(ii) For subsequent biennial filings, the common line revenue requirement shall be determined by a cost of service study for the most recent 24-month period. Subscriber line charges shall be based on cost and demand data for the same period. Carrier common line rates shall be determined by the following formula:

$$\frac{CCL\ \text{Rev Req}}{\text{CCL MOU}_b * (1+h/2)^{5/2}}$$

Where:

$$h = \frac{CCL\ \text{MOU}_1}{\text{CCL MOU}_0} - 1$$

And where:

CCL Rev Req = carrier common line revenue requirement for the most recent 24-month period;
$CCL\ MOU_b$ = carrier common line minutes of use for the most recent 24-month period;
$CCL\ MOU_1$ = carrier common line minutes of use for the 12-month period; and
$CCL\ MOU_0$ = carrier common line minutes of use for the 12-month period preceding the most recent 12-month period.

(4) For a tariff change, the incumbent local exchange carrier which is an average schedule carrier must propose common line rates based on the following:

(i) For the first biennial filings, the common line revenue requirement shall be determined by the incumbent local exchange carrier's most recent annual Common Line settlement from the National Exchange Carrier Association. Subscriber line charges shall be based on cost and demand data for the same period. Carrier common line rates shall be determined by the following formula:

$$\frac{CCL\ \text{Rev Req}}{\text{CCL MOU}_b * (1+h/2)^2}$$

Where:

$$h = \frac{CCL\ \text{MOU}_1}{\text{CCL MOU}_0} - 1$$

And where:

CCL Rev Req = carrier common line settlement for the most recent 12-month period;
$CCL\ MOU_b$ = carrier common line minutes of use for the most recent 12-month period;
$CCL\ MOU_1$ = $CCL\ MOU_b$; and
$CCL\ MOU_0$ = carrier common line minutes of use for the 12-month period preceding the most recent 12-month period.

(ii) For subsequent biennial filings, the common line revenue requirement shall be an amount calculated to reflect the average schedule pool settlements the carrier would have received if the carrier had continued to participate in the carrier common line pool, based upon the average schedule Common Line formulas developed by the National Exchange Carrier Association for the most recent 24-month period. Subscriber line charges shall be based on cost and demand data for the same period. Carrier common line rates shall be determined by the following formula:

$$\frac{CCL\ \text{Rev Req}}{\text{CCL MOU}_b * (1+h/2)^{5/2}}$$

Where:

$$h = \frac{CCL\ \text{MOU}_1}{\text{CCL MOU}_0} - 1$$

And where:

CCL Rev Req = carrier common line settlement for the most recent 24-month period;
$CCL\ MOU_b$ = carrier common line minutes of use for the most recent 24-month period;
$CCL\ MOU_1$ = carrier common line minutes of use for the most recent 12-month period; and
$CCL\ MOU_0$ = carrier common line minutes of use for the 12-month period preceding the most recent 12-month period.

(5) For End User Common Line charges included in a tariff pursuant to this Section, the incumbent local

exchange carrier must provide supporting information for the two-year historical period with its letter of transmittal in accordance with § 61.38.

(c) *Maximum allowable rate of return.* Incumbent Local exchange carriers filing tariffs under this section are not required to comply with §§ 65.700 through 65.701 of this chapter, except with respect to periods during which tariffs were not subject to this section. The Commission may require any carrier to submit such information if it deems it necessary to monitor the carrier's earnings. However, rates must be calculated based on the incumbent local exchange carrier's prescribed rate of return applicable to the period during which the rates are effective.

(d) Rates for a new service that is the same as that offered by a price cap local exchange carrier providing service in an adjacent serving area are deemed presumptively lawful, if the proposed rates, in the aggregate, are no greater than the rates established by the price cap local exchange carrier. Tariff filings made pursuant to this paragraph must include the following:

(1) A brief explanation of why the service is like an existing service offered by a geographically adjacent price cap local exchange carrier; and

(2) Data to establish compliance with this paragraph that, in aggregate, the proposed rates for the new service are no greater than those in effect for the same or comparable service offered by that same geographically adjacent price cap regulated local exchange carrier. Compliance may be shown through submission of applicable tariff pages of the adjacent carrier; a showing that the serving areas are adjacent; any necessary explanations and work sheets.

(e) Average schedule companies filing pursuant to this section shall retain their status as average schedule companies.

(f) On each page of cost support material submitted pursuant to this section, the issuing carrier shall indicate the transmittal number under which that page was submitted.

13. Section 61.40 is amended by revising paragraph (a) introductory text to read as follows:

§ 61.40 Private line rate structure guidelines.

(a) The Commission uses a variety of tools to determine whether a dominant carrier's private line tariffs are just, reasonable, and nondiscriminatory. The dominant carrier's burden of cost justification can be reduced when its private line rate structures comply with the following five guidelines.

* * * * *

14. Section 61.41 is amended by revising paragraph (a)(2) to read as follows:

§ 61.41 Price cap requirements generally.

(a) * * *

(2) To such price cap local exchange carriers as specified by Commission order, and to all local exchange carriers, other than average schedule companies, that are affiliated with such carriers; and

* * * * *

15. Section 61.42 is amended by revising paragraphs (d) introductory text, (d)(4)(i) and (d)(4)(ii), (e)(1) introductory text, and (f) to read as follows:

§ 61.42 Price cap baskets and service categories.

* * * * *

(d) Each price cap local exchange carrier shall establish baskets of services as follows:

* * * * *

(4)(i) To the extent that a price cap local exchange carrier specified in § 61.41(a)(2) or (a)(3) offers interstate interexchange services that are not classified as access services for the purpose of part 69 of this chapter, such exchange carrier shall establish a fourth basket for such services. For purposes of §§ 61.41 through 61.49, this basket shall be referred to as the "interexchange basket."

(ii) If a price cap local exchange carrier has implemented interLATA and intraLATA toll dialing parity everywhere it provides local exchange services at the holding company level, that price cap carrier may file a tariff revision to remove corridor and interstate intraLATA toll services from its interexchange basket.

* * * * *

(e)(1) The traffic sensitive switched interstate access basket shall contain such services as the Commission shall permit or require, including the following service categories:

* * * * *

(f) Each price cap local exchange carrier shall exclude from its price cap baskets such services or portions of such services as the Commission has designated or may hereafter designate by order.

* * * * *

16. Section 61.43 is revised to read as follows:

§ 61.43 Annual price cap filings required.

Price cap local exchange carriers shall submit annual price cap tariff filings that propose rates for the upcoming tariff year, that make appropriate adjustments to their PCI, API, and SBI values pursuant to §§ 61.45 through 61.47, and that incorporate new services into the PCI, API, or SBI calculations pursuant to §§ 61.45(g), 61.46(b), and 61.47(b) and (c). Price cap local exchange carriers may propose rate, PCI, or other tariff changes more often than annually, consistent with the requirements of § 61.59.

17. Section 61.45 is amended by revising paragraphs (a), (b)(1)(i) introductory text, and (d)(2) to read as follows:

§ 61.45 Adjustments to the PCI for Local Exchange Carriers.

(a) Price cap local exchange carriers shall file adjustments to the PCI for each basket as part of the annual price cap tariff filing, and shall maintain updated PCIs to reflect the effect of mid-year exogenous cost changes.

(b)(1)(i) Adjustments to price cap local exchange carrier PCIs, in those carriers' annual access tariff filings, the traffic sensitive basket described in § 61.42(d)(2), the trunking basket described in § 61.42(d)(3), the special access basket described in § 61.42(d)(5) and the Interexchange Basket described in § 61.42(d)(4)(i), shall be made pursuant to the following formula:

* * * * *

(d) * * *

(2) Price cap local exchange carriers specified in §§ 61.41(a)(2) or (a)(3) shall, in their annual access tariff filing, recognize all exogenous cost changes attributable to modifications during the coming tariff year in their Subscriber Plant Factor and the Dial Equipment Minutes factor, and completions of inside wire amortizations and reserve deficiency amortizations.

* * * * *

18. Section 61.46 is amended by revising paragraph (a) introductory text to read as follows:

§ 61.46 Adjustments to the API.

(a) Except as provided in paragraphs (d) and (e) of this section, in connection with any price cap tariff filing proposing rate changes, the price cap local exchange carrier must calculate an API for each affected basket pursuant to the following methodology:

* * * * *

19. Section 61.47 is amended by revising paragraphs (f), (i)(2), and (i)(5) to read as follows:

§ 61.47 Adjustments to the SBI; pricing bands.

* * * * *

(f) A price cap local exchange carrier may establish density zones pursuant to the requirements set forth in § 69.123 of this chapter, for any service in the

trunking and special access baskets, other than the interconnection charge set forth in § 69.124 of this chapter. The pricing flexibility of each zone shall be limited to an annual increase of 15 percent, relative to the percentage change in the PCI for that basket, measured from the levels in effect on the last day of the preceding tariff year. There shall be no lower pricing band for any density zone.

* * * * *

(i)(1) * * *

(2) Effective January 1, 1998, notwithstanding the requirements of paragraph (a) of this section, if a price cap local exchange carrier is recovering interconnection charge revenues through per-minute rates pursuant to § 69.155 of this chapter, any reductions to the PCI for the basket designated in § 61.42(d)(3) resulting from the application of the provisions of § 61.45(b)(1)(i) and from the application of the provisions of §§ 61.45(i)(1) and 61.45(i)(2) shall be directed to the SBI of the service category designated in § 61.42(d)(i).

* * * * *

(5) Effective July 1, 2000, notwithstanding the requirements of paragraph (a) of this section and subject to the limitations of § 61.45(i), if a price cap local exchange carrier is recovering an ATS charge greater than its Target Rate as set forth in § 61.3(qq), any reductions to the PCI for the traffic sensitive or trunking baskets designated in §§ 61.42(d)(2) and 61.42(d)(3) resulting from the application of the provisions of § 61.45(b), and the formula in § 61.45(b) and from the application of the provisions of §§ 61.45(i)(1), and 61.45(i)(2) shall be directed to the SBIs of the service categories designated in §§ 61.42(e)(1) and 61.42(e)(2).

* * * * *

20. Section 61.48 is amended by revising paragraphs (i)(2), (i)(3) introductory text, (i)(4), and (l)(2) to read as follows:

§ 61.48 Transition rules for price cap formula calculations.

* * * * *

(i) * * *

(2) *Simultaneous Introduction of Special Access and Transport Zones.* Price cap local exchange carriers that have established density pricing zones pursuant to § 69.123 of this chapter, and whose special access zone date and transport zone date occur on the same date, shall initially establish density pricing zone SBIs and bands pursuant to the methodology in § 61.47(e) and (f).

(3) *Sequential Introduction of Zones in the Same Tariff Year.* Notwithstanding § 61.47(e) and (f), price cap local exchange carriers that have established density pricing zones pursuant to § 69.123 of this chapter, and whose special access zone date and transport zone date occur on different dates during the same tariff year, shall, on the earlier date, establish density pricing zone SBIs and pricing bands using the methodology described in § 61.47(e) and (f), but applicable to the earlier service only. On the later date, such carriers shall recalculate the SBIs and pricing bands to limit the pricing flexibility of the services included in each density pricing zone category, as reflected in its SBI, as follows:

* * * * *

(4) *Introduction of Zones in Different Tariff Years.* Notwithstanding § 61.47(e) and (f), those price cap local exchange carriers that have established density pricing zones pursuant to § 69.123 of this chapter, and whose special access zone date and transport zone date do not occur within the same tariff year, shall, on the earlier date, establish density pricing zone SBIs and pricing bands using the methodology described in § 61.47(e) and (f), but applicable to the earlier service only.

* * * * *

(l) * * *

(2) Once the reductions in paragraph (l)(1)(i) and paragraphs (l)(1)(ii)(A) and (B) of this section are identified, the difference between those reductions and $2.1 billion is the total amount of additional reductions that would be made to ATS rates of price cap local exchange carriers. This amount will then be restated as the percentage of total price cap local exchange carrier Local Switching revenues as of June 30, 2000 using 2000 annual filing base period demand ("June 30 Local Switching revenues") necessary to yield the total amount of additional reductions and taking into account the fact that, if participating, a price cap local exchange carrier would not reduce ATS rates below its Target Rate as set forth in § 61.3(qq). Each price cap local exchange carrier then reduces ATS rate elements, and associated SBI upper limits and PCIs, by a dollar amount equivalent to the percentage times the June 30 Local Switching revenues for that filing entity, provided that no price cap local exchange carrier shall be required to reduce its ATS rates below its Target Rate as set forth in § 61.3(qq). Each price cap local exchange carrier can take its additional reductions against any of the ATS rate elements, provided that at least a proportional share must be taken against Local Switching rates.

* * * * *

21. Section 61.49 is amended by revising paragraphs (f)(2), (f)(3), (f)(4), (g) introductory text, (g)(2), (h), (k) and (l) to read as follows:

§ 61.49 Supporting information to be submitted with letters of transmittal for tariffs of carriers subject to price cap regulation.

* * * * *

(f) * * *

(2) Each tariff filing submitted by a price cap local exchange carrier that introduces a new loop-based service, as defined in § 61.3(pp)—including a restructured unbundled basic service element (BSE), as defined in § 69.2(mm) of this chapter, that constitutes a new loop-based service—that is or will later be included in a basket, must be accompanied by cost data sufficient to establish that the new loop-based service or unbundled BSE will not recover more than a just and reasonable portion of the carrier's overhead costs.

(3) A price cap local exchange carrier may submit without cost data any tariff filings that introduce new services, other than loop-based services.

(4) A price cap local exchange carrier that has removed its corridor or interstate intraLATA toll services from its interexchange basket pursuant to § 61.42(d)(4)(ii), may submit its tariff filings for corridor or interstate intraLATA toll services without cost data.

(g) Each tariff filing submitted by a price cap local exchange carrier that introduces a new loop-based service or a restructured unbundled basic service element (BSE), as defined in § 69.2(mm) of this chapter, that is or will later be included in a basket, or that introduces or changes the rates for connection charge subelements for expanded interconnection, as defined in § 69.121 of this chapter, must also be accompanied by:

* * * * *

(2) *Working papers and statistical data.* (i) Concurrently with the filing of any tariff change or tariff filing for a service not previously offered, the issuing carriers must file the working papers containing the information underlying the data supplied in response to paragraph (h)(1) of this section, and a clear explanation of how the working papers relate to that information.

(ii) All statistical studies must be submitted and supported in the form prescribed in § 1.363 of this chapter.

(h) Each tariff filing submitted by a price cap local exchange carrier that

introduces or changes the rates for connection charge subelements for expanded interconnection, as defined in § 69.121 of this chapter, must be accompanied by cost data sufficient to establish that such charges will not recover more than a just and reasonable portion of the carrier's overhead costs.

* * * * *

(k) In accordance with §§ 61.41 through 61.49, price cap local exchange carriers that elect to file their annual access tariff pursuant to section 204(a)(3) of the Communications Act shall submit supporting material for their interstate annual access tariffs, absent rate information, 90 days prior to July 1 of each year.

(l) On each page of cost support material submitted pursuant to this section, the issuing carrier shall indicate the transmittal number under which that page was submitted.

Subpart H—[Removed]

22. Remove Subpart H consisting of §§ 61.151 through 61.153.

Subpart G—[Redesignated as Subpart H]

23. Redesignate Subpart G (§§ 61.131 to 61.136) as Subpart H.

Subpart F—[Redesignated as Subpart G]

24. Redesignate Subpart F (§§ 61.66 to 61.87) as Subpart G.

25. Designate §§ 61.52 through 61.59 as subpart F, and add a new subpart F heading to read as follows:

Subpart F—Formatting and Notice Requirements for Tariff Publications

26. Section 61.51 is added to newly designated subpart F to read as follows:

§ 61.51 Scope.

The rules in this subpart apply to tariffs filed by issuing carriers, with the exception of the informational tariffs filed pursuant to 47 U.S.C. 226(h)(1)(A), unless otherwise noted.

27. Section 61.52 is amended by removing paragraph (a), redesignating paragraphs (b) and (c) as paragraphs (a) and (b) and revising newly redesignated paragraph (a) introductory text, and newly redesignated paragraph (b) to read as follows:

§ 61.52 Form, size, type, legibility, etc.

(a) Pages of tariffs must be numbered consecutively and designated as "Original title page," "Original page 1," "Original page 2," etc.

* * * * *

(b) All issuing carriers shall file all tariff publications and associated documents, such as transmittal letters, requests for special permission, and supporting information, electronically in accordance with the requirements set forth in § 61.13 through § 61.17.

28. Section 61.55 is amended by revising paragraph (a) to read as follows:

§ 61.55 Contract-based tariffs.

(a) This section shall apply to price cap local exchange carriers permitted to offer contract-based tariffs under § 69.727(a) of this chapter.

* * * * *

29. Section 61.58 is amended by revising paragraphs (a)(2)(ii), (d), (e)(1) introductory text and adding new paragraph (f) to read as follows:

§ 61.58 Notice requirements.

(a) * * *

(2) * * *

(ii) Local exchange carriers may elect not to file tariffs pursuant to section 204(a)(3) of the Communications Act. For dominant carriers, any such tariffs shall be filed on at least 16 days' notice. For nondominant carriers, any such tariffs shall be filed on at least one days' notice.

* * * * *

(d)(1) A price cap local exchange carrier that is filing a tariff revision to remove its corridor or interstate intraLATA toll services from its interexchange basket pursuant to § 61.42(d)(4)(ii) shall submit such filing on at least fifteen days' notice.

(2) A price cap local exchange carrier that has removed its corridor and interstate intraLATA toll services from its interexchange basket pursuant to § 61.42(d)(4)(ii) shall file subsequent tariff filings for corridor or interstate intraLATA toll services on at least one day's notice.

(e) *Non-price cap local exchange carriers and/or services.* (1) Tariff filings in the instances specified in paragraphs (e)(1)(i), (ii), and (iii) of this section by dominant carriers must be made on at least 15 days' notice.

* * * * *

(f) All tariff filings of domestic and international non-dominant carriers must be made on at least one days' notice.

30. Section 61.59 is amended by revising paragraphs (b) and (c) to read as follows:

§ 61.59 Effective period required before changes.

* * * * *

(b) Changes to rates and regulations for dominant carriers that have not yet become effective, *i.e.,* are pending, may not be made unless the effective date of the proposed changes is at least 30 days after the scheduled effective date of the pending revisions.

(c) Changes to rates and regulations for dominant carriers that have taken effect but have not been in effect for at least 30 days may not be made unless the scheduled effective date of the proposed changes is at least 30 days after the effective date of the existing regulations.

31. Section 61.66 is revised to read as follows:

§ 61.66 Scope.

The rules in this subpart apply to all issuing carriers, unless otherwise noted.

32. Section 61.68 is amended by revising paragraph (a) to read as follows:

§ 61.68 Special notations.

(a) Any tariff filing made pursuant to an Application for Special Permission, Commission decision or order must contain the following statement:

Issued under authority of (specific reference to the special permission, Commission decision, or order) of the Commission.

* * * * *

33. Section 61.83 is revised to read as follows:

§ 61.83 Consecutive numbering.

Issuing carriers should file tariff publications under consecutive FCC numbers. If this cannot be done, a memorandum containing an explanation of the missing number or numbers must be submitted. Supplements to a tariff must be numbered consecutively in a separate series.

34. Section 61.86 is revised to read as follows:

§ 61.86 Supplements.

An issuing carrier may not file a supplement except to suspend or cancel a tariff publication, or to defer the effective date of pending tariff revisions. A carrier may file a supplement for the voluntary deferral of a tariff publication.

35. Section 61.87 is amended by revising paragraph (a) introductory text, paragraphs (a)(1)(i), (a)(1)(ii), (a)(3), and (c) to read as follows:

§ 61.87 Cancellation of tariffs.

(a) An issuing carrier may cancel an entire tariff. Cancellation of a tariff automatically cancels every page and supplement to that tariff except for the canceling Title Page or first page.

(1) * * *

(i) The issuing carrier whose tariff is being canceled must revise the Title Page or the first page of its tariff indicating that the tariff is no longer effective, or

(ii) The issuing carrier under whose tariff the service(s) will be provided must revise the Title Page or first page of the tariff to be canceled, using the name and numbering shown in the heading of the tariff to be canceled, indicating that the tariff is no longer effective. This carrier must also file with the Commission the new tariff provisions reflecting the service(s) being canceled. Both filings must be effective on the same date and may be filed under the same transmittal.

* * * * *

(3) A carrier canceling its tariff, as described in this section, must comply with § 61.54(b)(1) and (b)(5), as applicable.

* * * * *

(c) When a carrier ceases to provide service(s) without a successor, it must cancel its tariff pursuant to the notice requirements of § 61.58, as applicable, unless otherwise authorized by the Commission.

36. Section 61.132 is revised to read as follows:

§ 61.132 Method of filing concurrences.

A carrier proposing to concur in another carrier's effective tariff must deliver one copy of the concurrence to the issuing carrier in whose favor the concurrence is issued. The concurrence must be signed by an officer or agent of the carrier executing the concurrence, and must be numbered consecutively in a separate series from its FCC tariff numbers. At the same time the issuing carrier revises its tariff to reflect such a concurrence, it must file one copy of the concurrence electronically with the Commission in accordance with the requirements set forth in §§ 61.13 through 61.17. The concurrence must bear the same effective date as the date of the tariff filing reflecting the concurrence. Carriers shall file revisions reflecting concurrences in their tariffs on the notice period specified in § 61.58.

37. Section 61.134 is revised to read as follows:

§ 61.134 Concurrences for through services.

An issuing carrier filing rates or regulations for through services between points on its own system and points on another carrier's system (or systems), or between points on another carrier's system (or systems), must list all concurring, connecting or other participating carriers as provided in § 61.54 (f), (g), and (h). A concurring carrier must tender a properly executed instrument of concurrence to the issuing carrier. If rates and regulations of the other carriers engaging in the through service(s) are not specified in the issuing carrier's tariff, that tariff must state where the other carrier's rates and regulations can be found. Such reference(s) must contain the FCC number(s) of the referenced tariff publication(s), the exact name(s) of the carrier(s) issuing such tariff publication(s), and must clearly state how the rates and regulations in the separate publications apply.

38. Section 61.191 is revised to read as follows:

§ 61.191 Carrier to file supplement when notified of suspension.

If an issuing carrier is notified by the Commission that its tariff publication has been suspended, the carrier must file, within five business days from the release date of the suspension order, a consecutively numbered supplement without an effective date, which specifies the schedules which have been suspended.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

Authority: 47 U.S.C. 154, 254(K); secs. 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, and 254(k) unless otherwise noted.

40. Section 64.709 is amended by revising paragraphs (d)(1) and (d)(2) to read as follows:

§ 64.709 Informational tariffs.

* * * * *

(d) * * *

(1) The original of the cover letter shall be submitted to the Secretary without attachments, along with FCC Form 159, and the appropriate fee to the address set forth in § 1.1105 of this chapter.

(2) Carriers should file informational tariffs and associated documents, such as cover letters and attachments, electronically in accordance with §§ 61.13 and 61.14 of this chapter.

* * * * *

[FR Doc. 2010–19580 Filed 8–10–10; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 75, No. 154
Wednesday, August 11, 2010

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

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Microsemi Corporation of Irvine, California, an exclusive license to U.S. Patent No. 7,135,871, "Soil Moisture Sensor," issued on November 14, 2006.

DATES: Comments must be received on or before September 10, 2010.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Microsemi Corporation of Irvine, California has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard J. Brenner,

Assistant Administrator.

[FR Doc. 2010–19795 Filed 8–10–10; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Fresno County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Fresno County Resource Advisory Committee will be meeting in Prather, California, September 29, 2010. The purpose of the meeting will be to develop a timeline for receiving project proposals for the next funding cycle and review monitoring accomplishments.

DATES: The meeting will be held on September 29, 2010 from 6 p.m. to 8:30 p.m.

ADDRESSES: The meeting will be held at the High Sierra Ranger District, 29688 Auberry Rd., Prather, CA. Send written comments to Robbin Ekman, Fresno County Resource Advisory Committee Coordinator, c/o Sierra National Forest, High Sierra Ranger District, 29688 Auberry Road, Prather, CA 93651 or electronically to *rekman@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Robbin Ekman, Fresno County Resource Advisory Committee Coordinator, (559) 855–5355 ext. 3341.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Payments to States Fresno County Title II project matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Agenda items to be covered include: (1) Develop timeline for new project proposals and (2) Discuss monitoring accomplishments of current projects.

Dated: August 3, 2010.

Ray Porter,

District Ranger.

[FR Doc. 2010–19665 Filed 8–10–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator of the Foreign Agricultural Service (FAS) today accepted and began a review of a petition for trade adjustment assistance filed under the Fiscal Year 2011 program by the Prune Bargaining Association on behalf of prune and dried plum producers in California. The Administrator will determine within 40 days whether increasing imports of prunes and dried plums contributed importantly to a greater than 15-percent decrease in the average annual price of prunes and dried plums compared to the average of the three preceding marketing years. If the determination is affirmative, producers who produce and market prunes and dried plums in California will be eligible to apply to the Farm Service Agency for free technical assistance and cash benefits.

FOR FURTHER INFORMATION CONTACT: Trade Adjustment Assistance for Farmers Program Staff, FAS, USDA by phone: (202) 720–0638 or (202) 690–0633; or by e-mail at: *tradeadjustment@fas.usda.gov;* or visit the TAA for Farmers' Web site: *http://www.fas.usda.gov/itp/taa.*

Dated: July 30, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–19791 Filed 8–10–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Tag Recapture Card

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and

respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 12, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Eric Orbesen, (800) 437–3936 or *Eric.Orbesen@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of a currently approved information collection.

The Cooperative Game Fish Tagging Program (CGFTP) was initiated in 1954 by Woods Hole Oceanographic Institution (WHOI). In 1973 the CGFTP became a cooperative effort between WHOI and the NOAA National Marine Fisheries (NMFS) as part of a comprehensive research program resulting from passage of the Migratory Game Fish Study Act of 1959 (Pub. L. 86–359) and other legislative acts under which the NMFS operates, including 16 U.S.C. Section 760e. In 1980 sole control of the CGFTP was handed over to the NMFS. The CGFTP was later renamed the Cooperative Tagging Center (CTC). The CTC attempts to determine the migratory patterns and other biological information of billfish, tunas, and swordfish by having fishermen tag and release their catch, so that fish can be subsequently recaptured.

The primary objectives of a tagging program are to obtain scientific information on fish growth and movements necessary to assist in stock assessment and management. This is accomplished by the random recapture of tagged fish by fishermen and the subsequent voluntary submission of the appropriate data.

II. Method of Collection

The recapture cards will be sent out to the constituents who will fill in the cards with the pertinent information when and if they recapture a tagged fish and mail the cards back to NMFS offices.

III. Data

OMB Control Number: 0648–0259.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 240.

Estimated Time per Response: 2 minutes.

Estimated Total Annual Burden Hours: 8.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

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

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

Dated: August 6, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–19755 Filed 8–10–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

Civil Nuclear Trade Advisory Committee Public Meeting

AGENCY: International Trade Administration, DOC.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Civil Nuclear Trade Advisory Committee (CINTAC).

DATES: The meeting is scheduled for Wednesday, September 1, 2010, at 11 a.m. Eastern Daylight Time (EDT).

ADDRESSES: The meeting will be held in Room 4830, U.S. Department of Commerce, Herbert Clark Hoover Building, 1401 Constitution Ave., NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Caliva, Office of Energy & Environmental Industries, International Trade Administration, Room 4053, 1401 Constitution Ave., NW., Washington, DC 20230. (Phone: 202–482–8245; Fax: 202–482–5665; e-mail: *Frank.Caliva@trade.gov*).

SUPPLEMENTARY INFORMATION:

Background: The CINTAC was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.), in response to an identified need for consensus advice from U.S. industry to the U.S. Government regarding the development and administration of programs to expand United States exports of civil nuclear goods and services in accordance with applicable United States regulations, including advice on how U.S. civil nuclear goods and services export policies, programs, and activities will affect the U.S. civil nuclear industry's competitiveness and ability to participate in the international market.

Topics To Be Considered: The agenda for the September 1, 2010, CINTAC meeting is as follows:

Public Session

1. Opening remarks by Chairman.
2. Trade Promotion Activities Update, including U.S. Department of Commerce-led civil nuclear trade mission to Europe, U.S. industry program at the International Atomic Energy Agency, and U.S.-Brazil Nuclear Codes and Standards Workshop.
3. Public comment period.

Closed Session

4. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app 2 sections (10)(a)(1) and 10(a)(3).

The open session will be disabled-accessible. Public seating is limited and available on a first-come, first-served basis. Members of the public wishing to attend the meeting must notify Mr. Frank Caliva at the contact information below by 5 p.m. EDT on Tuesday, August 31, 2010, in order to pre-register for clearance into the building. Please specify any requests for reasonable accommodation at least five business days in advance of the meeting. Last minute requests will be accepted, but may be impossible to fill.

A limited amount of time will be available for pertinent brief oral

comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 30 minutes. Individuals wishing to reserve speaking time during the meeting must contact Mr. Caliva and submit a brief statement of the general nature of the comments and the name and address of the proposed participant by 5 p.m. EDT on Tuesday, August 31, 2010. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration (ITA) may conduct a lottery to determine the speakers. Speakers are requested to bring at least 20 copies of their oral comments for distribution to the participants and public at the meeting.

Any member of the public may submit pertinent written comments concerning the CINTAC's affairs at any time before and after the meeting. Comments may be submitted to the Civil Nuclear Trade Advisory Committee, Office of Energy & Environmental Industries, Room 4053, 1401 Constitution Ave., NW., Washington, DC 20230. To be considered during the meeting, comments must be received no later than 5 p.m. EDT on Tuesday, August 31, 2010, to ensure transmission to the Committee prior to the meeting. Comments received after that date will be distributed to the members but may not be considered at the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on July 29, 2010, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app 2 section (10)(d)), that the portion of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in (5 U.S.C. app 2 section (10)(a)(1) and 10(a)(3). The portion of the meeting dealing with matters requiring disclosure of trade secrets and commercial or financial information as described in 5 U.S.C. 552b(c)(4) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app 2 section (10)(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

Copies of CINTAC meeting minutes will be available within 90 days of the meeting.

Edward A. O'Malley,

Director, Office of Energy and Environmental Industries.

[FR Doc. 2010–19796 Filed 8–10–10; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–904]

Certain Activated Carbon From the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review

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

DATES: *Effective Date:* August 11, 2010.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone—(202) 482–3207.

Background

On May 28, 2010, the Department of Commerce ("Department") published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on certain activated carbon from the People's Republic of China ("PRC") covering the period April 1, 2009–March 31, 2010. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 75 FR 29976–29980 (May 28, 2010) ("*Initiation*").

On June 15, 2010, Calgon Carbon Corporation and Norit Americas Inc. ("Petitioners") withdrew their request for an administrative review for the following companies: Actview Carbon Technology Co., Ltd.; Alashan Yongtai Activated Carbon Co., Ltd.; Anhui Hengyuan Trade Co., Ltd.; Baoding Activated Carbon Factory; Beijing Broad Activated Carbon Co., Ltd.; Beijing Haijian Jiechang Environmental Protection Chemicals; Beijing Hibridge Trading Co., Ltd.; Beijing Huapeng Environment Protection Materials; Benbu Jiutong Trade Co., Ltd.; Changji Hongke Activated Carbon Co., Ltd.; Chengde Jiayu Activated Carbon Factory; China National Building Materials and Equipment Import Export Corp.; China National Nuclear General Company Ningxia Activated Carbon Factory; Da Neng Zheng Da Activated Carbon Co., Ltd.; Datong Carbon Corporation; Datong Changtai Activated Carbon Co., Ltd.; Datong City Zuoyun County Activated Carbon Co., Ltd.; Datong Fenghua Activated Carbon; Datong Fuping Activated Carbon Co., Ltd.; Datong Huanqing Activated Carbon Co., Ltd.; Datong Huaxin Activated Carbon; Datong Huiyuan Cooperative Activated Carbon Plant; Datong Kaneng Carbon Co. Ltd.; Datong Kangda Activated Carbon Factory; Datong Runmei Activated Carbon Factory; Datong Tianzhao Activated Carbon Co., Ltd.; DaTong Tri-Star & Power Carbon Plant; Datong Weidu Activated Carbon Co., Ltd.; Datong Xuanyang Activated Carbon Co. Ltd.; Datong Zuoyun Biyun Activated Carbon Co., Ltd.; Datong Zuoyun Fu Ping Activated Carbon Co., Ltd.; Dezhou Jiayu Activated Carbon Factory; Dongguan Baofu Activated Carbon; Dushanzi Chemical Factory; Fangyuan Carbonization Co., Ltd.; Fu Yuan Activated Carbon Co., Ltd.; Fujian Jianyang Carbon Plant; Fujian Nanping Yuanli Activated Carbon Co., Ltd.; Fuzhou Taking Chemical; Fuzhou Yihuan Carbon; Great Bright Industrial; Hangzhou Hengxing Activated Carbon; Hangzhou Hengxing Activated Carbon Co., Ltd.; Hangzhou Linan Tianbo Material; Hebei Shenglun Import & Export Group Company; Hegongye Ninxia Activated Carbon Factory; Heilongjiang Provincial Hechang Imp. & Exp. Co., Ltd.; Hongke Activated Carbon Co., Ltd.; Huaibei Environment Protection Material Plant; Huairen Huanyu Purification Material Co., Ltd.; Huaiyushan Activated Carbon Group; Huatai Activated Carbon; Huaxin Active Carbon Plant; Huzhou Zhonglin Activated Carbon; Inner Mongolia Taixi Coal Chemical Industry Limited Company; Itigi Corp. Ltd.; J&D Activated Carbon Filter Co., Ltd.; Jiangle County Xinhua Activated Carbon Co., Ltd.; Jiangxi Hansom Import Export Co.; Jiangxi Huaiyushan Activated Carbon; Jiangxi Huaiyushan Activated Carbon Group Co.; Jiangxi Huaiyushan Suntar Active Carbon Co., Ltd.; Jiangxi Jinma Carbon; Jianou Zhixing Activated Carbon; Jiaocheng Xinxin Purification Material Co., Ltd.; Jilin Goodwill Activated Carbon Plant; Jing Mao (Dongguan) Activated Carbon Co., Ltd.; Kaihua Xingda Chemical Co., Ltd.; Kaihua Xinghua Chemical Plant; Kemflo (Nanjing) Environmental Tech; Kunshan Actview Carbon Technology; Link Link Shipping Limited; Longyan Wanan Activated Carbon; Nanjing Mulinsen Charcoal; Nantong Ameriasia Advanced Activated Carbon Product Co., Ltd.; Ningxia Baota Active Carbon Plant; Ningxia Baota Activated Carbon Co.,

Ltd.; Ningxia Blue-White-Black Activated Carbon; Ningxia Fengyuan Activated Carbon Co., Ltd.; Ningxia Haoqing Activated Carbon Co., Ltd.; Ningxia Henghui Activated Carbon; Ningxia Honghua Carbon Industrial Corporation; Ningxia Huinong Xingsheng Activated Carbon Co., Ltd.; Ningxia Jirui Activated Carbon; Ningxia Luyuangheng Activated Carbon Co., Ltd.; Ningxia Taixi Activated Carbon; Ningxia Tianfu Activated Carbon Co., Ltd.; Ningxia Tongfu Coking Co., Ltd.; Ningxia Weining Active Carbon Co., Ltd.; Ningxia Xingsheng Coal and Active Carbon Co., Ltd.; Ningxia Xingsheng Coke and Activated Carbon; Ningxia Yinchuan Lanqiya Activated Carbon Co., Ltd.; Ningxia Yirong Alloy Iron Co., Ltd.; Ningxia Zhengyuan Activated; OEC Logistic Qingdao Co., Ltd.; Panshan Import and Export Corporation; Pingluo Xuanzhong Activated Carbon Co., Ltd.; Shanghai Activated Carbon Co. Ltd.; Shanghai Coking and Chemical Corporation; Shanghai Goldenbridge International; Shanghai Jiayu International Trading; Shanghai Jinhu Activated Carbon; Shanghai Mebao Activated Carbon; Shanhai Xingchang Activated Carbon; Shanxi Blue Sky Purification Material Co., Ltd.; Shanxi Qixian Hongkai Active Carbon Goods; Shanxi Supply and Marketing Cooperative; Shanxi Tianli Ruihai Enterprise Co.; Shanxi Xiaoyi Huanyu Chemicals Co., Ltd.; Shanxi Xinhua Activated Carbon Co., Ltd.; Shanxi Xinhua Chemical Co., Ltd. (formerly known as Shanxi Xinhua Chemical Factory); Shanxi Xinhua Protective Equipment; Shanxi Xinshidai Imp. Exp. Co., Ltd.; Shanxi Zuoyun Yunpeng Coal Chemistry; Shenzhen Sihaiweilong Technology Co.; Sincere Carbon Industrial Co., Ltd.; Taining Jinhu Carbon; Tianchang (Tianjin) Activated Carbon; Tonghua Bright Future Activated Carbon Plant; Tonghua Xinpeng Activated Carbon Factory; Valqua Seal Products (Shanghai) Co.; Wellink Chemical Industry; Xi Li Activated Carbon Co., Ltd.; Xiamen All Carbon Corporation; Xingan County Shenxin Activated Carbon Factory; Xinhua Chemical Company Ltd.; Xinyuan Carbon; Xuanzhong Chemical Industry; Yangyuan Hengchang Active Carbon; Yicheng Logistics; Yinchuan Lanqiya Activated Carbon Co., Ltd.; Yinyuan Carbon; YunGuan Chemical Factory; Yuanguang Activated Carbon Co., Ltd.; Yuyang Activated Carbon Co., Ltd.; Zhejiang Quizhou Zhongsen Carbon; Zhejiang Yun He Tang Co., Ltd.; Zhuxi Activated Carbon; Zuoyun Bright Future Activated Carbon Plan. The Petitioners were the only party to request a review of these companies.

Partial Rescission

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The Petitioners' request was submitted within the 90-day period, and thus, is timely. Because the Petitioners' withdrawal of requests for review is timely and because no other party requested a review of the aforementioned companies, in accordance with 19 CFR 351.213(d)(1), we are partially rescinding this review with respect to the above listed companies.

Assessment Rates

At this time the Department cannot order liquidation for the above companies because they remain part of the PRC entity and their respective entries may be under review in the ongoing administrative review. The Department intends to issue assessment instructions for the PRC entity, which will cover any entries by the above companies, 15 days after publication of the final results of the ongoing administrative review.

Notification to Importers

This notice serves as a final reminder to importers for whom this review is being rescinded, as of the publication date of this notice, of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: August 5, 2010.

Edward C. Yang,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–19828 Filed 8–10–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID. DoD–2010–OS–0111]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 12, 2010.

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, Room 3C843, 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: To request more information on this proposed information collection, or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense (Personnel and Readiness), Department of Defense Education Activity (Policy and Legislation), ATTN: J. Michael Lynch, 4040 North Fairfax Drive, Arlington, VA 22203 or call (703) 588–3201.

Title, Associated Form, and OMB Control Number: Department of Defense Education Activity Student Registration; DoDEA Form 600; OMB Number 0704–TBD.

Needs and Uses: This information collection is necessary to obtain information about Department of Defense military and civilian sponsors and the dependents they wish to enroll in a Department of Defense Education Activity (DoDEA) school. The information gathered on the sponsors is used to determine their dependents' enrollment eligibility to attend the DoDEA schools and their enrollment category, (*i.e.,* whether the sponsors' dependents are authorized to enroll on a tuition-free or tuition-paying and space-required or space-available basis). Information gathered about students is used to verify age; determine, class and transportation schedules; record attendance, absence and withdrawal; record and monitor student progress, grades, course and grade credits, educational services and placement, activities, awards, special interest and accomplishments.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; Federal Government personnel and/or Federal contractors. Respondents are not required to keep records.

Annual Burden Hours: 35,627.

Number of Respondents: 71,254.

Responses per Respondent: 1.

Average Burden per Response: 30 minutes.

Frequency: One time for school registration.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The primary objective of the information collection is to determine that DoDEA has all the information it requires to make available a quality education, from prekindergarten through grade 12, for the eligible dependents of the Department of Defense (DoD) military and civilian personnel on official assignments. The DoDEA Form 600 secures data about each sponsor who enrolls a child in a DoDEA school to determine the child's eligibility for enrollment. Eligibility for enrollment depends on whether the sponsor is a member of the Armed Forces or a civilian employee of the DoD, and which component thereof (Armed Forces or DoD) he or she is a member; or is an employee of another Federal Agency; or is a DoD contractor; or whether the sponsor is a U.S. citizen or a foreign national; and whether the sponsor is assigned overseas or to an military installation in the U.S. Eligibility also depends on whether the student is a dependent of a member of the Armed Forces or of the Federal Government who is authorized Federally funded transportation to an overseas assignment, or is authorized residence on a domestic U.S. military installation. The DoDEA Form 600 also secures information about each enrolled student to ensure that DoDEA makes available the appropriate classrooms, staffing, and supportive services. The data collected on the DoDEA Form 600, "DoDEA Student Registration," is covered by the DoDEA System of Records Notice DoDEA 26 available at: *http://privacy.defense.gov/notices/osd/DODEA26.shtml*, "Department of Defense Education Activity Dependent Children's School Program Files." The paper forms and electronic data systems containing the sponsor and dependent personally identifying information are secured in accordance with the requirements of Federal law and implementing DoD regulations.

Dated: August 6, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–19789 Filed 8–10–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 10–27, 10–31 and 10–41]

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 three section 36(b)(1) arms sales notifications 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: The following are copies of letters to the Speaker of the House of Representatives, Transmittals 10–27, 10–31, and 10–41 with associated attachments.

Dated: August 6, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Transmittal No. 10–27

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 10–27 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

AUG 05 2010

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. 10-27, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Colombia for defense articles and services estimated to cost $162 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,

Richard A. Genaille, Jr.
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification

Transmittal No. 10-27

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: Colombia

(ii) Total Estimated Value:

Major Defense Equipment*	$152 million
Other	$ 10 million
TOTAL	$162 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 9 UH-60L BLACK HAWK Helicopters(1 for Colombian Air Force, 4 for Colombian National Police, 4 for Colombian Army), 18 T700-GE-701D General Electric Engines, warranty, internal fuel tanks, spare and repair parts, tools and support equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, logistics, and technical support services, and other related elements of logistics support.

(iv) Military Department: Army (UYD Amd #1, VFH, VFI)

(v) Prior Related Cases, if any:
FMS Case UUF-$143M–13Jun00
FMS Case UTN $116M–24Dec96
FMS Case USI $ 37M–28Dec93
FMS Case ULY $ 35M–29Jun89
FMS Case UKZ $ 36M–30Jun87
FMS Case UXM$ 96M–19Sep05
FMS Case VBR $230M–18Apr07
FMS Case UYD $ 30M–10Mar06

(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: 5 August 2010

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Colombia – UH-60L BLACK HAWK Helicopters

The Government of Colombia has requested a possible sale of 9 UH-60L BLACK HAWK Helicopters(1 for Colombian Air Force, 4 for Colombian National Police, 4 for Colombian Army), 18 T700-GE-701D General Electric Engines, warranty, internal fuel tanks, spare and repair parts, tools and support equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, logistics, and technical support services, and other related elements of logistics support. The estimated cost is $162M.

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, which has been and continues to be an important force for political stability and economic progress in South America.

Colombia intends to use these helicopters to modernize its armed forces. The Colombian Air Force intends to expand its existing medical evacuation architecture to expedite movement of injured personnel from combat zones. The Colombian National Police will expand its existing utility helicopter defense architecture and counter threats posed by narco-terrorist elements within Colombia. The purchase of UH-60L BLACK HAWK Helicopters will contribute to Colombia's goal to update its capability while enhancing interoperability between Colombia, the U.S., and other allies.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be Sikorsky Aircraft Corporation in Stratford, Connecticut. There are no known offset agreements proposed in connection with this potential sale. Implementation of this proposed sale will require U.S. Government or contractor representatives to travel to Colombia for a period of 8 weeks for equipment deprocessing/fielding, system checkout and new equipment training.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 10–31

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 10–31 with attached transmittal and policy justification.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

AUG 05 2010

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. 10-31, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $152 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,

Richard A. Genaille, Jr.
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 10-31

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Iraq

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$152 million
TOTAL	$152 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: two years of contractor logistics support for Mi-17 Helicopters and two years of logistics support for U.S.-origin rotary wing aircraft not in DoD's inventory.

(iv) Military Department: Army (VEN)

(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: 5 August 2010

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Iraq – Technical Support Services

The Government of Iraq has requested a possible sale of two years of contractor logistics support for Mi-17 Helicopters and two years of logistics support for U.S.-origin rotary wing aircraft not in DoD's inventory. The estimated cost is $152 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. This proposed sale directly supports the Iraq government and serves the interests of the Iraqi people and the U.S.

This proposed sale will advance Iraqi efforts to develop a strong national military and police force structure. The support and services will enable Iraq to equip new forces to assume the missions currently accomplished by U.S. and coalition forces and to sustain itself in its efforts to bring stability to Iraq.

The proposed sale of this service will not alter the basic military balance in the region.

The prime contractor will be ARINC in Annapolis, Maryland. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this sale will require the assignment of multiple U.S. Government or contractor representatives to Iraq for a period of two years with an option to extend them for additional years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 10–41

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 10–41 with attached transmittal and policy justification.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

AUG 0 5 2010

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. 10-41, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Israel for defense articles and services estimated to cost $2.0 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard A. Genaille, Jr.

Richard A. Genaille, Jr.
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification

Transmittal No. 10-41

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: Israel

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 billion
Other	$2.0 billion
TOTAL	$2.0 billion

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 60,000,000 gallons of unleaded gasoline, 284,000,000 gallons of JP-8 aviation jet fuel, and 100,000,000 gallons of diesel fuel

(iv) Military Department: Army (ZNC, ZND, and ZNE)

(v) Prior Related Cases, if any: numerous cases dating back to 1995

(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: 5 August 2010

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Israel – Unleaded Gasoline, JP-8 Aviation Jet Fuel, and Diesel Fuel

The Government of Israel has requested a possible sale of 60,000,000 gallons of unleaded gasoline, 284,000,000 gallons of JP-8 aviation jet fuel, and 100,000,000 gallons of diesel fuel. The estimated cost is $2.0 billion.

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 which has been, and continues to be, an important force for political stability and economic progress in the Middle East.

The proposed sale of the JP-8 aviation fuel will enable Israel to maintain the operational capability of its aircraft inventory. The unleaded gasoline and diesel fuel will be used for ground forces' vehicles and other equipment used in keeping peace and security in the region. Israel will have no difficulty absorbing this additional fuel into its armed forces.

The proposed sale of these three types of fuel will not alter the basic military balance in the region.

The vendors are unknown at this time due to the competitive bid process for the supply source(s). There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Israel.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2010–19767 Filed 8–10–10; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0112]

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 September 10, 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 Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, Room 3C843 Pentagon, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler at (703) 767–5045.

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 Privacy Act Officer, Headquarters Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

The specific changes to the records 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: August 6, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S335.01

SYSTEM NAME:

Training and Employee Development Record System (April 29, 2010; 75 FR 22562).

CHANGES:

* * * * *

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 DLA Privacy Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221."

* * * * *

S335.01

SYSTEM NAME:

Training and Employee Development Record System.

SYSTEM LOCATION:

The master file is maintained by the Director, Defense Logistics Agency Training Center, Building 11, Section 5, 3990 E. Broad Street, Columbus, OH 43216–5000.

Subsets of the master file are maintained by DLA Support Services, Business Management Office, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221; the DLA Primary Level Field Activities; and individual supervisors.

Official mailing addresses are published as an appendix to DLA's compilation of systems of records notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals receiving training funded or sponsored by the Defense Logistics Agency (DLA) to include DLA employees, Department of Defense military personnel, non-appropriated fund personnel, DLA contractor personnel, and DLA foreign national personnel may be included in the system at some locations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individuals name, Social Security Number (SSN), student identification number, date of birth, e-mail, home addresses; occupational series, grade, and supervisory status; registration and training data, including application or nomination documents, pre-and post-test results, student progress data, start and completion dates, course descriptions, funding sources and costs, student goals, long- and short-term training needs, and related data. The files may contain employee agreements and details on personnel actions taken with respect to individuals receiving apprentice or on-the-job training.

Where training is required for professional licenses, certification, or recertification, the file may include proficiency data in one or more skill areas. Electronic records may contain computer logon and password data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. chapter 41, Training; E.O. 11348, Providing for the further training of Government employees, as amended by E.O. 12107, Relating to the Civil Service Commission and labor-management in the Federal Service; 5 CFR part 410, Office of Personnel Management-Training and E.O. 9397 (SSN), as amended.

PURPOSE(S):

Information is used to manage and administer training and development programs; to identify individual training needs; to screen and select candidates for training; and for reporting and financial forecasting, tracking, monitoring, assessing, and payment reconciliation purposes. Statistical data, with all personal identifiers removed, are used to compare hours and costs allocated to training among different DLA activities and different types of 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 may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Veterans Affairs for inspecting, surveying, auditing, or evaluating apprentice or on-the-job training programs.

To the Department of Labor for inspecting, surveying, auditing, or evaluating apprentice training programs and other programs under its jurisdiction.

To Federal, State, and local agencies and oversight entities to track, manage, and report on mandatory training requirements and certifications.

To public and private sector educational, training, and conferencing entities for participant enrollment, tracking, evaluation, and payment reconciliation purposes.

To Federal agencies for screening and selecting candidates for training or developmental programs sponsored by the agency.

To Federal oversight agencies for investigating, reviewing, resolving, negotiating, settling, or hearing complaints, grievances, or other matters under its cognizance.

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/or on electronic storage media.

RETRIEVABILITY:

Records may be retrieved by name, student identification number, or Social Security Number (SSN).

SAFEGUARDS:

Records are maintained in physical and electronic areas accessible only to DLA personnel who must use the records to perform assigned duties. Physical access is limited through the use of locks, guards, card swipe, and other administrative procedures. The electronic records are deployed on accredited systems with access restricted by the use of Common Access Card (CAC) and assigned system roles. The Web-based files are encrypted in accordance with approved information assurance protocols. Employees are warned through screen log-on protocols and periodic briefings of the consequences of improper access or use of the data. In addition, users are trained to lock or shutdown their workstations when leaving the work area. During non-duty hours, records are secured in access-controlled buildings, offices, cabinets or computer systems.

RETENTION AND DISPOSAL:

Training files are destroyed when 5 years old or when superseded, whichever is sooner. Employee agreements, individual training plans, progress reports, and similar records used in intern, upward mobility, career management, and similar developmental training programs are destroyed 1 year after employee has completed the program.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Defense Logistics Agency Training Center, Building 11, Section 5, 3990 E. Broad Street, Columbus, OH 43216–5000 and Staff Director, Business Management Office, DLA Enterprise Support, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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.

Written inquiries should contain the individual's name, Social Security Number (SSN), home address and telephone number. Current DLA employees may determine whether information about themselves is contained in subsets to the master file by accessing the system through their assigned DLA computer or by contacting their immediate supervisor.

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.

Written inquiries should contain the individual's name, Social Security Number (SSN), home address and telephone number. Current DLA employees may gain access to data contained in subsets to the master file by accessing the system through their assigned DLA computer or by contacting their immediate supervisor.

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 DLA Privacy Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual, current and past supervisors, personnel offices, educational and training facilities, licensing or certifying entities, the Defense Civilian Personnel Data System (DCPDS) and the Military Online Processing System (MOPS).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–19768 Filed 8–10–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2010–0019]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Army is proposing to amend a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on September 10, 2010, unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, Room 3C843 Pentagon, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Leroy Jones at (703) 428–6185.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records 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 Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are 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 a new or altered system report.

Dated: August 6, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0614–100/200 SAIG

SYSTEM NAME:

Inspector General Personnel System (July 25, 2008; 73 FR 43415).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Personnel and computerized files containing name, rank/grade, Social Security Number (SSN), education, duty position, organization of assignment, date assigned, estimated departure date, job specialty, and relevant career data."

* * * * *

A0614–100/200 SAIG

SYSTEM NAME:

Inspector General Personnel System.

SYSTEM LOCATION:

U.S. Army Inspector General Agency, Headquarters, Department of the Army, 1700 Army Pentagon, Washington, DC 20310–1700.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person assigned and/or detailed to the Offices of Inspectors General/Inspector General positions in Department of the Army and certain Department of Defense and Joint activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel and computerized files containing name, rank/grade, Social Security Number (SSN), education, duty position, organization of assignment, date assigned, estimated departure date, job specialty, and relevant career data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 3020, Inspector General; Army Regulation 20–1, Inspector General Activities and Procedures and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To manage assignment of members to Inspector General duties.

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' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files in folders and electronic storage media.

RETRIEVABILITY:

By individual's name or Social Security Number.

SAFEGUARDS:

Files are stored in locked containers accessible only to authorized persons with an official need-to-know. Computer data base access is limited by terminal control and a password system to authorized persons with an official need-to-know.

RETENTION AND DISPOSAL:

Information is retained until individual transfers or is separated; historical data remain in automated media for 4 years.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Inspector General, Headquarters, Department of the Army,

1700 Army Pentagon, Washington, DC 20310–1700.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Office of the Inspector General, Headquarters, Department of the Army, 1700 Army Pentagon, Washington, DC 20310–1700.

Individual should provide the full name, address, telephone number, Social Security Number (SSN), and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Office of the Inspector General, Headquarters, Department of the Army, 1700 Army Pentagon, Washington, DC 20310–1700.

Individual should provide the full name, address, telephone number, Social Security Number (SSN), and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army records and reports, and other sources providing or containing pertinent information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–19769 Filed 8–10–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education (ED).

ACTION: Notice of proposed information collection requests.

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: ED has requested emergency review of this information collection by OMB, as authorized under 44 U.S.C. 3507(j), because the use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information on a timely basis. Persons who wish to comment regarding the emergency approval must submit their comments to OMB by August 20, 2010. If OMB approves this emergency information collection request, the collection will be approved for a period not to exceed 180 days.

At the same time, ED requests comments for a full, three-year approval of this information collection request (ICR). Persons are invited to submit comments to ED on or before October 12, 2010.

ADDRESSES: Written comments regarding the emergency approval of this ICR should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*. Comments regarding the full approval of this ICR for a three-year period should be e-mailed to *ICDocketMgr@ed.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (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 this notice containing proposed information collection requests at the beginning of ED's review of the information collection. 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. ED invites public comment. ED is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of ED; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might ED enhance the quality, utility, and clarity of the information to be collected; and (5) how might ED minimize the burden of this collection on respondents, including through the use of information technology.

Dated: August 5, 2010.

James Hyler,

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

Office of Innovation and Improvement

Type of Review: New.

Title: TEACH.gov Job Listing Collection and Publication.

OMB #: 1855–NEW.

Agency Form #: N/A.

Frequency: On Occasion.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, Local, or Tribal Government, State Educational Agencies (SEAs) or Local Education Agencies (LEAs).

Reporting and Recordkeeping Hour Burden:

Responses: 60,000.

Burden Hours: 4,500.

Abstract: TEACH.gov will be a Web site clearinghouse for information necessary to become a PK–12 teacher, including, but not limited to: career preparation information, financial aid packages, certification resources, job listings and state/district profiles. TEACH.gov will also provide inspirational material to help promote and raise the perception of the teaching profession.

This Information Collection Request (ICR) represents the job listing section of TEACH.gov. TEACH.gov does not aim to become a "job bank." TEACH.gov will offer a section on the web site that displays an aggregate of existing teacher jobs throughout the United States. TEACH.gov will display a limited amount of job listing information on its Web site and the viewer will click through the source Web site link to view the full job description and application instructions.

The publishers of a job listing may be: a commercial or non-profit job listing service, a state educational agency (State Department of Education), a local educational agency (school district) or a school not operating within a school district. For the launch of TEACH.gov, the Web site will collect and publish teacher jobs for Pre-Kindergarten through Grade 12.

Additional Information: ED seeks emergency approval for a fully-

functional web based application that would link prospective teachers to opportunities for preparation, licensure, and employment. The job-posting feature phase of this web site must be fully functional by next month, September 2010, so the Administration can provide an effective resource for prospective and current teachers who are interested in teaching opportunities throughout the United States. In order to meet this need, ED must be able to collect limited information before the expiration of the time period established under the Paperwork Reduction Act of 1995.

The FY 2009 appropriation for the School Improvement Program, authorizes the Secretary to establish a national initiative, such as the TEACH campaign, to improve the recruitment, training, mentoring, retention, and placement of teachers and principals in order to improve educational outcomes. Only 7 percent of teachers are African American and 7 percent of teachers are Latino. The Nation also faces a major shortage of individuals who teach science, technology, engineering, and math (STEM). TEACH.gov is an essential component of the Secretary's effort to increase interest in and access to the teaching profession, particularly among minority individuals, and particularly in teaching science, technology, engineering, and math (STEM). TEACH.gov will be a virtual "one stop shopping center" for aspiring teachers to learn about ways to find a career in teaching that is personally best for them.

The TEACH campaign, which includes TEACH.gov, is a high priority of the Secretary and has the full and enthusiastic support of the President. Indeed, the Secretary is committed to delivering a full functioning Web site for the start of this coming school year and is scheduled to unveil TEACH.gov to the public next month with endorsements by the President and a variety of celebrities.

The Secretary plans to enter into partnerships with several organizations that support increasing interest in, and access to, the teaching profession, particularly among minority individuals and particularly for teaching STEM subjects. These organizations will work with the Department to direct aspiring minority and STEM teacher candidates to TEACH.gov to seek information about career opportunities as a teacher.

We ask for emergency approval because both the President and the Secretary believe that it is imperative that we increase interest in, and access to, the teaching profession, particularly for minority individuals and individuals who are interested in teaching STEM subjects. The Secretary believes that TEACH.gov will be very effective at achieving this objective, and no other Web site currently exists that is as comprehensive as TEACH.gov. We must launch TEACH.gov as soon as possible to meet the needs of schools and school districts in the coming academic year. Without approval of the Secretary's emergency request, we will be prohibited from collecting and providing essential information to aspiring teachers in a timely manner. Failure to launch TEACH.gov for this coming academic year would significantly reduce the effectiveness of the Administration's effort to increase the number of minority teachers and teachers of STEM subjects.

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 4372. 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 the Internet address *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. 2010–19749 Filed 8–10–10; 8:45 am]

BILLING CODE 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 October 12, 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: August 5, 2010.

James Hyler,

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

Institute of Education Sciences

Type of Review: Reinstatement.

Title: Schools and Staffing Survey (SASS 2011/12) Preliminary Field Activities 2010/11.

OMB #: 1850–0598.

Agency Form Number(s): N/A.

Frequency: One time.

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

Reporting and Recordkeeping Hour Burden:

Responses: 18,503.
Burden Hours: 886.

Abstract: The Schools and Staffing Survey (SASS) is an in-depth, nationally representative survey of first through twelfth grade public and private school teachers, principals, schools, library media centers, and school districts. For public school districts, principals, schools, teachers and school libraries, the survey estimates are state-representative. For private school principals, schools, and teachers, the survey estimates are representative of private school types. There are two additional components within SASS's 4-year data collection cycle: The Teacher Follow-up Survey (TFS) and the Principal Follow-up Survey (PFS), which are conducted a year after the SASS main collection. SASS respondents include public and private school principals, teachers, and school and school district staff. Topics covered include characteristics of teachers, principals, schools, school libraries, teacher training opportunities, retention, retirement, hiring, and shortages. This submission for SASS 2011/12 requests OMB approval for preliminary field activities to take place prior to data collection in the fall of 2011, including (a) Submitting SASS research applications to special districts that require prior research approval before their schools and a coordinator can be recruited for the study; (b) conducting a calling operation to verify whether a subset of districts are one-school districts and will require receiving a combined school- and district-level questionnaire; (c) contacting all of the remaining districts, asking whether they are willing to provide a Teacher Listing Form at a later time and to request email addresses for sampled school principals; and (d) mailing of a pre-contact letter to sample schools to verify the mailing address of the school and to notify the school about the upcoming data collection.

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 4376. 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. 2010–19811 Filed 8–10–10; 8:45 am]

BILLING CODE 4000–01–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 October 12, 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: August 6, 2010.

Sheila Carey,

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

Office of Postsecondary Education

Type of Review: Extension.
Title: Ronald E. McNair Postbaccalaureate Achievement Program Annual Performance Report.
OMB #: 1840–0640.
Agency Form Number(s): N/A.
Frequency: Annually.
Affected Public: Businesses or other for-profit; Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:
Responses: 200.
Burden Hours: 1,000.

Abstract: McNair Program grantees must submit the report annually. The report provides the U.S. Department of Education with information needed to evaluate a grantee's performance and compliance with program requirements and to award prior experience points in accordance with the program regulations. The data collection is also aggregated to provide national information on project participants and program outcomes.

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 4374. 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. 2010–19813 Filed 8–10–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

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

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.*

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. The OMB 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.

Dated: August 6, 2010.

Sheila Carey,

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

Office of Postsecondary Education

Type of Review: Revision.

Title of Collection: Fund for the Improvement of Postsecondary Education Performance Reports (FIPSE).

OMB #: 1840–0793.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Not-for-profit institutions.

Estimated Number of Annual Responses: 901.

Estimated Annual Burden Hours: 10,426.

Abstract: This collection includes an annual and a final performance report for use with all of the following FIPSE programs: Comprehensive (84.116B), EU–U.S. (84.116J), U.S.-Brazil (84.116M), North America (84.116N), and U.S.-Russia (84.116S) Programs. Also included is an annual and a final performance report for Congressionally-Directed grants (earmarks) (84.116Z). A total of five (5) forms comprise this collection. We need to collect this data in order to evaluate and assess each grantee for continued funding and assessment of their project.

Requests for copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4304. 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 the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title and OMB Control Number of the information collection when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–19808 Filed 8–10–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Equity and Excellence Commission

AGENCY: U.S. Department of Education, Office for Civil Rights.

ACTION: Notice of Establishment of the Equity and Excellence Commission.

SUMMARY: The U.S. Secretary of Education (Secretary) announces the establishment of the Equity and Excellence Commission (Equity Commission or Commission). The Federal Advisory Committee Act (FACA) (Pub. L. 92–463, as amended; 5 U.S.C.A., Appendix 2) shall govern the Equity Commission.

Purpose: The Secretary is establishing the Commission in order to collect information, analyze issues, and obtain broad public input regarding how the Federal government can increase educational opportunity by improving school funding equity. The Commission will also make recommendations for restructuring school finance systems to achieve equity in the distribution of educational resources and further student performance, especially for the students at the lower end of the achievement gap. The Commission will examine the disparities in meaningful educational opportunities that give rise to the achievement gap, with a focus on systems of finance, and recommend appropriate ways in which Federal policies could address such disparities.

In order to achieve this purpose, the Commission will collect and analyze information related to the issues described above, including information and comment from members of the public. To this end, the Commission will conduct no fewer than four (4) town hall meetings in different parts of the country, in addition to convening at such other times as the Commission deems appropriate, to gather information and will utilize other means of outreach to encourage and facilitate a public discussion of the issues. Approximately fifteen (15) months after the appointment of the members, the Commission will submit a report to the Secretary outlining its findings and any recommendations. The Commission's report will address, at a minimum, the following:

- Options for how Federal, State, and local governments could establish funding systems to ensure that all students receive equal educational opportunities.
- The cost of education in different settings, with consideration of students' educational needs, school needs, and variations in geography.

The Secretary will share a copy of the report with Congress through the United States Senate Committees on Appropriations and on Health, Education, Labor, and Pensions and the United States House of Representatives Committees on Appropriations and on Education and Labor.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Education, White House

Liaison Office, Washington, DC 20202, telephone: (202) 401–3677.

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

Dated: August 5, 2010.

Arne Duncan,

Secretary of Education.

[FR Doc. 2010–19800 Filed 8–10–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Equity and Excellence Commission

AGENCY: Office for Civil Rights, U.S. Department of Education.

ACTION: Request for Nominations to Serve on the Equity and Excellence Commission.

SUMMARY: The Secretary of Education (Secretary) invites interested parties to submit nominations for individuals to serve on the Equity and Excellence Commission.

SUPPLEMENTARY INFORMATION: The Equity and Excellence Commission (Equity Commission or Commission) will be established by the Secretary of Education and governed by the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463, as amended; 5 U.S.C.A., Appendix 2). The Commission will collect information, analyze issues, and obtain broad public input regarding how the Federal government can increase educational opportunity by improving school funding equity. The Commission will also make recommendations for restructuring school finance systems to achieve equity in the distribution of educational resources and further student performance, especially for the students at the lower end of the achievement gap. The Commission will examine the disparities in meaningful educational opportunities that give rise to the achievement gap, with a focus on systems of finance, and recommend appropriate ways in which Federal policies could address such disparities.

The Commission will submit a report to the Secretary outlining its findings and any recommendations. The Secretary will share a copy of this report with Congress through the United States Senate Committees on Appropriations and on Health, Education, Labor, and Pensions and the United States House of Representatives Committees on Appropriations and on Education and Labor.

The Commission will be composed of approximately 15 members, including persons who have knowledge of and expertise in systems of school finance, taxes, or civil rights. The Secretary intends that at least one-third of the members will have experience working in or with State educational agencies or local educational agencies. The Commission will also include *ex officio* members from the Department, including, but not limited to, the Deputy Secretary, the General Counsel, and the Assistant Secretary for Civil Rights.

Nomination Process: Any interested person or organization may nominate one or more qualified individuals for membership. If you would like to nominate an individual or yourself for appointment to the Commission, please submit the following information to the Department's White House Liaison Office:

- A copy of the nominee's resume;
- A cover letter that provides the reason(s) for nominating the individual; and
- Contact information for the nominee (name, title, and business address, phone number, fax number, and e-mail address).

In addition, the cover letter must state that the nominee (if you are nominating someone other than yourself) has agreed to be nominated and is willing to serve on the Commission. Nominees will be appointed based on:

- Technical qualifications, professional experience, and demonstrated knowledge of issues related to systems of school finance, taxes, and civil rights; and
- Demonstrated experience, integrity, impartiality, and good judgment.

The Secretary will appoint members for the life of the Commission, which will span approximately 15 months. Any member appointed to fill a vacancy occurring prior to the expiration of the full term for which the member's predecessor was appointed will be appointed for the remainder of such term.

Members will serve without compensation. However, members may receive reimbursement for travel expenses for attending Commission meetings, including *per diem* in lieu of subsistence, as authorized by the Federal travel regulations.

These members will serve as Special Government Employees (SGEs) and, as SGEs, will be chosen for their individual expertise, qualifications, and experience; they will provide advice and make recommendations based on their independent judgment and will not be speaking for or representing the views of any nongovernmental organization or recognizable group of persons.

DATES: Nominations for individuals to serve on the Commission must be submitted (postmarked, if sending by mail; submitted electronically; or received, if hand-delivered) by September 10, 2010.

ADDRESSES: You may submit nominations, including attachments, by any of the following methods:

- *Electronically:* Send to: *WhiteHouseLiaison@ed.gov* (specify in the e-mail subject line, "Equity Commission Nomination").
- *Mail, express delivery, hand delivery, messenger, or courier service:* Submit *one* copy of the documents listed above to the following address: U.S. Department of Education, White House Liaison Office, 400 Maryland Avenue, SW., Room 7C109, Washington, DC 20202, Attn: Karen Akins.

For questions, contact Karen Akins, White House Liaison Office, at (202) 401–3677, at (202) 205–0723 (fax), or via e-mail at *WhiteHouseLiaison@ed.gov.*

Dated: August 5, 2010.

Arne Duncan,

Secretary of Education.

[FR Doc. 2010–19798 Filed 8–10–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, September 1, 2010, 4 p.m.

ADDRESSES: Atomic Testing Museum, 755 East Flamingo Road, Las Vegas, Nevada 89119.

FOR FURTHER INFORMATION CONTACT: Denise Rupp, Board Administrator, 232 Energy Way, M/S 505, North Las Vegas, Nevada 89030. Phone: (702) 657–9088; Fax (702) 295–5300 or e-mail: *ntscab@nv.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations

to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Update from Transportation/Waste Committee.

2. Fiscal Year 2010 Work Plan Development.

3. Election of Officers.

Public Participation: The EM SSAB, Nevada Test Site, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Denise Rupp at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Denise Rupp at the telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing to Denise Rupp at the address listed above or at the following Web site: *http://www.ntscab.com/MeetingMinutes.htm.*

Issued at Washington, DC on August 5, 2010.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2010–19786 Filed 8–10–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 4, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–83–000.

Applicants: Southwestern Electric Power Company.

Description: Southwestern Electric Power Company submits Application for Approval Under Section 203 of the Federal Power Act, Request for Expedited Consideration and Request for Confidential Treatment.

Filed Date: 07/30/2010.

Accession Number: 20100802–0216.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–1099–014; ER02–1406–015; ER99–2928–011.

Applicants: Cleco Power LLC; Acadia Power Partners, LLC; Cleco Evangeline LLC.

Description: Cleco Companies submits revised Simultaneous Import Limitation data, *et al.*

Filed Date: 08/02/2010.

Accession Number: 20100803–0024.

Comment Date: 5 p.m. Eastern Time on Monday, August 23, 2010.

Docket Numbers: ER10–1152–002.

Applicants: Allegheny Power.

Description: Allegheny Power submits Sub First Revised Sheet No. 312 *et al.* to FERC Electric Tariff, Sixth Revised Volume No. 1.

Filed Date: 07/28/2010.

Accession Number: 20100728–0210.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 18, 2010.

Docket Numbers: ER10–1299–002.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc submits amended filing to provide clarity to and cost support for the agreement.

Filed Date: 08/03/2010.

Accession Number: 20100804–0200.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 24, 2010.

Docket Numbers: ER10–1783–001.

Applicants: REP Energy LLC.

Description: REP Energy LLC submits the amended Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority.

Filed Date: 07/28/2010.

Accession Number: 20100729–0205.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 18, 2010.

Docket Numbers: ER10–1806–001.

Applicants: AP Holdings, LLC.

Description: AP Holdings, LLC amends the July 19th Petition by providing additional information regarding its ownership structure etc.

Filed Date: 07/30/2010.

Accession Number: 20100802–0214.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: ER10–2042–001; ER10–1862–001; ER10–1864–001; ER10–1865–001; ER10–1873–001; ER10–1875–001; ER10–1876–001; ER10–1878–001; ER10–1883–001; ER10–1884–001; ER10–1885–001; ER10–1888–001; ER10–1938–001; ER10–1941–001; ER10–1942–001; ER10–1947–001.

Applicants: Calpine Energy Services, L.P., South Point Energy Center, LLC, Delta Energy Center, LLC, Geysers Power Company, LLC, Otay Mesa Energy Center, LLC, Calpine Power America-CA, LLC, Pastoria Energy Center, LLC, Metcalf Energy Center, LLC, Los Medanos Energy Center LLC, Los Esteros Critical Energy Facility LLC, Goose Haven Energy Center, LLC, Gilroy Energy Center, LLC, Creed Energy Center, LLC, Calpine Gilroy Cogen, L.P., Power Contract Financing, L.L.C., Calpine Construction Finance Co., L.P.

Description: Updated Market Power Analysis of Calpine Energy Services, L.P., *et al.*

Filed Date: 07/30/2010.

Accession Number: 20100730–5263.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: ER10–2082–000.

Applicants: National Fuel Resources, Inc.

Description: National Fuel Resources, Inc submits notice of cancellation of its FERC Electric Tariff, Original Volume 1, Original Sheet 1–2, effective 8/1/10.

Filed Date: 07/30/2010.

Accession Number: 20100802–0208.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: ER10–2083–000.

Applicants: POSDEF Power Company, L.P.

Description: POSDEF Power Company, LP submits Notice of Cancellation of its market-based rate tariff, FERC Electric Tariff, First Revised Volume 1, effective 6/30/10.

Filed Date: 07/30/2010.

Accession Number: 20100802–0207.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: ER10–2084–000.

Applicants: New England Power Pool.

Description: New England Power Pool Participants Committee submits transmittal letter along with counterpart signature pages of the NEPOOL Agreement with Choice Energy *et al.*

Filed Date: 07/30/2010.

Accession Number: 20100802–0206.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: ER10–2085–000.

Applicants: New England Power Company.

Description: National Grid submits notice canceling the Interconnection Agreement with Dominion Energy Manchester Street, Inc, designated as Original Service Agreement No 102, FERC Electric Tariff, Fourth Revised Volume No. 1.

Filed Date: 07/30/2010.
Accession Number: 20100802–0205.
Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: ER10–2086–000.
Applicants: Alta Wind I, LLC.
Description: Petition of Alta Wind I, LLC for order accepting market-based rate tariff for filing and granting waivers and blanket approvals and request for expedited action.
Filed Date: 07/30/2010.
Accession Number: 20100802–0204.
Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: ER10–2087–000.
Applicants: Wisconsin Public Service Corporation.
Description: Wisconsin Public Service Corporation submits Notice of Cancellation of its Coordination Sales Tariff designated as FERC Electric Tariff, First Revised Volume 5.
Filed Date: 07/30/2010.
Accession Number: 20100802–0202.
Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: ER10–2088–000.
Applicants: Southern Company Services, Inc.
Description: Alabama Power Company *et al.* (Southern Companies) submits notice of cancellation of its tariff sheet for FERC Electric Tariff, First Revised Volume 9, Generator Balancing Service.
Filed Date: 07/30/2010.
Accession Number: 20100802–0203.
Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: ER10–2115–000.
Applicants: Carolina Power & Light Company.
Description: Notice of Cancellation of Network Integration Transmission Service Agreement of Carolina Power & Light Company with Town of Winterville, NC.
Filed Date: 08/04/2010.
Accession Number: 20100804–5057.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 25, 2010.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES09–31–003.
Applicants: Entergy Texas, Inc.
Description: Application of Entergy Texas, Inc. to amend existing authorization to issue long-term debt during the period from June 1, 2009, through May 31, 2011.
Filed Date: 07/29/2010.
Accession Number: 20100729–5168.
Comment Date: 5 p.m. Eastern Time on Thursday, August 19, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. 2010–19773 Filed 8–10–10; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12597–021; Project No. 12598–019]

Turnbull Hydro, LLC; Notice of Availability of Environmental Assessment

August 4, 2010.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC's) regulations, 18 Code of Federal Regulations (CFR) part 380 (Order No. 486, 52 **Federal Register** [FR] 47897), the Office of Energy Projects has reviewed Turnbull Hydro, LLC's (Turnbull Hydro's) application for amendment of license for the Lower Turnbull Drop and Upper Turnbull Drop Hydroelectric Projects (FERC Project Nos. 12597 and 12598), located on the Spring Valley Canal, near the town of Fairfield, in Teton County, Montana. As licensed, the Lower Turnbull Drop and Upper Turnbull Drop Hydroelectric projects would occupy a total of 48.0 and 37.7 acres of federal lands, respectively, administered by the U.S. Bureau of Reclamation.

The EA is attached to a Commission order titled, "Order Amending License and Revising Annual Charges," which was issued August 4, 2010, and is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659.

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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–19778 Filed 8–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2078–000]

White Oak Energy LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

August 4, 2010.

This is a supplemental notice in the above-referenced proceeding, of White Oak Energy LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is August 24, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–19775 Filed 8–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2108–000]

Heritage Stoney Corners Wind Farm I, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

August 4, 2010.

This is a supplemental notice in the above-referenced proceeding, of Heritage Stoney Corners Wind Farm I, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is August 24, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–19777 Filed 8–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2086–000]

Alta Wind I, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

August 4, 2010.

This is a supplemental notice in the above-referenced proceeding, of Alta Wind I, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and

assumptions of liability is August 24, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–19776 Filed 8–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2029–000]

Calpine Mid-Atlantic Marketing, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

August 4, 2010.

This is a supplemental notice in the above-referenced proceeding, of Calpine Mid-Atlantic Marketing, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is August 24, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–19774 Filed 8–10–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2010–0360; FRL–9188–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Stationary Gas Turbines (Renewal), EPA ICR Number 1071.10, OMB Control Number 2060–0028

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before September 10, 2010.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2010–0360 to (1) EPA online using *www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone number:* (202) 564–4113; *fax number:* (202) 564–0050; *e-mail address: williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 2, 2010 (75 *FR* 30813), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2010–0360, which is available for public viewing online at *http://www.regulations.gov,* in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents, whether submitted electronically or in paper will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments the electronic docket, go to *www.regulations.gov.*

Title: NSPS for Stationary Gas Turbines (Renewal).

ICR Numbers: EPA ICR Number 1071.10, OMB Control Number 2060–0028.

ICR Status: This ICR is schedule to expire on October 31, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The New Source Performance Standard (NSPS) for Stationary Gas Turbines (40 CFR part 60, subpart GG) were proposed on October 3, 1977, and promulgated on September 10, 1979.

Owners and operators of stationary gas turbines must submit a one-time-only notification of construction/reconstruction, modification, and startup date, initial performance test date, physical or operational changes, and demonstration of a continuous monitoring system. They also must provide a report on initial performance test result, monitoring results, and any excess emissions. Records must be maintained of: Startups, shutdowns, and malfunctions; periods when the continuous monitoring system is inoperative; sulfur and nitrogen content of the fuel; fuel to water ratio; rate of fuel consumption; and ambient conditions. Semiannual reports are also required.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, retain the file for at least two years following the date of such measurements, and maintain reports and records. Performance test reports are required as this is the Agency's record of a source's initial capability to comply with the emission standard, and they serve as a record of the operating conditions under which compliance was achieved.

All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 60, subpart GG, as authorized in sections 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are list in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information are estimated to average 64 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining, information, and disclosing and providing information. All existing ways will have to adjust to comply with any previously applicable instructions and requirements that have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Stationary gas turbines.

Estimated Number of Respondents: 535.

Frequency of Response: Initially and semiannually.

Estimated Total Annual Hour Burden: 68,447.

Estimated Total Annual Cost: $6,474,328, which includes $6,474,328 in labor costs exclusively, with neither capital/startup costs nor any operation and maintenance (O&M) costs.

Changes in the Estimates: There is no increase in the number of affected facilities or the number of responses compared to the previous ICR.

There is however, an increase in the estimated labor burden hours and cost as currently identified in the OMB Inventory of Approved Burdens. This increase is not due to any program changes. The change in the labor burden hours and cost estimates has occurred because the previous ICR did not reflect the managerial and clerical burden. This renewal package includes those costs. We also updated the labor rates, which resulted in an increase in labor costs.

Dated: August 5, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–19810 Filed 8–10–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0012; FRL–8840–6]

Notice of Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Agency's receipt of several initial filings of pesticide petitions proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before September 10, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, 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 the docket ID number and the pesticide petition number of interest as shown in the body of this document. 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: A contact person, with telephone number and e-mail address, is listed at the end of each pesticide petition summary. You may also reach each contact person by mail at Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

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:

• 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 provides 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 at the end of the pesticide petition summary of interest.

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.

3. *Environmental justice*. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse

human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petitions described in this notice contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this notice, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov*.

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerance

1. *PP 0E7738.* (EPA–HQ–OPP–2010–0619). IR-4, 500 College Road East, Suite 201 W, Princeton, NJ 08540, proposes to establish tolerances in 40 CFR part 180 for the combined residues of the insecticide avermectin B_1 (a mixture of avermectins containing greater than or equal to 80% avermectinB_{1a} (5-*O*-demethyl avermectin A_1) and less than or equal to 20% avermectin B_{1b} (5-*O*-demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectin A_1)) and its delta-8,9-isomer, in or on bean, dry, seed at 0.01 parts per million (ppm); chive, dried leaves at 0.07 ppm; chive, fresh leaves at 0.01 ppm; and onion, bulb, subgroup 3–07A at 0.01 ppm. The analytical methods involve homogenization, filtration, partition, and cleanup with analysis by high performance liquid chromatography (HPLC)-fluorescence detection. The methods are sufficiently sensitive to detect residues at or above the tolerances proposed. All methods have undergone independent laboratory validation as required by PR Notice 96–1. Contact: Laura E. Nollen, (703) 305–7390, e-mail address: *nollen.laura@epa.gov*.

2. *PP 0F7721.* (EPA–HQ–OPP–2010–0615). Syngenta Crop Protection, Inc., Regulatory Affairs, P.O. Box 18300, Greensboro, NC 27419–8300, proposes to establish tolerances in 40 CFR part 180 for residues of the fungicide sedaxane as a seed treatment, in or on barley, grain, seed at 0.01 ppm; barley, hay, seed at 0.05 ppm; barley, straw, seed at 0.01 ppm; canola, seed at 0.01 ppm; oat, grain, seed at 0.01 ppm; rye, seed at 0.01 ppm; soybean, forage, seed at 0.06 ppm; soybean, hay, seed at 0.4 ppm; soybean, seed at 0.01 ppm; triticale, seed at 0.01 ppm; wheat, forage, seed at 0.02 ppm; wheat, grain, seed at 0.01 ppm; wheat, hay, seed at 0.07 ppm; and wheat, straw, seed at 0.01 ppm. Various crops were analyzed for sedaxane (parent only) using a procedure for analysis of sedaxane (SYN524464) that can distinguish between its trans (SYN508210) and cis (SYN508211) isomers. Plant matrices using method GRM023.01A or modified method GRM023.01B are taken through an extraction procedure with final determination by high performance liquid chromatography with triple quadrupole mass spectrometric detection (LC-MS/MS). Contact: Heather Garvie, (703) 308–0034, e-mail address: *garvie.heather@epa.gov*.

3. *PP 0F7734.* (EPA–HQ–OPP–2010–0602). Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27410, proposes to establish a tolerance in 40 CFR part 180 for residues of the insecticide thiamethoxam, (3-[(2-chloro-5-thiazolyl) methyl]tetrahydro-5-methyl-*N*-nitro-4*H*-1,3,5-oxadiazin-4-imine) and its metabolite [*N*-(2-chloro-thiazol-5-ylmethyl)-*N*′-methyl-*N*″-nitro-guanidine], in or on food commodities/feed commodities (other than those covered by a higher tolerance as a result of use on growing crops) in food/feed handling establishments at 0.01 ppm. Syngenta Crop Protection has submitted practical analytical methodology for detecting and measuring levels of thiamethoxam in or on raw agricultural commodities. This method is based on crop specific cleanup procedures and determination by liquid chromatography with either ultraviolet (UV) or mass spectrometry (MS) detections. The limit of detection (LOD) for each analyte of this method is 1.25 ng injected for samples analyzed by UV and 0.25 ng injected for samples analyzed by MS, and the limit of quantification (LOQ) is 0.005 ppm for milk and juices, and 0.01 ppm for all other substrates. Contact: Kable Bo Davis, (703) 306–0415, e-mail address: *davis.kable@epa.gov*.

4. *PP 0F7739.* (EPA–HQ–OPP–2010–0603). Chemtura Corporation, 199 Benson Road (2–5), Middlebury, CT 06749, proposes to establish tolerances in 40 CFR part 180 for residues of the insecticide diflubenzuron, *N*-[[(4-chlorophenyl) amino]carbonyl]-2,6-difluorobenzamide (DFB) and its metabolites 4-chlorophenylurea (CPU) and 4-chloroaniline (PCA), in or on citrus fruit, crop group 10 at 1.3 ppm, and citrus, oil processed commodity at 39 ppm. A practical analytical method for detecting and quantifying levels of diflubenzuron in or on food with a LOD that allows monitoring of the residue at or above the level set in the tolerance was used to determine residues in citrus raw agricultural commodities (RAC) and processed commodities. Contact: Kable Bo Davis, (703) 306–0415, e-mail address: *davis.kable@epa.gov*.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 3, 2010.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2010–19831 Filed 8–10–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0014; FRL–8839–9]

Product Cancellation Order for Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of the products listed in Table 1 of Unit II., pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows a January 26, 2010 **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 2 of Unit II. to voluntarily cancel these product registrations. In the January 26, 2010 notice, EPA indicated that it

would issue an order implementing the cancellations, unless the Agency received substantive comments within the 180–day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency did not receive any comments on the notice. Further, the Agency received notice from a registrant to withdraw one cancellation request. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective August 11, 2010.

FOR FURTHER INFORMATION CONTACT: Maia Tatinclaux, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–0123; fax number: (703) 308–8090; e-mail address: *tatinclaux.maia@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. How Can I Get Copies of this Document and Other Related Information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0014. 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 Office of Pesticide Programs (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.

II. What Action is the Agency Taking?

This notice announces the cancellation, as requested by registrants, of 33 products registered under FIFRA section 3. These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1.—PRODUCT CANCELLATIONS

Registration No.	Product Name	Chemical Name
000004–00315	Bonide Liquid Rotenone Pyrethrins Spray	Pyrethrins Rotenone
000279–03404	Intruder II	Pyrethrins Piperonyl butoxide Cyfluthrin
000655–00079	Prentox 25% Malathion Dust Concentrate	Malathion
000703–00001	Buchach Insect Powder	Pyrethrins
002517–00028	Geisler No Mite Spray	Piperonyl butoxide Pyrethrins MGK 264
002517–00047	Sergeant's Skip-Flea Shampoo for Dogs	Piperonyl butoxide
002517–00055	Sergeant's Rug Patrol Carpet Insecticide and Freshener Formula B	Piperonyl butoxide
002517–00069	Sergeant's Multipurpose Flea and Tick Killer I	Piperonyl butoxide Pyrethrins Permethrin
002517–00072	Sergeant's Flea and Tick Powder with Pyrethrins	Piperonyl butoxide Pyrethrins Permethrin
002517–00073	Sergeant's Flea and Tick Powder with Permethrin	Piperonyl butoxide Permethrin
002517–00075	Sergeants X-term Fogger with Nylar	Pyrethrins Permethrin MGK 264 Pyriproxifen
002517–00079	SPI # 8325	Piperonyl butoxide Permethrin

TABLE 1.—PRODUCT CANCELLATIONS—Continued

Registration No.	Product Name	Chemical Name
002517–00106	Ultra-Sect IGR Flea and Tick Mist	Piperonyl butoxide Pyrethrins MGK 264
002517–00121	Zema Flea and Tick Dip	Piperonyl butoxide Pyrethrins
004822–00145	Johnson Yard Master Foam Vegetable Garden Insect Killer	Pyrethrins
004822–00155	Product 29 Garden Insect Killer	Pyrethrins
004822–00311	Pyrethrum Extract 25	Pyrethrins
004822–00460	Whitmire Residual Flea and Tick Spray for Dogs and Cats	Pyrethrins Permethrin
004822–00461	Whitmire Residual Pressurized Flea and Tick Spray	Pyrethrins Permethrin
007405–00070	Chemi-Cap Total Release Insect Fogger	Pyrethrins MGK 264 Permethrin
008536–00033	Thermal Fogging Insecticide Type M	Piperonyl butoxide Pyrethrins MGK 264
008536–00036	Cardinal 25–5 Insecticide	Piperonyl butoxide Pyrethrins
008536–00037	Cardinal Food Plant Concentrate Fogging Insecticide	Piperonyl butoxide Pyrethrins
008536–00038	Cardinal 1–2–3 Insecticide	Piperonyl butoxide Pyrethrins MGK 264
008536–00039	Cardinal 3–6–10 Insecticide	Piperonyl butoxide Pyrethrins MGK 264
008660–00254	Permethrin 0.5 Lawn Insect Control with Fertilizer	Permethrin
009816–00003	Fiebing's Equilfend Flyspray for Horses	Piperonyl butoxide Pyrethrins Permethrin
010772–00011	Ear-Rite Insecticidal Ear Wash for Dogs	Piperonyl butoxide Pyrethrins
010772–00016	Lambert Kay Scented Flea and Tick Shampoo for Dogs, Cats and Ferrets	Piperonyl butoxide Pyrethrins
013799–00017	Four Paws Flea and Tick Soap	Piperonyl butoxide Pyrethrins MGK 264
013799–00022	Four Paws Mite and Lice Bird and Cage Spray	Piperonyl butoxide Pyrethrins
013799–00025	Four Paws Magic Coat Super Plus	Piperonyl butoxide Pyrethrins MGK 264
035138–00074	Aero Permethrin 25	Permethrin

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 of this unit.

TABLE 2. —REGISTRANTS OF CANCELLED PRODUCTS

EPA Co. Number	Company Name and Address
4	Bonide Products, Inc. Agent Registrations By Design, Inc. PO Box 1019 Salem, VA 24153–3805
279	FMC Corp. Agricultural Products Group 1735 Market St, RM 1978 Philadelphia, PA 19103
655	Prentiss, INC. 3600 Mansell Rd, Suite 350 Alpharetta, GA 30022
703	Buhach Company 14336 SE 84 CT Newcastle, WA 98059
2517	Sergeant's Pet Care Products, Inc. 2625 South 158th Plaza Omaha, NE 68130–1703
4822	S.C. Johnson and Son, Inc. 1525 Howe St. Racine, WI 53403
7405	CP Aeroscience, Inc. P.O. BOX 667770 Pompano Beach, FL 33066
8536	Soil Chemicals Corporation P.O, Box 782 Hollister, CA 95024
8660	United Industries Corp. d/b/a Sylorr Plant Corp P.O, Box 14642 St. Louis, MO 63114–0642
9816	Fiebing Company, Inc. P.O, Box 694 Milwaukee, WI 53201–0694

TABLE 2. —REGISTRANTS OF CANCELLED PRODUCTS—Continued

EPA Co. Number	Company Name and Address
10772	Church and Dwight Co. Inc. 469 North Harrison St. Princeton, NJ 08543–5297
13799	Four Paws Products Ltd. 50 Wireless Boulevard Hauppauge, NY 11788
35138	AeroChem 1396 Lee Lane Raymond, MS 39154

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the January 26, 2010 **Federal Register** notice announcing the Agency's receipt of the requests for voluntary cancellations of products listed in Table 1 of Unit II. The request for the voluntary cancellation of product 66330–220 was withdrawn by the registrant.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations of the registrations identified in Table 1 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit II. are canceled. The effective date of the cancellations that are subject of this notice is August 11, 2010. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II. in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI. will be a violation of FIFRA.

V. 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 EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** of January 26, 2010 (75 FR 4072) (FRL–8808–2). The comment period closed on July 26, 2010.

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. The existing stocks provisions for the products subject to this order are as follows.

The registrants may continue to sell and distribute existing stocks of products listed in Table 1 of Unit II. until August 11, 2011, which is 1 year after the publication of the Cancellation Order in the **Federal Register** Thereafter, the registrants are prohibited from selling or distributing products listed in Table 1, except for export in accordance with FIFRA section 17, or proper disposal. Persons other than the registrants may sell, distribute, or use existing stocks of products listed in Table 1 of Unit II. until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 2, 2010.

Richard P. Keigwin, Jr.

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2010–19575 Filed 8–10–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0599; FRL–8840–7]

Pesticides; Revised Fee Schedule for Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is publishing a revised list of pesticide registration service fees applicable to specified pesticide applications and tolerance actions. In accordance with the Pesticide Registration Improvement Renewal Act, the registration service fees for covered pesticide registration applications received on or after October 1, 2010,

will increase by 5 percent, rounded up to the nearest dollar amount, from the fees published for fiscal years 2009 and 2010. The new fees become effective on October 1, 2010.

FOR FURTHER INFORMATION CONTACT: Elizabeth Leovey (7501P), Immediate Office, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7328; fax number: (703) 308–4776; e-mail address: *leovey.elizabeth@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you register pesticide products under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Potentially affected entities may include, but are not limited to:

- Agricultural pesticide manufacturers (32532).
- Antimicrobial pesticide manufacturers (32561).
- Antifoulant pesticide manufacturers (32551).
- Wood preservative manufacturers (32519).

This listing is not intended to be exhaustive, but rather provides 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. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in the notice and in FIFRA section 33. 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 Copies of this Document and Other Related Information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0599. 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 Office of Pesticide Programs (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.

II. Background

A. What Action is the Agency Taking?

The Pesticide Registration Improvement Act of 2003 (PRIA), established a new section 33 of FIFRA creating a registration service fee system for certain types of pesticide applications, establishment of tolerances, and certain other regulatory decisions under FIFRA and the Federal Food, Drug, and Cosmetic Act (FFDCA). Section 33 also created a schedule of decision review times for applications covered by the service fee system. The Agency began administering the registration service fee system for covered applications received on or after March 23, 2004.

On October 9, 2007, the Pesticide Registration Improvement Renewal Act was signed by the President, revising, among other things, FIFRA section 33. The new law reauthorized the service fee system through 2012 and established fees and review times for applications received during fiscal years 2008 through 2012. As required by section 33(b)(6)(B) of FIFRA, the registration service fees for covered pesticide registration applications received on or after October 1, 2010, will increase by 5 percent, rounded up to the nearest dollar amount, from the fees published in the August 5, 2008, **Federal Register** Notice (73 FR 45438).

B. What is the Agency's Authority for Taking this Action?

The publication of this fee schedule is required by section 33(b)(6)(C) of FIFRA as amended.

III. Elements of the Fee Schedule

This unit explains how EPA has organized the fee schedule identified in the statute and how to read the fee schedule tables, and includes a key to terminology published with the table in the Congressional Review. EPA's organization and presentation of the fee schedule information does not affect the categories of registration service fees or the structure or procedures for submitting applications or petitions for tolerance.

A. The Congressional Record Fee Schedule

The fee schedule published in the Congressional Record of July 21, 2007 identifies the registration service fees and decision times and is organized according to the organizational units (Divisions) of the Office of Pesticide Programs (OPP) within EPA. Thereafter, the categories within the organizational unit sections of the table are further categorized according to the type of application being submitted, the use patterns involved, or, in some cases, upon the type of pesticide that is the subject of the application. The fee categories differ by Division. Not all application types are covered by, or subject to, the fee system.

B. Fee Schedule and Decision Review Times

In today's notice, EPA has retained the format of previous schedule notices and included the corrections to the schedule published in the September 24, 2007 issue of the Congressional Record. The schedules are presented as 11 tables, organized by OPP Division and by type of application or pesticide subject to the fee. These tables only list the decision time review periods for fiscal years 2011 and 2012 as these are the only applicable review periods for applications received on or after October 1, 2010. Unit IV presents fee tables for the Registration Division (RD) (5 tables), the Antimicrobials Division (AD) (3 tables), and the Biopesticides and Pollution Prevention Division (BPPD) (3 tables).

C. How to Read the Tables

1. Each table consists of the following columns:

- The column entitled "EPA No." assigns an EPA identifier to each fee category. There are 140 categories spread across the 3 Divisions. There are 58 RD categories, 27 AD categories, and 55 BPPD categories. For tracking purposes, OPP has assigned a 3-digit identifier to each category, beginning with RD categories, followed by AD and BPPD categories. The categories are prefaced with a letter designation indicating which Division of OPP is responsible for applications in that category (R= Registration Division, A=Antimicrobials Division, B=Biopesticides and Pollution Prevention Division).
- The column entitled "CR No." cross-references the current Congressional Record category number for convenience. However, EPA will be using the categories as numbered in the "EPA No." column in its tracking systems.
- The column entitled "Action" describes the categories of action. In establishing the expanded fee schedule categories, Congress eliminated some of the more confusing terminology of the original categories. For example, instead of the term "fast-track," the schedule in the Congressional Record uses the

regulatory phrase "identical or substantially similar in composition and use to a registered product."

• The column entitled "Decision Time" lists the decision times in months for each type of action for Fiscal Years 2011 and 2012. The 2010 decision times apply to 2011 and 2012. The decision review periods in the tables are based upon EPA fiscal years (FY), which run from October 1 through September 30.

• The column entitled "FY 11/12 Registration Service Fee ($)" lists the registration service fee for the action for fiscal year 2010 (October 1, 2010 through September 30, 2011) and fiscal year 2011 (October 1, 2011 through September 30, 2012).

2. The following acronyms are used in some of the tables:

• DART = Dose Adequacy Response Team
• DNT = Developmental Neurotoxicity
• GW/SW = Ground Water/Surface Water
• HSRB = Human Studies Review Board
• PHI = Pre-Harvest Interval
• PPE = Personal Protective Equipment
• REI = Restricted Entry Interval
• SAP = FIFRA Scientific Advisory Panel

IV. PRIRA Fee Schedule Tables—Effective October 1, 2010

A. Registration Division

The Registration Division of OPP is responsible for the processing of pesticide applications and associated tolerance petitions for pesticides that are termed "conventional chemicals," excluding pesticides intended for antimicrobial uses. The term "conventional chemical" is a term of art that is intended to distinguish synthetic chemicals from those that are of naturally occurring or non-synthetic origin, synthetic chemicals that are identical to naturally-occurring chemicals and microbial pesticides. Tables 1 through 5 of Unit V.A. cover RD actions.

TABLE 1.–REGISTRATION DIVISION—NEW ACTIVE INGREDIENTS

EPA No.	CR No.	Action	Decision Time (months) FY 11/12	FY 11/12 Registration Service Fee ($)
R010	1	Food use[1]	24	569,221
R020	2	Food use; reduced risk[1]	18	569,221
R030	3	Food use; Experimental Use Permit application submitted simultaneously with application for registration; decision time for Experimental Use Permit and temporary tolerance same as #R040[1]	24	629,197
R040	4	Food use; Experimental Use Permit application; establish temporary tolerance; submitted before application for registration; credit $326,025 toward new active ingredient application that follows	18	419,502
R050	5	Food use; application submitted after Experimental Use Permit application; decision time begins after Experimental Use Permit and temporary tolerance are granted[1]	14	209,806
R060	6	Non-food use; outdoor[1]	21	395,467
R070	7	Non-food use; outdoor; reduced risk[1]	16	395,467
R080	8	Non-food use; outdoor; Experimental Use Permit application submitted simultaneously with application for registration; decision time for Experimental Use Permit same as #R090[1]	21	437,472
R090	9	Non-food use; outdoor; Experimental Use Permit application submitted before application for registration; credit $228,225 toward new active ingredient application that follows	16	293,596
R100	10	Non-food use; outdoor; submitted after Experimental Use Permit application; decision time begins after Experimental Use Permit is granted[1]	12	143,877
R110	11	Non-food use; indoor[1]	20	219,949
R120	12	Non-food use; indoor; reduced risk[1]	14	219,949
R121	13	Non-food use; indoor; Experimental Use Permit application submitted before application for registration; credit $100,000 toward new active ingredient application that follows	18	165,375
R122	14	Enriched isomer(s) of registered mixed-isomer active ingredient[1]	18	287,643
R123	15	Seed treatment only; includes non-food and food uses; limited uptake into Raw Agricultural Commodities[1]	18	427,991

TABLE 1.–REGISTRATION DIVISION—NEW ACTIVE INGREDIENTS—Continued

EPA No.	CR No.	Action	Decision Time (months) FY 11/12	FY 11/12 Registration Service Fee ($)
R124	16	Conditional Ruling on Preapplication Study Waivers; applicant-initiated	6	2,294

[1] All uses (food and/or non-food) included in any original application or petition for a new active ingredient or a first food use that otherwise satisfy the conditions for the category are covered by the base fee for that application.

TABLE 2.—REGISTRATION DIVISION—NEW USES

EPA No.	CR No.	Action	Decision Time (months) FY 11/12	FY 11/12 Registration Service Fee ($)
R130	17	First food use; indoor; food/food handling[1]	21	173,644
R140	18	Additional food use; Indoor; food/food handling	15	40,518
R150	19	First food use[1]	21	239,684
R160	20	First food use; reduced risk[1]	16	239,684
R170	21	Additional food use	15	59,976
R180	22	Additional food use; reduced risk	10	59,976
R190	23	Additional food uses; 6 or more submitted in one application	15	359,856
R200	24	Additional food uses; 6 or more submitted in one application; reduced risk	10	359,856
R210	25	Additional food use; Experimental Use Permit application; establish temporary tolerance; no credit toward new use registration	12	44,431
R220	26	Additional food use; Experimental Use Permit application; crop destruct basis; no credit toward new use registration	6	17,993
R230	27	Additional use; non-food; outdoor	15	23,969
R240	28	Additional use; non-food; outdoor; reduced risk	10	23,969
R250	29	Additional use; non-food; outdoor; Experimental Use Permit application; no credit toward new use registration	6	17,993
R260	30	New use; non-food; indoor	12	11,577
R270	31	New use; non-food; indoor; reduced risk	9	11,577
R271	32	New use; non-food; indoor; Experimental Use Permit application; no credit toward new use registration	6	8,820
R272	33	Review of Study Protocol; applicant-initiated; excludes DART, pre-registration conferences, Rapid Response review, DNT protocol review, protocols needing HSRB review	3	2,294
R273	34	Additional use; seed treatment; limited uptake into raw agricultural commodities; includes crops with established tolerances (e.g., for soil or foliar application); includes food or non-food uses	12	45,754
R274	35	Additional uses; seed treatment only; 6 or more submitted in one application; limited uptake into raw agricultural commodities; includes crops with established tolerances (e.g., for soil or foliar application); includes food and/or non-food uses	12	274,523

[1] All uses (food and/or non-food) included in any original application or petition for a new active ingredient or a first food use that otherwise satisfy the conditions for the category are covered by the base fee for that application.

TABLE 3.—REGISTRATION DIVISION—IMPORT AND OTHER TOLERANCES

EPA No.	CR No.	Action	Decision Time (months) FY 11/12	FY 11/12 Registration Service Fee ($)
R280	36	Establish import tolerance; new active ingredient or first food use[1]	21	289,407
R290	37	Establish import tolerance; additional food use	15	57,882
R291	38	Establish import tolerances; additional food uses; 6 or more crops submitted in one petition	15	347,288
R292	39	Amend an established tolerance (e.g., decrease or increase); domestic or import; applicant-initiated	10	41,124
R293	40	Establish tolerance(s) for inadvertent residues in one crop; applicant-initiated	12	48,510
R294	41	Establish tolerances for inadvertent residues; 6 or more crops submitted in one application; applicant-initiated	12	291,060
R295	42	Establish tolerance(s) for residues in one rotational crop in response to a specific rotational crop application; applicant-initiated	15	59,976
R296	43	Establish tolerances for residues in rotational crops in response to a specific rotational crop petition; 6 or more crops submitted in one application; applicant-initiated	15	359,856

[1] All uses (food and/or non-food) included in any original application or petition for a new active ingredient or a first food use that otherwise satisfy the conditions for the category are covered by the base fee for that application.

TABLE 4.—REGISTRATION DIVISION—NEW PRODUCTS

EPA No.	CR No.	Action	Decision Time (months) FY 11/12	FY 11/12 Registration Service Fee ($)
R300	44	New product; identical or substantially similar in composition and use to a registered product; no data review or only product chemistry data; cite-all data citation, or selective data citation where applicant owns all required data, or applicant submits specific authorization letter from data owner. Category also includes 100% re-package of registered end-use or manufacturing-use product that requires no data submission nor data matrix.	3	1,434
R301	45	New product; identical or substantially similar in composition and use to a registered product; registered source of active ingredient; selective data citation only for data on product chemistry and/or acute toxicity and/or public health pest efficacy, where applicant does not own all required data and does not have a specific authorization letter from data owner.	4	1,720
R310	46	New end-use or manufacturing-use product; requires review of data package within RD; includes reviews and/or waivers of data for only: Product chemistry and/or Acute toxicity and/or Public health pest efficacy	6	4,807
R311	49	New product; requires approval of new food-use inert; applicant-initiated; excludes approval of safeners	12	17,133
R312	50	New product; requires approval of new non-food-use inert; applicant-initiated	6	9,151
R313	51	New product; requires amendment to existing inert tolerance exemption (e.g., adding post-harvest use); applicant-initiated	10	12,591
R320	47	New product; new physical form; requires data review in science divisions	12	11,996
R330	48	New manufacturing-use product; registered active ingredient; selective data citation	12	17,993

TABLE 4.—REGISTRATION DIVISION—NEW PRODUCTS—Continued

EPA No.	CR No.	Action	Decision Time (months) FY 11/12	FY 11/12 Registration Service Fee ($)
R331	52	New product; repack of identical registered end-use product as a manufacturing-use product; same registered uses only	3	2,294
R332	53	New manufacturing-use product; registered active ingredient; unregistered source of active ingredient; submission of completely new generic data package; registered uses only	24	256,883

TABLE 5.—REGISTRATION DIVISION—AMENDMENTS TO REGISTRATION

EPA No.	CR No.	Action	Decision Time (months) FY 11/12	FY 11/12 Registration Service Fee ($)
R340	54	Amendment requiring data review within RD (e.g., changes to precautionary label statements, or source changes to an unregistered source of active ingredient)[1]	4	3,617
R350	55	Amendment requiring data review in science divisions (e.g., changes to REI, or PPE, or PHI, or use rate, or number of applications; or add aerial application; or modify GW/SW advisory statement)[1]	8	11,996
R370	56	Cancer reassessment; applicant-initiated	18	179,818
R371	57	Amendment to Experimental Use Permit; requires data review / risk assessment	6	9,151
R372	58	Refined ecological and/or endangered species assessment; applicant-initiated	12	171,219

[1] EPA-initiated amendments shall not be charged fees. Fast-track amendments handled by the Antimicrobials Division are to be completed within the FIFRA stated timelines listed in Section 3(h) and are not subject to PRIA fees. Label amendments submitted by notification under PR Notices, such as PR Notice 95–2 and PR Notice 98–10, continue under PR Notice timelines and are not subject to PRIA fees.

B. Antimicrobials Division

The Antimicrobials Division of OPP is responsible for the processing of pesticide applications and associated tolerances for conventional chemicals intended for antimicrobial uses, that is, uses that are defined under FIFRA section 2(mm)(1)(A), including products for use against bacteria, protozoa, non-agricultural fungi, and viruses. AD is also responsible for a selected set of conventional chemicals intended for other uses, including most wood preservatives and antifoulants. Tables 6 through 8 of Unit V.B. cover AD actions.

TABLE 6.—ANTIMICROBIALS DIVISION—NEW ACTIVE INGREDIENTS

EPA No.	CR No.	Action	Decision Time (months) FY 11/12	FY 11/12 Registration Service Fee ($)
A380	59	Food use; establish tolerance exemption[1]	24	104,187
A390	60	Food use; establish tolerance[1]	24	173,644
A400	61	Non-food use; outdoor; FIFRA section 2(mm) uses[1]	18	86,823
A410	62	Non-food use; outdoor; uses other than FIFRA section 2(mm)[1]	21	173,644
A420	63	Non-food use; indoor; FIFRA section 2(mm) uses[1]	18	57,882
A430	64	Non-food use; indoor; uses other than FIFRA section 2(mm)[1]	20	86,823
A431	65	Non-food use; indoor; low-risk and low-toxicity food-grade active ingredient(s); efficacy testing for public health claims required under GLP and following DIS/TSS or AD-approved study protocol	12	60,638

[1] All uses (food and/or non-food) included in any original application or petition for a new active ingredient or a first food use that otherwise satisfy the conditions for the category are covered by the base fee for that application.

TABLE 7.—ANTIMICROBIALS DIVISION—NEW USES

EPA No.	CR No.	Action	Decision Time (months) FY 11/12	FY 11/12 Registration Service Fee ($)
A440	66	First food use; establish tolerance exemption[1]	21	28,942
A450	67	First food use; establish tolerance[1]	21	86,823
A460	68	Additional food use; establish tolerance exemption	15	11,577
A470	69	Additional food use; establish tolerance	15	28,942
A480	70	Additional use; non-food; outdoor; FIFRA section 2(mm) uses	9	17,365
A490	71	Additional use; non-food; outdoor; uses other than FIFRA section 2(mm)	15	28,942
A500	72	Additional use; non-food; indoor; FIFRA section 2(mm) uses	9	11,577
A510	73	Additional use; non-food; indoor; uses other than FIFRA section 2(mm)	12	11,577
A520	74	Experimental Use Permit application	9	5,789
A521	75	Review of public health efficacy study protocol within AD; per AD Internal Guidance for the Efficacy Protocol Review Process; applicant-initiated; Tier 1	3	2,205
A522	76	Review of public health efficacy study protocol outside AD by members of AD Efficacy Protocol Review Expert Panel; applicant-initiated; Tier 2	12	11,025

[1] All uses (food and/or non-food) included in any original application or petition for a new active ingredient or a first food use that otherwise satisfy the conditions for the category are covered by the base fee for that application.

TABLE 8.—ANTIMICROBIALS DIVISION—NEW PRODUCTS AND AMENDMENTS

EPA No.	CR No.	Action	Decision Time (months) FY 11/12	FY 11/12 Registration Service Fee ($)
A530	77	New product; identical or substantially similar in composition and use to a registered product; no data review or only product chemistry data; cite-all data citation, or selective data citation where applicant owns all required data, or applicant submits specific authorization letter from data owner. Category also includes 100% re-package of registered end-use or manufacturing-use product that requires no data submission nor data matrix.	3	1,159
A531	78	New product; identical or substantially similar in composition and use to a registered product; registered source of active ingredient; selective data citation only for data on product chemistry and/or acute toxicity and/or public health pest efficacy, where applicant does not own all required data and does not have a specific authorization letter from data owner.	4	1,654
A532	85	New product; identical or substantially similar in composition and use to a registered product; registered active ingredient; unregistered source of active ingredient; cite-all data citation except for product chemistry; product chemistry data submitted	4	4,631
A540	79	New end use product; FIFRA section 2(mm) uses only	4	4,631
A550	80	New end-use product; uses other than FIFRA section 2(mm); non-FQPA product	6	4,631
A560	81	New manufacturing-use product; registered active ingredient; selective data citation	12	17,365
A570	82	Label amendment requiring data submission[1]	4	3,474
A571	83	Cancer reassessment; applicant-initiated	18	86,823

TABLE 8.—ANTIMICROBIALS DIVISION—NEW PRODUCTS AND AMENDMENTS—Continued

EPA No.	CR No.	Action	Decision Time (months) FY 11/12	FY 11/12 Registration Service Fee ($)
A572	84	Refined ecological risk and/or endangered species assessment; applicant-initiated	12	82,688

[1] EPA-initiated amendments shall not be charged fees. Fast-track amendments handled by the Antimicrobials Division are to be completed within the FIFRA stated timelines listed in Section 3(h) and are not subject to PRIA fees. Label amendments submitted by notification under PR Notices, such as PR Notice 95–2 and PR Notice 98–10, continue under PR Notice timelines and are not subject to PRIA fees.

C. Biopesticides and Pollution Prevention Division

The Biopesticides and Pollution Prevention Division of OPP is responsible for the processing of pesticide applications for biochemical pesticides, microbial pesticides, and plant-incorporated protectants (PIPs).

The fee tables for BPPD actions are presented by type of pesticide rather than by type of action: Table 9—Microbial and biochemical pesticides; Table 10—straight chain lepidopteran pheromones (SCLPs), and Table 11—PIPs. Within each table, the types of application are the same as those in other divisions and use the same terminology as in Unit III.

TABLE 9.—BIOPESTICIDES AND POLLUTION PREVENTION DIVISION—MICROBIAL AND BIOCHEMICAL PESTICIDES; NEW PRODUCTS AND AMENDMENTS

EPA No.	CR No.	Action	Decision Time (months) FY 11/12	FY 11/12 Registration Service Fee ($)
B580	86	New active ingredient; food use; establish tolerance[1]	18	46,305
B590	87	New active ingredient; food use; establish tolerance exemption[1]	16	28,942
B600	88	New active ingredient; non-food use[1]	12	17,365
B610	89	Food use; Experimental Use Permit application; establish temporary tolerance exemption	9	11,577
B620	90	Non-food use; Experimental Use Permit application	6	5,789
B621	91	Extend or amend Experimental Use Permit	6	4,631
B630	92	First food use; establish tolerance exemption	12	11,577
B631	93	Amend established tolerance exemption	9	11,577
B640	94	First food use; establish tolerance[1]	18	17,365
B641	95	Amend established tolerance (e.g., decrease or increase)	12	11,577
B650	96	New use; non-food	6	5,789
B660	97	New product; identical or substantially similar in composition and use to a registered product; no data review or only product chemistry data; cite-all data citation, or selective data citation where applicant owns all required data, or applicant submits specific authorization letter from data owner. Category also includes 100% re-package of registered end-use or manufacturing-use product that requires no data submission nor data matrix.	3	1,159
B670	98	New product; registered source of active ingredient; all Tier I data for product chemistry, toxicology, non-target organisms, and product performance must be addressed with product specific data or with request for data waivers supported by scientific rationales	6	4,631
B671	99	New product; food use; unregistered source of active ingredient; requires amendment of established tolerance or tolerance exemption; all Tier I data requirements for product chemistry, toxicology, non-target organisms, and product performance must be addressed with product-specific data or with request for data waivers supported by scientific rationales	16	11,577

TABLE 9.—BIOPESTICIDES AND POLLUTION PREVENTION DIVISION—MICROBIAL AND BIOCHEMICAL PESTICIDES; NEW PRODUCTS AND AMENDMENTS—Continued

EPA No.	CR No.	Action	Decision Time (months) FY 11/12	FY 11/12 Registration Service Fee ($)
B672	100	New product; non-food use or food use having established tolerance or tolerance exemption; unregistered source of active ingredient; no data compensation issues; all Tier I data requirements for product chemistry, toxicology, non-target organisms, and product performance must be addressed with product-specific data or with request for data waivers supported by scientific rationales	12	8,269
B680	101	Label amendment requiring data submission[2]	4	4,631
B681	102	Label amendment; unregistered source of active ingredient; supporting data require scientific review	6	5,513
B682	103	Protocol review; applicant-initiated; excludes time for HSRB review (pre application)	3	2,205

[1] All uses (food and/or non-food) included in any original application or petition for a new active ingredient or a first food use that otherwise satisfy the conditions for the category are covered by the base fee for that application.

[2] EPA-initiated amendments shall not be charged fees. Fast-track amendments handled by the Antimicrobials Division are to be completed within the FIFRA stated timelines listed in Section 3(h) and are not subject to PRIA fees. Label amendments submitted by notification under PR Notices, such as PR Notice 95–2 and PR Notice 98–10, continue under PR Notice timelines and are not subject to PRIA fees.

TABLE 10.—BIOPESTICIDES AND POLLUTION PREVENTION DIVISION—STRAIGHT CHAIN LEPIDOPTERAN PHEROMONES (SCLPS)

EPA No.	CR No.	Action	Decision Time (months) FY 11/12	FY 11/12 Registration Service Fee ($)
B690	104	New active ingredient; food or non-food use[1]	6	2,316
B700	105	Experimental Use Permit application; new active ingredient or new use	6	1,159
B701	106	Extend or amend Experimental Use Permit	3	1,159
B710	107	New product; identical or substantially similar in composition and use to a registered product; no data review or only product chemistry data; cite-all data citation, or selective data citation where applicant owns all required data, or applicant submits specific authorization letter from data owner. Category also includes 100% re-package of registered end-use or manufacturing-use product that requires no data submission nor data matrix.	3	1,159
B720	108	New product; registered source of active ingredient; all Tier I data for product chemistry, toxicology, non-target organisms, and product performance must be addressed with product specific data or with request for data waivers supported by scientific rationales	4	1,159
B721	109	New product; unregistered source of active ingredient	6	2,426
B722	110	New use and/or amendment to tolerance or tolerance exemption	6	2,426
B730	111	Label amendment requiring data submission[2]	4	1,159

[1] All uses (food and/or non-food) included in any original application or petition for a new active ingredient or a first food use that otherwise satisfy the conditions for the category are covered by the base fee for that application.

[2] EPA-initiated amendments shall not be charged fees. Fast-track amendments handled by the Antimicrobials Division are to be completed within the FIFRA stated timelines listed in Section 3(h) and are not subject to PRIA fees. Label amendments submitted by notification under PR Notices, such as PR Notice 95–2 and PR Notice 98–10, continue under PR Notice timelines and are not subject to PRIA fees.

TABLE 11.—BIOPESTICIDE AND POLLUTION PREVENTION DIVISION—PLANT INCORPORATED PROTECTANTS (PIPS)

EPA No.	CR No.	Action	Decision Time (months) FY 11/12	FY 11/12 Registration Service Fee ($)
B740	112	Experimental Use Permit application; registered active ingredient; non-food/feed or crop destruct basis; no SAP review required[1]	6	86,823
B750	113	Experimental Use Permit application; registered active ingredient; establish temporary tolerance or tolerance exemption; no SAP review required[1]	9	115,763
B760	114	Experimental Use Permit application; new active ingredient; non-food/feed or crop destruct basis; SAP review required; credit $78,750 toward new active ingredient application that follows	12	144,704
B761	115	Experimental Use Permit application; new active ingredient; non-food/feed or crop destruct; no SAP review required; credit $78,750 toward new active ingredient application that follows	7	86,823
B770	116	Experimental Use Permit application; new active ingredient; establish temporary tolerance or tolerance exemption; SAP review required; credit $105,000 toward new active ingredient application that follows	15	173,644
B771	117	Experimental Use Permit application; new active ingredient; establish temporary tolerance or tolerance exemption; no SAP review required; credit $105,000 toward new active ingredient application that follows	10	115,763
B772	118	Amend or extend Experimental Use Permit; minor changes to experimental design; established temporary tolerance or tolerance exemption is unaffected	3	11,577
B773	119	Amend or extend existing Experimental Use Permit; minor changes to experimental design; extend established temporary tolerance or tolerance exemption	5	28,942
B860	120	Amend Experimental Use Permit; first food use or major revision of experimental design	6	11,577
B780	121	New active ingredient; non-food/feed; no SAP review required[2]	12	144,704
B790	122	New active ingredient; Non-food/feed; SAP review required[2]	18	202,585
B800	123	New active ingredient; establish permanent tolerance or tolerance exemption based on temporary tolerance or tolerance exemption; no SAP review required[2]	12	231,525
B810	124	New active ingredient; establish permanent tolerance or tolerance exemption based on temporary tolerance or tolerance exemption; SAP review required[2]	18	289,407
B820	125	New active ingredient; establish tolerance or tolerance exemption; no SAP review required[2]	15	289,407
B840	126	New active ingredient; establish tolerance or tolerance exemption; SAP review required[2]	21	347,288
B830	127	New active ingredient; Experimental Use Permit application submitted simultaneously; establish tolerance or tolerance exemption; no SAP review required[2]	15	347,288
B850	128	New active ingredient; Experimental Use Permit requested simultaneously; establish tolerance or tolerance exemption; SAP review required[2]	21	405,169
B851	129	New active ingredient; different genetic event of a previously approved active ingredient; same crop; no tolerance action required; no SAP review required	9	115,763
B852	130	New active ingredient; different genetic event of a previously approved active ingredient; same crop; no tolerance action required; SAP review required	9	173,644

TABLE 11.—BIOPESTICIDE AND POLLUTION PREVENTION DIVISION—PLANT INCORPORATED PROTECTANTS (PIPS)—Continued

EPA No.	CR No.	Action	Decision Time (months) FY 11/12	FY 11/12 Registration Service Fee ($)
B870	131	New use[1]	9	34,729
B880	132	New product; no SAP review required[3]	9	28,942
B881	133	New product; SAP review required[3]	15	86,823
B890	134	Amendment; seed production to commercial registration; no SAP review required	9	57,882
B891	135	Amendment; seed production to commercial registration; SAP review required	15	115,763
B900	136	Amendment (except #B890); No SAP review required; (e.g., new IRM requirements that are applicant initiated; or amending a conditional registration to extend the registration expiration date with additional data submitted)[4]	6	11,577
B901	137	Amendment (except #B890); SAP review required[4]	12	69,458
B902	138	PIP Protocol review	3	5,789
B903	139	Inert ingredient tolerance exemption; e.g., a marker such as NPT II; reviewed in BPPD	6	57,882
B904	140	Import tolerance or tolerance exemption; processed commodities/food only	9	115,763

[1] Example: Transfer existing PIP trait by traditional breeding, such as from field corn to sweet corn.
[2] May be either a registration for seed increase or a full commercial registration. If a seed increase registration is granted first, full commercial registration is obtained using B890.
[3] Example: Stacking PIP traits within a crop using traditional breeding techniques.
[4] EPA-initiated amendments shall not be charged fees. Fast-track amendments handled by the Antimicrobials Division are to be completed within the FIFRA stated timelines listed in Section 3(h) and are not subject to PRIA fees. Label amendments submitted by notification under PR Notices, such as PR Notice 95–2 and PR Notice 98–10, continue under PR Notice timelines and are not subject to PRIA fees.

V. How to Pay Fees

Applicants must submit fee payments at the time of application, and EPA will reject any application that does not contain evidence that the fee has been paid. The EPA has developed a web site at *http://www.epa.gov/pesticides/fees/tool/index.htm* to help applicants identify the fee category and the fee. All fees should be rounded up to the nearest whole dollar. Payments may be made by check, bank draft, or money order, or online with a credit card or wire transfer.

A. Online

You may pay electronically through the government payment website at *http://www.pay.gov* as follows:

1. From the pay.gov home page, under "Find Public Forms." select "search by Agency name."

2. On the A-Z Index of Forms page, select "E."

3. Select "Environmental Protection Agency."

4. From the list of forms, select "Pesticide Registration Improvement Act Fee – Pre-Payment."

5. Complete the form entering the PRIA fee category and fee.

6. Keep a copy of the pay.gov acknowledgement of payment. A copy of the acknowledgement must be printed and attached to the front of the application to assure that EPA can match the application with the payment.

B. By Check or Money Order

All payments must be in U.S. currency by check, bank draft, or money order drawn to the order of the Environmental Protection Agency. On the check, the applicant must supply in the information line either the registration number of the product or the company number. A copy of the check must accompany the application to the Agency, specifically attached to the front of the application. The copy of the check ensures that payment has been made at the time of application and will enable the Agency to properly connect the payment with the application sent to the Agency.

If you send the Agency a check, it will be converted into an electronic funds transfer (EFT). This means the Agency will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will usually occur within 24 hours and will be shown on your regular account statement.

You will not receive your original check back. The Agency will destroy your original check but will keep the copy of it. If the EFT cannot be processed for technical reasons, you authorize the Agency to process the copy in place of your original check. If the EFT cannot be completed because of insufficient funds, the Agency may try to make the transfer up to two times.

All paper-based payments should be sent by one of the following methods:

1. *By U.S. Postal Service.* U.S. Environmental Protection Agency, Washington Finance Center, FIFRA Service Fees, P.O. Box 979074, St. Louis, MO 63197–9000.

2. *By courier or personal delivery.* U.S. Bank, Government Lockbox 979074, 1005 Convention Plaza, SL–MO–C2–GL, St. Louis, MO 63197, (314) 418–4990.

VI. How to Submit Applications

Submissions to the Agency should be made at the address given in Unit VIII. The applicant should attach documentation that the fee has been paid which may be pay.gov payment acknowledgement or a copy of the check. If the applicant is applying for a fee waiver, the applicant should provide sufficient documentation as described in FIFRA section 33(b)(7) and *http://www.epa.gov/pesticides/fees/questions/waivers.htm.* The fee waiver request should be easy to identify and separate from the rest of the application and submitted with documentation that at least 25 percent of the fee has been paid.

If evidence of fee payment (electronic acknowledgement or copy of check properly identified as to company) is not submitted with the application, EPA will reject the application and will not process it further.

After EPA receives an application and payment, EPA performs a screen on the application to determine that the category is correct and that the proper fee amount has been paid. If either is incorrect, EPA will notify the applicant and require payment of any additional amount due. A refund will be provided in case of an overpayment. EPA will not process the application further until the proper fee has been paid for the category of application or a request for a fee waiver accompanies the application and the appropriate portion of the fee has been paid.

EPA will assign a unique identification number to each covered application for which payment has been made. EPA will notify the applicant of the unique identification number. This information is sent by e-mail if EPA has either an e-mail address on file or an e-mail address is provided on the application.

VII. Addresses

New covered applications should be identified in the title line with the mail code REGFEE and sent by one of the following methods:

1. *By USPS mail.* Document Processing Desk (REGFEE), Office of Pesticide Programs (7504P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20460–0001.

2. *By courier.* Document Processing Desk (REGFEE), Office of Pesticide Programs, U.S. Environmental Protection Agency, Room S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA 22202–4501.

Couriers and delivery personnel must present a valid picture identification card to gain access to the building. Hours of operation for the Document Processing Desk are 8 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays.

List of Subjects

Environmental protection, Administrative practice and procedure, Pesticides.

Dated: August 4, 2010.

Steven Bradbury,

Director, Office of Pesticides Programs.

[FR Doc. 2010–19720 Filed 8–10–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2010–0617; FRL–9188–3]

Human Studies Review Board (HSRB); Notification of a Public Teleconference To Review Draft Final Report From the June 23, 2010 HSRB Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Human Studies Review Board (HSRB) announces a public teleconference meeting to discuss its Draft HSRB Final Report from the June 23, 2010 HSRB meeting.

DATES: The teleconference will be held on Thursday, September 9, 2010, from 1:30–3 p.m. (Eastern Time).

Location: The meeting will take place via telephone only.

Meeting Access: For information on access or services for individuals with disabilities, please contact Lu-Ann Kleibacker at least 10 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT**, so that appropriate arrangements can be made.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral comments for the HSRB to consider during the advisory process. Additional information concerning submission of relevant written or oral comments is provided in section I., under subsection D., "How I May Participate in this Meeting" of this notice.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain the call-in number and access code to participate in the telephone conference, request a current draft copy of the Board's report or who wish further information may contact Lu-Ann Kleibacker, EPA, Office of the Science Advisor, (8105R), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or via telephone/voice mail at (202) 564–7189 or via e-mail at *kleibacker.lu-ann@epa.gov.* General information concerning the EPA HSRB can be found on the EPA Web site at *http://www.epa.gov/osa/hsrb/.*

ADDRESSES: Submit your written comments, identified by Docket ID No. EPA–HQ–ORD–2010–0617, by one of the following methods: *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

E-mail: ORD.Docket@epa.gov.

Mail: ORD Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Hand Delivery: EPA Docket Center (EPA/DC), Public Reading Room, Infoterra Room (Room Number 3334), EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA–ORD–2010–0617. Deliveries are accepted between 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2010–0617. 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 comments include 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 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. 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.

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to persons who conduct or assess human studies on substances regulated by EPA or to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I access electronic copies of this document and other related information?

In addition to using regulations.gov, you may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

Docket: All documents in the docket are listed in the index under the docket number. Even though it will be listed by title in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Copyright material will be publicly available only in hard copy. Publicly available docket materials are electronically available either through *http://www.regulations.gov* or in hard copy at the ORD Docket, EPA/DC, Public Reading Room, Infoterra Room (Room Number 3334), 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open between 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 ORD Docket is (202) 566–1752.

C. What should I consider as 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.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you use that support your views.

4. Provide specific examples to illustrate your concerns and suggest alternatives.

5. 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.

D. How may I participate in this meeting?

You may participate in this meeting by following the instructions in this section. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–ORD–2010–0617 in the subject line on the first page of your request.

1. Oral comments. Requests to present oral comments will be accepted up to Thursday, September 2, 2010. To the extent that time permits, interested persons who have not pre-registered may be permitted by the Chair of the HSRB to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to the HSRB is strongly advised to submit their request (preferably via email) to Lu-Ann Kleibacker, listed under **FOR FURTHER INFORMATION CONTACT,** no later than noon, Eastern Time, Thursday, September 2, 2010, in order to be included on the meeting agenda and to provide sufficient time for the HSRB Chair and HSRB Designated Federal Official (DFO) to review the meeting agenda to provide an appropriate public comment period. The request should identify the name of the individual making the presentation and the organization (if any) the individual will represent. Oral comments before the HSRB are generally limited to five minutes per individual or organization. Please note that this includes all individuals appearing either as part of, or on behalf of an organization. While it is our intent to hear a full range of oral comments on the science and ethics issues under discussion, it is not our intent to permit organizations to expand the time limitations by having numerous individuals sign up separately to speak on their behalf. If additional time is available, public comments may be possible.

2. Written comments. Submit your written comments prior to the conference call, for the HSRB to have the best opportunity to review and consider your comments as it deliberates on its report, you should submit your comments at least five business days prior to the beginning of this teleconference. If you submit comments after this date, those comments will be provided to the Board members, but you should recognize that the Board members may not have adequate time to consider those comments prior to making a decision. Thus, if you plan to submit written comments, the Agency strongly encourages you to submit such comments no later than noon, Eastern Time, September 2, 2010. You should submit your comments using the instructions in section I., under subsection C., "What Should I Consider as I Prepare My Comments for EPA?" In addition, the Agency also requests that persons submitting comments directly to the docket also provide a copy of their comments to Lu-Ann Kleibacker listed under **FOR FURTHER INFORMATION CONTACT**. There is no limit on the length of written comments for consideration by the HSRB.

E. Background

The EPA Human Studies Review Board will be reviewing its draft Final Report from the June 23, 2010, HSRB meeting. The Board may also discuss planning for future HSRB meetings. Background on the June 23, 2010, HSRB meeting can be found at **Federal Register**: June 8, 2010 (Volume 75, Number 109, Page 32461–32463), and at the HSRB Web site *http://www.epa.gov/osa/hsrb/*. The June 23, 2010 meeting draft Final Report is now available. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the *http://www.regulations.gov* Web site and the HSRB Internet Home Page at *http://www.epa.gov/osa/hsrb/*. For questions on document availability or if you do not have access to the Internet, consult Lu-Ann Kleibacker using the information listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: August 4, 2010.

Paul T. Anastas,

EPA Science Advisor.

[FR Doc. 2010–19815 Filed 8–10–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

TIME AND DATE: 10 a.m. (Eastern Time) August 16, 2010.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC 20005.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the July 19, 2010 Board Member Meeting.
2. Thrift Savings Plan Activity Report by the Executive Director:
   a. Monthly Participant Activity Report.
   b. Monthly Investment Performance Review.
   c. Legislative Report.

Parts Closed to the Public

3. Personnel.
4. Security.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: August 6, 2010.

Thomas K. Emswiler,

Secretary, Federal Retirement Thrift Investment Board.

[FR Doc. 2010–19883 Filed 8–9–10; 11:15 am]

BILLING CODE 6760–01–P

FEDERAL MARITIME COMMISSION

Agency Information Collection Activities: 60-Day Public Comment Request

AGENCY: Federal Maritime Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, the Federal Maritime Commission (Commission) invites comments on the continuing information collection (extension of the information collection with no changes) listed below in this notice.

DATES: Written comments must be submitted on or before October 12, 2010.

ADDRESSES: You may send comments to: Ronald D. Murphy, Managing Director, Office of the Managing Director, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523–5800, *omd@fmc.gov.* Please reference the information collection's title and OMB number in your comments.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection and instructions, or copies of any comments received, may be obtained by contacting Jane Gregory on (202) 523–5800 or e-mail: *jgregory@fmc.gov.*

SUPPLEMENTARY INFORMATION:

Request for Comments

The Federal Maritime Commission, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing information collection listed in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments. We invite comments on: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Information Collection Open for Comment

Title: 46 CFR 515—Licensing, Financial Responsibility Requirements and General Duties for Ocean Transportation Intermediaries and Related Forms.

OMB Approval Number: 3072–0018 (Expires October 31, 2010).

Abstract: The Shipping Act of 1984 (the "Act"), 46 U.S.C. 40101–41309 (2006), as modified by Public Law 105–258 (The Ocean Shipping Reform Act of 1998) and Section 424 of Public Law 105–383 (The Coast Guard Authorization Act of 1998), provides that no person in the United States may act as an ocean transportation intermediary (OTI) unless that person holds a license issued by the Commission. The Commission shall issue an OTI license to any person that the Commission determines to be qualified by experience and character to act as an OTI. Further, no person may act as an OTI unless that person furnishes a bond, proof of insurance or other surety in a form and amount determined by the Commission to ensure financial responsibility. The Commission has implemented the provisions of section 19 in regulations contained in 46 CFR 515, including financial responsibility forms FMC–48, FMC–67, FMC–68, and FMC–69, Optional Rider Forms FMC–48A and FMC–69A, and its related license application form, FMC–18.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission uses information obtained under this part and through Form FMC–18 to determine the qualifications of OTIs and their compliance with shipping statutes and regulations and to enable the Commission to discharge its duties under the Act by ensuring that OTIs maintain acceptable evidence of financial responsibility. If the collection of information were not conducted, there would be no basis upon which the Commission could determine if applicants are qualified for licensing.

Frequency: This information is collected when applicants apply for a license or when existing licensees change certain information in their application forms.

Type of Respondents: The types of respondents are persons desiring to obtain a license to act as an OTI. Under the Act, OTIs may be either an ocean freight forwarder, a non-vessel-operating common carrier, or both.

Number of Annual Respondents: The Commission estimates a potential annual respondent universe of 5,400 entities.

Estimated Time per Response: The time per response for completing Application Form FMC–18 averages 2 hours. The time to complete a financial responsibility form averages 20 minutes.

Total Annual Burden: The Commission estimates the total annual person-hour burden at 5,162 person-hours.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–19858 Filed 8–10–10; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. A copy of the agreement is available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201208.

Title: Marine Terminal Services Agreement Port of Houston Authority and NYK Line (North America) Inc.

Parties: NYK Line (North America), Inc. and Port of Houston Authority.

Filing Party: Erik A. Erikcson, Esq.; Port of Houston Authority; P.O. Box 2562; Houston, TX 77252–2562.

Synopsis: The agreement sets certain discount rates and charges applicable to NYK Line, Inc.

Dated: August 6, 2010

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–19859 Filed 8–10–10; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Golden Jet—L.A., Inc. dba Golden Jet Freight Forwarders (NVO), 145–30 156th Street, Suite E, Jamaica, NY 11434, *Officer:* Clifford J. Ivie, President/Vice President (Qualifying Individual), *Application Type:* New NVO License.

Joffroy Warehouse Inc. (NVO), 1251 N. Industrial Park Avenue, Nogales, AZ 85621, *Officers:* Marco A. Joffroy, Compliance Officer (Qualifying Individual), Rodolfo Joffroy, President, *Application Type:* New NVO License.

Maritime and Intermodal Logistics Systems, Inc. dba MILS dba Fesco Integrated Transport (NVO & OFF), 1000 Second Avenue, Suite 1310, Seattle, WA 98104, *Officers:* Junko Altman, Secretary (Qualifying Individual), Mike Evans, President, *Application Type:* Trade Name Change.

Nippon Express U.S.A. (Illinois), Inc. (NVO & OFF), 950 N. Edgewood Avenue, Wood Dale, IL 60191–1257, *Officers:* Michiya Shimizu, Senior Vice President/General Manager (Qualifying Individual), Kenryo Senda, President/CEO, *Application Type:* QI Change.

Praxis SCM, LLC (NVO & OFF), 5725 Paradise Drive, #1000, Corte Madera, CA 94925, *Officers:* George W. Pasha, IV, President/CEO (Qualifying Individual), James Britton, CFO, *Application Type:* New NVO & OFF License.

Rado International, Inc. dba Rado Logistics (NVO & OFF), 2251 Sylvan Road, Suite C, East Point, GA 30344, *Officers:* Lovett Brooks, CEO (Qualifying Individual), Maria Caceres, Secretary, *Application Type:* Add Trade Name.

Renaissance Global Logistics LLC (NVO & OFF), 4333 West Fort Street, Detroit, MI 48209, *Officers:* Kathleen M. Green, Vice President Logistics Services (Qualifying Individual), John James, CEO, *Application Type:* New NVO & OFF License.

Rose Containerline, Inc. dba Fabius Containerline (NVO), 259 West 30th Street, New York, NY 10001, *Officer:* Neal M. Rosenberg, President (Qualifying Individual), *Application Type:* Remove Trade Name.

Sea Cargo Inc. (NVO), 19130 Figueroa Street, Carson, CA 90248, *Officers:* Shane J. Kennedy, Secretary/Chief Financial Officer (Qualifying Individual), Andrei V. Pilipenko, Chief Executive Officer, *Application Type:* New NVO License.

Sea Horse Express Inc. (OFF), 1250 Newark Turnpike, 1st Floor, Kearny, NJ 07032, *Officer:* Desiree Herrera, President/Vice President/Secretary (Qualifying Individual), *Application Type:* New OFF License.

Tricon Container Line, LLC (NVO & OFF), 259 West 30th Street, New York, NY 10001, *Officers:* Neal M. Rosenberg, Member/Manager (Qualifying Individual), Joshua Rosenberg, Manager, *Application Type:* New NVO & OFF License.

USTC Global, Inc. (NVO), 20695 S. Western Avenue, #132, Torrance, CA 90501, *Officers:* Hyunmo (A.K.A. Sean) Yang, Secretary (Qualifying Individual), Michelle Suh, President/CEO, *Application Type:* New NVO License.

Valueway Global Logistics Inc. (NVO & OFF), 136–56 39th Avenue, Suite 406, Flushing, NY 11354, *Officers:* Zong (David) W. Chen, Vice President (Qualifying Individual), Qian (Arthur) Xie, President/Secretary/Treasurer, *Application Type:* New NVO & OFF License.

Dated: August 6, 2010.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–19860 Filed 8–10–10; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL TRADE COMMISSION

[File No. 101 0074]

Tops Markets LLC; Analysis of Agreement Containing Consent Orders to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order — embodied in the consent agreement — that would settle these allegations.

DATES: Comments must be received on or before September 7, 2010.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to"Tops-Penn Traffic, File No. 101 0074" to facilitate the organization of comments. Please note that your comment — including your name and your state — will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . .," as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled

"Confidential," and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://ftcpublic.commentworks.com/ftc/penntraffic/*) and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink: (*https://ftcpublic.commentworks.com/ftc/penntraffic/*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at (*http://www.ftc.gov/*) to read the Notice and the news release describing it.

A comment filed in paper form should include the "Tops-Penn Traffic, File No. 101 0074" reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act ("FTC Act") and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Jeffrey Perry (202-326-2331), FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 4, 2010), on the World Wide Web, at (*http://www.ftc.gov/os/actions.shtm*). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

I. Introduction and Background

The Federal Trade Commission ("Commission") has accepted for public comment, and subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Morgan Stanley Capital Partners V U.S. Holdco LLC ("Holdco"), its subsidiary, Tops Markets LLC ("Tops"), and The Penn Traffic Company ("Penn Traffic"), (collectively "Respondents"), that is designed to remedy the anticompetitive effects that would otherwise result from Tops' acquisition of the supermarket assets of Penn Traffic. The proposed Consent Agreement requires divestiture of seven Penn Traffic supermarkets and related assets to a Commission-approved buyer.

On November 18, 2009, Penn Traffic filed for Chapter 11 bankruptcy. Through the expedited bankruptcy proceeding, Tops sought to acquire substantially all of Penn Traffic's assets, including its 79 supermarkets in New York, Pennsylvania, Vermont, and New Hampshire (the "Acquisition"). The purchase price for the Acquisition was $85 million. In addition, Tops agreed to assume from Penn Traffic approximately $70 million in liabilities and claims. Because the only remaining bidder for the supermarkets was a liquidator, the Acquisition represented the only opportunity to avoid mass closing of the Penn Traffic supermarkets.

In light of the extremely tight deadlines inherent in the bankruptcy proceeding, and in an effort to avoid mass liquidation of 79 supermarkets in more than 50 metropolitan areas, Commission staff crafted a remedy that would permit timely consummation of the Acquisition while preserving the Commission's ability to obtain full relief to cure the anticompetitive harm that the Acquisition would otherwise cause in certain local areas where Tops and Penn Traffic operated competing supermarkets. In light of this extraordinary set of circumstances, the Commission determined that this unique remedy would best serve the interests of consumers.

In particular, before the Acquisition was consummated, Respondents agreed in writing to divest all of the Penn Traffic stores in each local geographic market in which the transaction presented potential competitive concerns. Respondents further agreed to maintain the viability of the acquired stores and to cooperate fully with staff's investigation, which continued after the Acquisition was consummated. As a result of this agreement, even before a meaningful investigation could be completed, Respondents had committed themselves in writing to the broadest relief that might ultimately be necessary, thereby preserving completely the Commission's ability to protect consumers through remedial action, while at the same time enabling Tops to consummate the Acquisition and prevent the mass shuttering of Penn Traffic stores.

In accordance with the agreement reached between Respondents and staff, early termination of the HSR waiting period was granted on January 25, 2010. A few days later, Respondents closed on the Acquisition.

The proposed Complaint alleges that the agreement among Respondents for the sale of the Penn Traffic assets to Tops constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and that the

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Acquisition constitutes a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by lessening competition in connection with the retail sale of food and other grocery products in supermarkets.

II. The Parties

Tops is a New York limited liability company with its office and principal place of business in Williamsville, New York. Prior to the Acquisition, Tops owned and operated 71 supermarkets in New York and Pennsylvania, all under the Tops banner. In addition, five supermarkets are owned and operated by franchisees under the Tops banner. Tops is a subsidiary of Holdco, a Delaware limited liability company with its office and principal place of business in New York, New York.

Penn Traffic is a Delaware corporation headquartered in Syracuse, New York. Prior to the Acquisition, Penn Traffic operated 79 supermarkets in New York, Pennsylvania, Vermont, and New Hampshire under the following banners: Bi-Lo, P&C Foods ("P&C"), and Quality Markets.

III. The Proposed Complaint

As outlined in the proposed Complaint, the relevant product market in which to analyze the Acquisition is the retail sale of food and other grocery products in supermarkets. Supermarkets are full-line grocery stores that carry a wide variety of food and grocery items in particular product categories, including bread and dairy products, refrigerated and frozen food and beverage products, fresh and prepared meats and poultry, produce, shelf-stable food and beverage products, staple foodstuffs, and other grocery products, including non-food items, household products, and health and beauty aids. The hallmark of supermarkets is that they offer consumers the convenience of one-stop shopping for food and grocery products. To achieve this, supermarkets typically carry more than 10,000 different products and have at least 10,000 square feet of selling space.

As alleged in the proposed Complaint, supermarkets compete principally with other supermarkets and base their prices primarily on the prices of food and grocery products sold in other supermarkets. Other types of retail stores, including neighborhood "mom & pop" grocery stores, convenience stores, specialty food stores, club stores, limited assortment stores (*e.g.*, ALDI, Save-A-Lot), and mass merchants, do not, individually or collectively, effectively constrain the prices of food and grocery products in supermarkets because they do not offer a supermarket's distinct set of products and services that provide consumers with the convenience of one-stop shopping for food and grocery products. Although stores such as limited assortment stores do sell food and certain other grocery items, they do not offer the breadth of services and products sold at supermarkets and thus do not provide an effective constraint on prices in supermarkets. The evidence and the Commission's conclusions on these issues are consistent with its prior supermarket investigations.

The relevant geographic markets in which to analyze the likely competitive effects of the Acquisition are: Bath, New York; Cortland, New York; Ithaca, New York; Lockport, New York; and Sayre, Pennsylvania. All of these relevant markets were already highly concentrated before the Acquisition, and the Acquisition has substantially increased concentration in each of these markets, as measured by the Herfindahl Hirschman Index ("HHI"). Post-Acquisition HHIs in the relevant geographic markets range from 5,000 to 10,000, and the Acquisition has increased HHI levels by between 1,145 and 4,996 points. The high concentration levels and staff's ultimate conclusions regarding the competitive harm likely to result from the acquisition are not sensitive to changes in the precise contours of the relevant geographic markets. Indeed, the transaction would be presumptively unlawful in the geographic areas at issue even if the relevant geographic markets were defined by radii as large as fifteen to twenty miles.

According to the proposed Complaint, the Acquisition has substantially lessened competition in the relevant markets by eliminating direct competition between Tops and Penn Traffic, by increasing the likelihood that Tops will unilaterally exercise market power, and by increasing the likelihood of successful coordinated interaction among the remaining firms. Absent relief, the ultimate effect of the Acquisition would be to increase the likelihood that prices of food and other grocery products would rise above competitive levels, or that there would be a decrease in the quality or selection of food, other grocery products, or services.

For the entry of a new competitor or the expansion of an existing competitor to deter or counteract the anticompetitive effects of an acquisition, entry must be timely, likely, and sufficient. According to the proposed Complaint, new entry or expansion by supermarket competitors in the relevant geographic markets is unlikely to deter the alleged anticompetitive effects of the Acquisition. The affected markets are insulated from new entry or expansion by significant entry barriers, including the time and costs associated with the need to conduct market research, select an appropriate location for the supermarket, obtain necessary permits and approvals, construct a new supermarket or convert an existing structure to a supermarket, and generate sufficient sales to have a meaningful impact on the market. Commission staff evaluated and considered pending and potential future entry by supermarket competitors in each of the affected geographic markets, as well as entry by other retailers such as mass merchants. In many of the markets, there is unlikely to be any entry in a time period that would prevent the anticompetitive effects. And, in those markets where entry may occur in the near future, the acquisition, despite new entry, still would result in highly concentrated markets, and that entry would not eliminate the anticompetitive harm of the acquisition.

IV. The Proposed Consent Agreement

The proposed Consent Agreement includes two proposed orders: a Decision and Order and an Order to Maintain Assets (collectively "Consent Orders"). The purpose of the proposed Consent Agreement is to: (1) ensure the continued use, and provide for the future use, of the Penn Traffic supermarket assets, subject to divestiture, in the operation of supermarkets at the respective locations; (2) create a viable and effective competitor that is independent of the Respondents in the operation of supermarkets in the relevant geographic markets; and (3) remedy the lessening of competition that has resulted from the Acquisition.

To achieve the above goals, the proposed Consent Agreement requires the divestiture of seven Penn Traffic supermarkets, together with their related assets, to a Commission-approved buyer at no minimum price within ninety (90) days of the Decision and Order becoming final. Tops and Holdco must secure all third-party consents and waivers necessary to facilitate the divestitures and to allow the Commission-approved buyer(s) to continue the operation of the Penn Traffic stores as supermarkets at their respective locations. As set forth in the Consent Orders, the stores to be divested are located in Bath, NY; Cortland, NY; Ithaca, NY (two stores); Lockport, NY; and Sayre, PA (two

stores). In the event Respondents do not meet their obligations to divest the Penn Traffic assets, the Commission may appoint a divestiture trustee to divest the assets in a manner consistent with the Decision and Order and subject to Commission approval.

Until all of the Penn Traffic assets are divested, the Consent Orders further require Respondents to maintain the viability, competitiveness, and marketability of the seven Penn Traffic supermarkets and related assets. This includes keeping the supermarkets open for business, performing routine maintenance, providing appropriate marketing and advertising, maintaining inventory levels at the stores, and using best efforts to preserve relationships with suppliers, distributors, customers, and employees. The Consent Agreement provides that the Commission may appoint an interim monitor whose principal duties are to ensure that Tops complies with its obligations under the Consent Orders. The Commission has appointed John J. MacIntyre, a former Penn Traffic employee with more than thirty years of experience in the supermarket industry, as interim monitor.

V. Opportunity for Public Comment

The proposed Consent Agreement has been placed on the public record for thirty (30) days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement, as well as the comments received, and will decide whether to withdraw its acceptance of the proposed Consent Agreement or issue its final Consent Orders.

The sole purpose of this analysis is to facilitate public comment on the proposed Consent Agreement. This analysis does not constitute an official interpretation of the proposed Consent Agreement, nor does it modify its terms in any way.

By direction of the Commission.

Donald S. Clark

Secretary.

[FR Doc. 2010–19780 Filed 8–10–10; 8:45 am]

BILLING CODE 6750–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0288; Docket 2010–0002, Sequence 16]

Agency Information Collection Activities; Proposed Collection; Comment Request; Open Government Citizen Engagement Ratings, Rankings, and Flagging; Submission for OMB Review; OMB Control No. 3090–0288

AGENCY: Office of Citizen Services, General Services Administration (GSA).

ACTION: Notice of a request for comments regarding an extension to an existing OMB information collection.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35), this document announces that GSA is planning to submit a request to extend an Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting this ICR to OMB for review and approval, GSA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 10, 2010.

ADDRESSES: Submit comments identified by Information Collection 3090–0288 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting "Information Collection 3090–0288" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "Information Collection 3090–0288". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 3090–0288" on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405. *Attn:* Hada Flowers/IC 3090–0288.

Instructions: Please submit comments only and cite Information Collection 3090–0288, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Rubin, General Services Administration, Office of Citizen Services, 1800 F Street NW., Room G139, Washington, DC 20405; *telephone number:* 202–501–0855; *fax number:* 202–501–4281; *e-mail address: jonathan.rubin@gsa.gov.*

SUPPLEMENTARY INFORMATION:

One comment was received, although it was of a general nature and was not related to our information collection. The comment was as follows:

"All Government Agencies are very secretive. None are complying with President Obama's Executive Order for transparency. None. FDA, HHS, USDA, USDOI, HHS, MMS, They are all secretive and sneaky. The employees in those agencies work for enrichment of their own wallets and not for the good of American citizens. Greed is the name of what they act for. Washington DC is bloated, corrupt far far too expensive for taxpayers, colossal mess. You need to audit all agencies. Jean Public 8 Winterberry Court Whitehouse Station NJ 08889"

What information is GSA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, GSA 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.

What should I consider when I prepare my comments for GSA?

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 GSA, be sure to identify the ICR title on the first page of your response. You may also provide the **Federal Register** citation.

What information collection activity or ICR does this apply to?

Title: Open Government Citizen Engagement Ratings, Rankings, and Flagging.

OMB Control Number: 3090–0288.

Abstract: This information collection request for a clearance for a replacement of the emergency ICR approved by OMB. This request is for an extension of 3 years. It is being submitted in order to fulfill the public feedback aspects of this important initiative. Visitors will be provided opportunities to provide feedback and ratings in the spirit of the President's open government and transparency initiative. Examples of feedback mechanisms are:

(1) An "agree/disagree", "vote up/vote down" or other rating system to give visitors information about which posts other visitors found most useful and interesting.

(2) A "Contact Us" entry page with an optional contact e-mail address for those visitors wishing to identify themselves.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average up to 1,666 hours per year. 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 estimated annual burden request is summarized here:

Estimated total number of potential respondents: 12,000,000.

Estimated total number of potential responses: 1,200,000.

Frequency of response: Occasionally.

Estimated total annual burden hours: 1,666 hours.

Estimated total annual costs: No cost to the public; no additional government resources.

What is the next step in the process for this ICR?

GSA 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, GSA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: August 5, 2010.

Kurt Garbars,

Acting Chief Information Officer.

[FR Doc. 2010–19838 Filed 8–10–10; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.18 of the Department of Health and Human Services' claims collection regulations (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest, which is determined and fixed by the Secretary of the Treasury after considering private consumer rates of interest on the date that the Department of Health and Human Services becomes entitled to recovery. The rate cannot be lower than the Department of the Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities" unless the Secretary waives interest in whole or part, or a different rate is prescribed by statute, contract, or repayment agreement. The Secretary of the Treasury may revise this rate quarterly. The Department of Health and Human Services publishes this rate in the **Federal Register**.

The current rate of 11%, as fixed by the Secretary of the Treasury, is certified for the quarter ended June 30, 2010. This interest rate is effective until the Secretary of the Treasury notifies the Department of Health and Human Services of any change.

Dated: August 4, 2010.

Molly P. Dawson,

Director, Office of Financial Policy and Reporting.

[FR Doc. 2010–19855 Filed 8–10–10; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Public Meeting To Solicit Input for a Strategic Plan for Federal Youth Policy

AGENCY: Office of the Assistant Secretary for Planning and Evaluation, DHHS.

ACTION: Notice of meeting.

SUMMARY: The U.S. Department of Health and Human Services, in its role as the Chair of the Interagency Working Group on Youth Programs, is announcing a meeting to solicit input from the public that will inform the development of a strategic plan for federal youth policy.

DATES: August 24, 2010, from 9 a.m.–1 p.m.

ADDRESSES: The meeting will take place at Two Illinois Center, 233 N. Michigan Avenue, Chicago, IL 60601.

FOR FURTHER INFORMATION CONTACT: Visit the Web site for the Interagency Working Group on Youth Programs at *http://www.FindYouthInfo.gov* for information on how to register, or contact the Interagency Working Group on Youth Programs help desk, by telephone at 1–877–231–7843 [**Note:** this is a toll-free telephone number], or by e-mail at *FindYouthInfo@air.org.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 11, 2009, the Congress passed the Omnibus Appropriations Act, 2009 (Pub. L. 111–8). The House Appropriations Committee Print, Division F—Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations included language directing the Interagency Working Group on Youth Programs to solicit input from young people, State children's cabinet directors, and non-profit organizations on youth programs and policies; develop an overarching strategic plan for Federal youth policy; and prepare recommendations to improve the coordination, effectiveness, and efficiency of programs affecting youth. A draft framework for the Strategic Plan can be found at *http://www.findyouthinfo.gov/provideinput.aspx.*

The Interagency Working Group on Youth Programs is comprised of staff from twelve Federal agencies that support programs and services that focus on youth: The U.S. Department of Agriculture; U.S. Department of Commerce; U.S. Department of Defense; U.S. Department of Education; U.S. Department of Health and Human Services (Chair); U.S. Department of Housing and Urban Development; U.S. Department of Justice (Vice-Chair); U.S. Department of Labor; U.S. Department of the Interior; U.S. Department of Transportation; Corporation for National and Community Service; and Office of National Drug Control Policy.

The Working Group seeks to promote achievement of positive results for at-risk youth through the following activities:

- Promoting enhanced collaboration at the Federal, state, and local levels, including with faith-based and other community organizations, as well as among families, schools and communities, in order to leverage existing resources and improve outcomes;
- Disseminating information about critical resources, including evidence-based programs, to assist interested citizens and decision-makers, particularly at the community level, to plan, implement, and participate in effective strategies for at-risk youth;
- Developing an overarching strategic plan for federal youth policy, as well as recommendations for improving the coordination, effectiveness and efficiency of youth programs, using input from community stakeholders, including youth; and
- Producing a Federal Web site, FindYouthInfo.gov, to promote effective community-based efforts to reduce the factors that put youth at risk and to provide high-quality services to at-risk youth.

II. Registration, Security, Building, and Parking Guidelines

For security purposes, members of the public who wish to attend the meeting must pre-register on-line at *http://www.findyouthinfo.gov* no later than (seven days before the meeting). Should problems arise with Web registration, call the help desk at 1–877–231–7843 or send a request to register for the meeting to *FindYouthInfo@air.org.* To register, complete the online registration form, which will ask for your name, title, organization or other affiliation, full address and phone, fax, and e-mail information or e-mail this information to *FindYouthInfo@air.org.* Additional identification documents may be required.

The meetings are held in a Federal government building; therefore, Federal security measures are applicable. In planning your arrival time, we recommend allowing additional time to clear security. Space is limited. In order to gain access to the building and grounds, participants must bring government-issued photo identification as well as their pre-registration confirmation.

Authority: Division F, Pub. L. 111–8; E.O. 13459, 73 FR 8003, February 12, 2008

Dated: August 3, 2010.

Sherry Glied,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 2010–19857 Filed 8–10–10; 8:45 am]

BILLING CODE 4154–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Single Source Cooperative Agreement Award for the World Health Organization (WHO) To Continue Development of Sustainable Influenza Vaccine Production

AGENCY: Department of Health and Human Services, Assistant Secretary for Preparedness and Response, Biomedical Advanced Research Development Authority

ACTION: Notice.

SUMMARY: Notification of Single Source Cooperative Agreement Award for the World Health Organization (WHO) To Continue Development of Sustainable Influenza Vaccine Production Capacity in Under-Resourced Nations CFDA#: 93.360.

Statutory Authority: Section 319L of the Public Health Service (PHS) Act, 42 U.S.C. 247d–7e as amended by Title IV of the Pandemic and All-Hazards Preparedness Act (PAHPA), Pub. L. 109–417; and the Consolidated Appropriations Act, 2010, Pub. L. 111–117.

Amount of Single Source Award: $6,400,000.

Project Period: September 30, 2010 through September 29, 2013.

In FY 2010, BARDA plans to provide a Single Source Continuation Award to the World Health Organization to support the International Vaccine Production Capacity-Building Program. BARDA currently funds the development of vaccine manufacturing capacity in ten developing and emerging-economy countries worldwide via a cooperative agreement with the World Health Organization (WHO). The WHO has proven to be a key partner and integral to the success of the program, which has been in existence since 2006. Continuing the partnership with the WHO will prove critical to the long-term viability of this program while bolstering the influenza vaccine manufacturing capabilities of resource poor nations and global pandemic preparedness overall.

Single Source Justification: The International Vaccine Capacity Building Program, supported by the Department of Health and Human Services, Assistant Secretary for Preparedness and Response, Biomedical Advanced Research and Development Authority was developed and has been operational since 2006. In light of the threat of an influenza pandemic it was originally designed with the goals of bolstering both international and domestic pandemic preparedness and response. The fundamental approach in achieving these goals has been through the development of the influenza vaccine production capabilities of under resourced nations in the hopes that they will ultimately be able to produce vaccines to protect the local, regional, and international public health. The program is supported by a collaborative of U.S. Government agencies, international organizations, foreign ministries and/or other foreign institutions dedicated to achieving these goals.

The WHO is the only global organization with the experience and scientific standing to accomplish the program goals. It is the recognized world health authority within the United Nations system. Similarly, the liaison and support functions that the WHO plays within the international vaccine production capacity building program cannot be duplicated or replicated. Through standing consultation and dialog with its members states on all aspects of public health, WHO is the only partner able to ensure synchronization of building of production capacity in developing countries for influenza vaccine with other pandemic preparedness activities and with increase of demand for seasonal influenza immunization.

The WHO's strong collaborative relationships with foreign governments, programmatic support, and familiarity with international vaccine production institutions have been and will be critical to the future viability of this program. Over the history of the International Vaccine Production Capacity Building program, the WHO has provided unique and invaluable support to the project. Similarly, the WHO has also independently funded other nations/institutions working to strengthen their influenza vaccine production capacity; also demonstrating

their commitment to the success of this program. The WHO represents a key stakeholder in the implementation of the program; providing unique functions, technical and scientific expertise, and capabilities that no other organization in the world has.

Additional Information: The agency program contact is Dr. Michael Perdue, whom can be contacted at (202) 260–0966 or *Michael.Perdue@hhs.gov.*

Dated: August 3, 2010.

Nicole Lurie,

Assistant Secretary for Preparedness and Response, U.S. Department of Health and Human Services.

[FR Doc. 2010–19861 Filed 8–10–10; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The Stem Cell Therapeutic Outcomes Database (OMB No. 0915–0310)—Extension

The Stem Cell Therapeutic and Research Act of 2005 provides for the collection and maintenance of human cord blood stem cells for the treatment of patients and research. The Health Resources and Services Administration's (HRSA) Healthcare Systems Bureau (HSB) has established the Stem Cell Therapeutic Outcomes Database. Operation of this database necessitates certain recordkeeping and reporting requirements in order to perform the functions related to hematopoietic stem cell transplantation under contract to the Department of Health and Human Services (HHS). The Act requires the Secretary of HHS to contract for the establishment and maintenance of information related to patients who have received stem cell therapeutic products and to do so using a standardized, electronic format. Data are collected from transplant centers in a manner similar to the data collection activities conducted by the Center for International Blood and Marrow Transplant Research (CIBMTR) and are used for ongoing analysis of transplant outcomes. HRSA uses the information in order to carry out its statutory responsibilities. Information is needed to monitor the clinical status of transplantation, and to provide the Secretary with an annual report of transplant center-specific survival data. The burden table for the year 2011 shows there will be approximately 12,800 annual follow-up assessments due for the Blood Stem Cell Transplantation Program's Stem Cell Therapeutic Outcomes Database. The 2007 30-Day Federal Register notice included total burden hours of 32,040 and 225 respondents. The burden table below includes 38,700 total burden hours and 200 respondents. The increase in burden is due to an increase in the annual number of transplants. The number of respondents has decreased due to some centers no longer performing unrelated stem cell transplants and some centers are no longer in business.

The estimate of burden is as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per Response	Total burden hours
Baseline Pre-TED (Transplant Essential Data)	200	30	6,000	0.85	5,100
Product Forms (includes Infusion, HLA, and Infectious Disease Marker inserts)	200	20	4,000	1.5	6,000
100-Day Post-TED	200	30	6,000	0.85	5,100
6-Month Post-TED	200	25	5,000	1.00	5,000
12-Month Post-TED	200	23.5	4,700	1.00	4,700
Annual Post-TED	200	64	12,800	1.00	12,800
Total	200		38,500		38,700

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the "attention of the desk officer for HRSA."

Dated: August 5, 2010.

Wendy Ponton,

Director, Office of Management.

[FR Doc. 2010–19752 Filed 8–10–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0411]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guide to Minimize Microbial Food Safety Hazards of Fresh-Cut Fruits and Vegetables

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 information collection provisions in the guidance document entitled "Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards of Fresh-Cut Fruits and Vegetables."

DATES: Submit either electronic or written comments on the collection of information by October 12, 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: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guide to Minimize Microbial Food Safety Hazards of Fresh-Cut Fruits and Vegetables (OMB Control Number 0910–0609)—Extension

Fresh-cut fruits and vegetables are fruits and vegetables that have been processed by peeling, slicing, chopping, shredding, coring, trimming, or mashing, with or without washing or other treatment, prior to being packaged for consumption. The methods by which produce is grown, harvested, and processed may contribute to its contamination with pathogens and, consequently, the role of the produce in transmitting foodborne illness. Factors such as the high degree of handling and mixing of the product, the release of cellular fluids during cutting or mashing, the high moisture content of the product, the absence of a step lethal to pathogens, and the potential for temperature abuse in the processing, storage, transport, and retail display all enhance the potential for pathogens to survive and grow in fresh-cut produce.

The Federal Food, Drug, and Cosmetic Act (the act) prohibits the distribution of adulterated food in interstate commerce (21 U.S.C. 331 and 342). In response to the increased consumption of fresh-cut fruits and vegetables and the potential for foodborne illness associated with these products, FDA recognizes the need for guidance specific to the processing of fresh-cut fruits and vegetables. The guidance document entitled "Guide to Minimize Microbial Food Safety Hazards of Fresh-cut Fruits and Vegetables," which is available at: *http://www.fda.gov/FoodGuidances*, provides FDA's recommendations to fresh-cut produce processors about how to avoid contamination of their product with pathogens. This guidance is in addition to the good manufacturing practices (GMPs) provided in part 110 of FDA's regulations (21 CFR part 110). The guidance is intended to assist fresh-cut produce processors in minimizing microbial food safety hazards common to the processing of most fresh-cut fruits and vegetables sold to consumers and retail establishments in a ready-to-eat form. Accordingly, FDA encourages fresh-cut produce processors to adopt the general recommendations in the guidance and to tailor practices to their individual operations.

The guidance provides information and recommended procedures designed to help fresh-cut produce processors minimize microbial food safety hazards. The recommended procedures contained in the guidance are voluntary. Both FDA and fresh-cut produce processors will use and benefit from the information collected.

Two general recommendations in the guidance are for operators to develop and implement both a written Standard Operating Procedures (SOPs) plan and a Sanitary Standard Operation Procedures (SSOPs) plan. SOPs and SSOPs are important components to properly implemented and monitored GMPs that are required for processed food operations under part 110. Other recommended programs that require documentation and recordkeeping are recall and traceback programs. In the event of a food safety concern, processors who adopt these recommended programs will be prepared to recall products from the market place or be able to trace back fresh produce, which might be implicated in a foodborne illness outbreak, to its source. Fresh-cut produce processors are also asked to consider the application of Hazards Analysis and Critical Control Point (HACCP) principles or comparable preventive control programs to the processing of fruits and vegetables. FDA, other Federal and state food agencies, industry, and food establishments have found such preventive control programs, when properly designed and maintained by the establishment's personnel, to be valuable in managing the safety of food products.

FDA's fresh-cut guidance represents the agency's recommendations to industry based on the current state of science. Following the recommendations set forth in the fresh-cut guidance is the choice of each individual fresh-cut operation, plant, or processor. FDA estimates the burden of this guidance on industry by assuming that those in the fresh-cut industry who do not currently follow the recommendations put forth in the guidance will find it of value to do so. Therefore, the estimates of the burden associated with the issuance of this guidance represent the upper bound estimate of burden, the burden if every fresh-cut plant, processor, or operation that does not follow the recommendations of the guidance should choose to do so.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

Activity	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
SOP and SSOP: Maintenance	122	3,315	404,430	0.067	27,097
Traceback Development	10	1	10	20	200
Traceback Maintenance	290	1	290	40	11,600
Preventive Control Program Comparable to a HACCP System: System Development	10	1	10	100	1,000
Preventive Control Program Comparable to a HACCP System: System Implementation	145	510	73,950	0.067	4,955
Preventive Control Program Comparable to a HACCP System: Implementation Review	145	4	580	4	2,320
Annual Burden Hours					47,172

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Industry Profile

Estimates of the paperwork burden to the fresh-cut industry are based on information received from a fresh-cut processor who has developed and maintained these programs and information from a fresh-cut produce industry trade association. Because of the small number of fresh-cut processors, the agency is able to extrapolate data from industry programs to calculate the total estimated upper bound burdens. (See table 1 of this document.)

The burden to industry of developing and maintaining the activities recommended in FDA's fresh-cut guidance will vary considerably among fresh-cut processors, depending on the type and number of products involved, the sophistication of the equipment or instruments (e.g., those that automatically monitor and record food safety controls), and the type of controls monitored under any individual preventive control program, such as critical control points (CCPs) monitored under a HACCP program.

In 2007, FDA estimated that there were 250 fresh-cut plants in operation in the United States, and that approximately 10 new firms enter the fresh-cut industry each year (72 FR 11364 at 11366). Using these figures, we estimate that in 2010 there are 280 fresh-cut plants in operation and that approximately 10 new firms will enter the fresh-cut industry each year, over the next 3 years. Many of the existing firms in the fresh-cut industry already make use of current good manufacturing practices-related, recall, HACCP, and other activities. FDA estimates that the burden of this fresh-cut guidance will fall on both existing and new firms entering the industry who may follow the recommendations in the guidance.

SOPs and SSOPs

Two general recommendations in this guidance are for operators to develop and implement both a SOPs plan and a written SSOPs plan. SOPs describe in writing the performance of the day-to-day operations of a processing plant. Examples of activities that would fall under SOPs would be developing written specifications for agricultural inputs, ingredients, and packaging materials; production steps for the processing and packaging operations; instructions for packaging and storage activities; and procedures for equipment maintenance, calibration, and replacement and facility maintenance and upkeep; and maintaining SOP records on product processing and distribution activities.

SSOPs provide written instructions or procedures for sanitary practices developed for each specific sanitation activity in and around the facility. Sanitation activities include procedures for cleaning equipment, food-contact surfaces, and plant facilities; chemical use and storage; cleaning equipment maintenance, use, and storage; pest control; and maintaining SSOP records for the activities. From communication with the fresh-cut industry, we know that existing fresh-cut processors already have developed SOPs and SSOPs. We therefore consider the development of SOPs and SSOPs to be "usual and customary" for manufacturers and processors in the fresh-cut industry. (See 5 CFR 1320.3(b)(2).) Thus, we do not calculate this burden for existing firms or new firms entering this industry.

FDA recommends that facilities not only develop but also maintain SOPs and SSOPs. Implementation and maintenance of SOPs and SSOPs include maintaining daily records for each of the firm's operational days for the following activities: Inspection of incoming ingredients, such as the fresh produce and packaging material; facility and production sanitation inspections; equipment maintenance, sanitation, and visual safety inspections; equipment calibration, e.g., checking pH meters; facility and premises pest control audits; temperature controls during processing and in storage areas; and audits of ingredients, food contact surfaces, and equipment for microbiological contamination. Of the 280 fresh-cut processors, we estimate that well over half have SOP and SSOP maintenance programs in place. Therefore, for purposes of estimating the annual recordkeeping burden for SOP and SSOP maintenance programs, the agency assumed that 40 percent of the existing processors, or 112 firms, and the 10 new firms do not have SOP and SSOP maintenance programs in place. FDA estimates the recordkeeping burden for SOP and SSOP maintenance programs by assuming that these 122 firms will choose to implement such a maintenance strategy as a result of the recommendations in the fresh-cut guidance document.

A typical fresh-cut processing plant operates about 255 days per year. For an 8-hour shift, assuming the ingredients are received twice during that time, under the recommendations in the

guidance, there would be about 13 records kept (2 for inspecting incoming ingredients; 2 for inspecting the facility and production areas once every 4 hours; 3 records for equipment (maintenance, sanitation, and visual inspections for defects); one for calibrating equipment; 2 temperature recording audits (1 time for each of the 2 processing runs); and 3 microbiological audits (ingredients, food contact surfaces, and equipment)). Therefore, the annual frequency of recordkeeping for SOPs and SSOPs is calculated to be 3,315 times (255 x 13) per year per firm; 122 firms will be performing these activities to generate a total 404,430 records (3,315 x 122) annually, assuming all firms choose to follow the recommendations on keeping records.

The total time to record observations for SOP and SSOP maintenance is estimated to take 4 minutes or 0.067 hours per record, and the number of records maintained is 404,430. Therefore, the total annual burden in hours for 122 processors to maintain their SOP and SSOP records is approximately 27,097 hours (404,430 x 0.067). The maintenance burden for these 122 firms, along with the annual maintenance burden of audits or testing, is estimated in row 1 of table 1 of this document. Again, these figures assume that all firms choose to follow the recommendations on recording observations.

Recall and Traceback

We recommend that fresh-cut processors establish and maintain written traceback procedures to respond to food safety hazard problems when they arise and establish and maintain a written contingency plan for use in initiating and effecting a recall. In order to facilitate tracebacks and recalls, we recommend that processors establish a program that documents and tracks fresh-cut products back to the source of their raw ingredients, and keep records of product identity and specifications, the product in inventory, and where, when, to whom, and how much of the product is shipped.

Traceback programs are used for those times when a food safety problem has been identified or a product has been implicated in a foodborne illness outbreak. The burden to develop a traceback program is a one-time activity estimated to take approximately 20 hours. In 2007, we previously estimated that firms in the industry would choose to begin a traceback program after the guidance was made available and estimated that the 250 existing fresh-cut firms and the 10 new businesses expected to enter the industry annually from 2007 to 2010 would spend 5,200 hours (250 x 20) on this activity. Accordingly, we only need to estimate the burden of this one-time activity on the 10 new businesses expected to enter the industry annually in the next 3 years. We estimate that the 10 new firms will spend 20 hours each preparing a traceback program, for a total of 200 hours (10 x 20). The burden estimate of developing a traceback program is shown in row 2 of table 1 of this document.

Traceback program adjustments or revisions may, or may not, be needed annually. Firms may test their traceback programs yearly to see if adjustments are needed to maintain traceback capabilities. Evaluating and updating traceback programs is estimated to take 40 hours to complete. The annual burden of maintaining a traceback program is estimated for the 280 existing firms in the industry plus the 10 firms new to the industry that may decide to implement this type of program. Assuming that each firm completes this exercise once a year, the total maintenance burden of traceback programs is 11,600 hours yearly (290 x 40). This burden estimate is shown in row 3 of table 1 of this document.

The fresh-cut guidance refers to previously approved collections of information found in FDA regulations. The recommendations in this document regarding establishing and maintaining a recall plan, as provided in 21 CFR 7.59, have been approved under OMB control number 0910–0249. Therefore, FDA is not calculating a new paperwork burden for recall plans.

Preventative Control Program

When properly designed and maintained by the establishment's personnel, a preventive control program is a valuable program for managing the safety of food products. A common preventive control program used by the fresh-cut industry is a HACCP system. A HACCP system allows managers to assess the inherent risks and identify hazards attributable to a product or a process, and then determine the necessary steps to control the hazards. Monitoring and verification steps, which include recordkeeping, are included in the HACCP system to ensure that potential risks are controlled. We use HACCP as an example of a preventive control program that a firm may choose based on the recommendations in the guidance to estimate the burden of developing, implementing, and reviewing a preventive control program.

FDA estimated the paperwork burden of developing and implementing a HACCP plan based on a plan with two CCPs. The number of CCPs may vary depending on how the processor chooses to identify the CCPs for a particular operation. Developing a HACCP plan is a one-time activity that is estimated to take 100 hours based on a trained HACCP team working on the plan full time. The HACCP team identifies the CCPs and measures needed to control them, and then identifies the approach needed to verify the effectiveness of the controls. During this plan development period, the firm chooses the records to be kept and information and observations to be recorded. This is a one-time process during the first year.

In 2007, we previously estimated that, of the estimated 250 fresh-cut processors, approximately 50 percent of the firms already have HACCP plans in place. We therefore assumed that the remaining fresh-cut processors (125 existing firms plus the 10 new firms), would voluntarily develop a HACCP plan, and estimated that 135 processors would spend 13,500 hours (135 x 100) to develop their individual HACCP plans. Accordingly, we only need to estimate the burden of this one-time activity on the 10 new businesses expected to enter the industry annually in the next 3 years. We estimate that the 10 new firms will spend 100 hours each to develop their individual HACCP plans, for a total of 1,000 hours (10 x 100). This burden estimate is shown in row 4 of table 1 of this document.

After the HACCP plan is developed, the frequency for recordkeeping for implementing or maintaining daily records is estimated to be 510 records per year. (This is based on a firm choosing to maintain daily records for 2 CCPs for one 8-hour shift per day for each of the estimated 255 operational days per year.) The total time to record observations for the CCPs was estimated to take 4 minutes or 0.067 hours per record. Therefore, the total annual records kept by 145 firms (the 135 firms plus the 10 new businesses expected to enter the industry) is 73,950 (510 x 145), and the total hours required are 4,955 (73,950 records x 0.067 hours per record = 4,954.65, rounded to 4,955). This annual burden is shown in row 5 of table 1 of this document.

After the HACCP plan has been developed and implemented, we recommend that the plan is reviewed regularly to ensure that it is working properly. Fresh-cut processors are estimated to review their HACCP plans four times per year (once per quarter). Assuming that it takes each of the 145

firms 4 hours per review each quarter, the total burden of this activity, for firms that choose to review their plans annually, is 2,320 (145 x 4 x 4) hours per year. This annual burden is shown in row 6 of table 1 of this document.

Dated: August 5, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–19747 Filed 8–10–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: ORR Requirements for Refugee Cash Assistance; and Refugee Medical Assistance (45 CFR Part 400).

OMB No.: 0970–0036.

Description: As required by section 412(e) of the Immigration and Nationality Act, the Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR), is requesting the information from Form ORR–6 to determine the effectiveness of the State cash and medical assistance, child welfare, social services, and targeted assistance programs. State-by-State Refugee Cash Assistance (RCA) and Refugee Medical Assistance (RMA) utilization rates derived from Form ORR–6 are calculated for use in formulating program initiatives, priorities, standards, budget requests, and assistance policies. ORR regulations require that State Refugee Resettlement and Wilson-Fish agencies, and local and Tribal governments complete Form ORR–6 in order to participate in the above-mentioned programs.

Respondents: State Refugee Resettlement and Wilson-Fish Agencies, local, and Tribal governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ORR–6	50	3	3.88	582

Estimated Total Annual Burden Hours: 582.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project.

Fax: 202–395–7285.

Email: *OIRA_SUBMISSION@OMB.EOP.GOV.*

Attn: Desk Officer for the Administration for Children and Families.

Dated: August 5, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–19748 Filed 8–10–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0198]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Premarket Notification

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by September 10, 2010.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0120. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Premarket Notification—(OMB Control Number 0910–0120)—Extension

Section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(k)) and the implementing regulation under part 807 (21 CFR part 807, subpart E) requires a person who intends to market a medical device to submit a premarket notification submission to FDA at least 90 days before proposing to begin the introduction, or delivery for introduction into interstate commerce, for commercial distribution of a device intended for human use. Based on the information provided in the notification, FDA must determine whether the new device is substantially equivalent to a legally marketed device, as defined in § 807.92(a)(3). If the device is determined to be not substantially equivalent to a legally marketed device, it must have an approved premarket approval application (PMA), Product Development Protocol, Humanitarian Device Exemption (HDE), Petition for Evaluation of Automatic Class III Designation (de novo) or be reclassified

into class I or class II before being marketed. FDA makes the final decision of whether a device is substantially equivalent or not equivalent.

Section 807.81 states when a premarket notification is required. A premarket notification is required to be submitted by a person who is:

- Introducing a device to the market for the first time;
- Introducing a device into commercial distribution for the first time by a person who is required to register; and
- Introducing or reintroducing a device which is significantly changed or modified in design, components, method of manufacturer, or the intended use that could affect the safety and effectiveness of the device.

Section 807.87 specifies information required in a premarket notification submission.

Section 204 of the Food and Drug Administration Modernization Act (FDAMA) amended section 514 of the act (21 U.S.C. 360d). Amended section 514 allows FDA to recognize consensus standards developed by international and national organizations for use in satisfying portions of device premarket review submissions including premarket notifications or other requirements. FDA has published and updated the list of recognized standards regularly since enactment of FDAMA and has allowed 510(k) submitters to certify conformance to recognized standards to meet the requirements of § 807.87. FDA Form FDA 3654, the 510(k) Standards Data Form, standardizes the format for submitting information on consensus standards that a 510(k) submitter chooses to use as a portion of their premarket notification submission (The Form FDA 3654 is not for declarations of conformance to a recognized standard). FDA believes that use of this form will simplify the 510(k) preparation and review process for 510(k).

Form FDA 3514, a summary coversheet form, assists respondents in categorizing administrative 510(k) information for submission to FDA. This form also assists respondents in categorizing information for other FDA medical device programs such as PMAs, investigational device exemptions, and HDEs. Under § 807.87(h), each 510(k) submitter must include in the 510(k) either a summary of the information in the 510(k) as required by § 807.92 (510(k) summary) or a statement certifying that the submitter will make available upon request the information in the 510(k) with certain exceptions as per § 807.93 (510(k) statement). If the 510(k) submitter includes a 510(k) statement in the 510(k) submission, § 807.93 requires that the official correspondent of the firm make available within 30 days of a request, all information included in the submitted premarket notification on safety and effectiveness. This information will be provided to any person within 30 days of a request if the device described in the 510(k) submission is determined to be substantially equivalent. The information provided will be a duplicate of the 510(k) submission including any safety and effectiveness information, but excluding all patient identifiers and trade secret and commercial confidential information. According to § 807.90, submitters may request information on their 510(k) review status 90 days after the initial log-in date of the 510(k). Thereafter, the submitter may request status reports every 30 days following the initial status request. To obtain a 510(k) status report, the submitter should complete the status request form, Form FDA 3541, and fax it to the Center for Devices and Radiological Health office identified on the form. The most likely respondents to this information collection will be specification developers and medical device manufacturers.

In the **Federal Register** of May 5, 2010 (75 FR 24708), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Form Number	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
807 subpart E		3,800	1	3,800	79	300,200
807.87	FDA Form 3514	1,956	1	1,956	0.5	978
807.90 (a)(3)	FDA Form 3541	218	1	218	0.25	55
807.87(d) and (f)	FDA Form 3654	1,500	1	1,500	10	15,000
807.92 and 807.93		2,000	10	2,000	10	20,000
Total						336,233

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: August 5, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–19746 Filed 8–10–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2363–N]

Medicare, Medicaid and CLIA Programs; COLA (Formerly the Commission on Office Laboratory Accreditation) Voluntary Withdrawal From the Specialty of Pathology

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

ACTION: Notice.

SUMMARY: This notice announces COLA's voluntary withdrawal from the specialty of Pathology. COLA is an accreditation organization for clinical laboratories under the Clinical Laboratory Improvement Amendments (CLIA) program.

DATES: *Effective Date:* This notice is effective on August 27, 2010.

FOR FURTHER INFORMATION CONTACT: Raelene Perfetto, (410) 786–6876.

SUPPLEMENTARY INFORMATION:

I. Background

In a **Federal Register** notice published on February 23, 2007(72 FR 8171), we granted COLA approval as an accreditation organization under 42 CFR part 493 subpart E. The approval was effective from February 23, 2007 until February 25, 2013. During this time, COLA was allowed to accredit laboratories for purposes of establishing their compliance with CLIA requirements in the following specialty and subspecialty areas:

- Microbiology, including Bacteriology, Mycobacteriology, Mycology, Parasitology, Virology.
- Diagnostic Immunology, including Syphilis Serology, General Immunology.
- Chemistry, including Routine Chemistry, Urinalysis, Endocrinology, Toxicology.
- Hematology.
- Immunohematology, Including ABO Group and Rh Group, Antibody Detection, Antibody Identification, Compatibility Testing.
- Pathology, including Histopathology, Oral Pathology, Cytology.

In a letter dated June 15, 2010, COLA provided official notice of its intent to voluntarily withdraw from accreditation in the specialty of Pathology. This withdrawal was effective June 30, 2010. All laboratories accredited by COLA in the specialty of Pathology (to include Histopathology, Oral Pathology or Cytology) will have 60 days from the date of this **Federal Register** notice to seek either CLIA inspection by the State Agency where the laboratory is located or accreditation with another accrediting organization that is currently CMS-approved for the specialty of Pathology.

This notice only addresses COLA's accreditation for the specialty of Pathology. As discussed below, COLA's accreditation status in the other specialties is not affected by this notice.

II. Provisions of the Notice

This notice announces COLA's withdrawal as an accreditation organization from the specialty of Pathology. COLA retains deeming authority as an accreditation organization under 42 CFR part 493 subpart E in a number of specialties. It may continue to accredit laboratories for purposes of establishing their compliance with CLIA requirements in the following specialty and subspecialty areas:

- Microbiology, including Bacteriology, Mycobacteriology, Mycology, Parasitology, Virology.
- Diagnostic Immunology, including Syphilis Serology, General Immunology.
- Chemistry, including Routine Chemistry, Urinalysis, Endocrinology, Toxicology.
- Hematology.
- Immunohematology, including ABO Group and Rh Group, Antibody Detection, Antibody Identification, Compatibility Testing.

A. Options for Laboratories Testing in Both Pathology and Other Specialties and Subspecialties

Laboratories currently accredited by COLA and performing testing in both the specialty of Pathology (to include Histopathology, Oral Pathology, or Cytology) and the other specialties and subspecialties for which COLA retains deeming authority may choose one of the following courses of action:

- Remain with COLA for purposes of the accreditation of non-Pathology specialties and subspecialties only and seek accreditation services for Pathology from another CMS-approved accrediting organization. The Certificate of Accreditation (CoA) will remain.
- Seek certification for all applicable specialties and subspecialties from the State Agency where the laboratory is located. A laboratory may not combine accreditation from a CMS-approved accrediting organization with a certification from the State Agency where the laboratory is located. Laboratories must seek a single path, either accreditation through one or more accreditation organizations with the appropriate deeming authorities, or certification through the appropriate State Agency.

B. Options for Laboratories Testing Only in Pathology

Laboratories currently accredited by COLA and performing testing in only the specialty of Pathology (to include Histopathology, Oral Pathology or Cytology) have the following options:

- Seek CLIA accreditation with another CMS-approved accrediting organization that currently possesses deeming authority in the specialty of Pathology.
- Seek certification with the State Agency where the laboratory is located.

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

Authority: Section 353 of the Public Health Service Act (42 U.S.C. 263a).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; No. 93.774, Medicare—Supplementary Medical Insurance Program; and No. 93.778, Medical Assistance Program.)

Dated: July 27, 2010.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2010–19675 Filed 8–10–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Migrant Health; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on Migrant Health.

Dates and Times: October 19, 2010, 8:30 a.m. to 5 p.m. October 20, 2010, 8:30 a.m. to 5 p.m.

Place: Charleston Marriott Hotel, 170 Lockwood Boulevard, Charleston, South Carolina 29403, Telephone: 800–968–3569, Fax: 843–723–0276.

Status: The meeting will be open to the public.

Purpose: The purpose of the meeting is to discuss services and issues related to the

health of migrant and seasonal farmworkers and their families and to formulate recommendations for the Secretary of Health and Human Services.

Agenda: The agenda includes an overview of the Council's general business activities. The Council will also hear presentations from experts on farmworker issues, including the status of farmworker health at the local and national levels.

The Council meeting is being held in conjunction with the East Coast Migrant Stream Forum sponsored by the North Carolina Community Health Center Association, which is being held in Charleston, South Carolina, October 21–23, 2010.

Agenda items are subject to change as priorities indicate.

For Further Information Contact: Marcia Gomez, M.D., Office of Minority and Special Populations, Bureau of Primary Health Care, Health Resources and Services Administration, 5600 Fishers Lane, Maryland 20857; telephone (301) 594–4897.

Dated: August 5, 2010.

Wendy Ponton,

Director, Office of Management.

[FR Doc. 2010–19751 Filed 8–10–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee I—Career Development, NCI–I Career Development.

Date: September 21, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Sergei Radaev, PhD, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd, Rm 8113, Bethesda, Md 20892, 301–435–5655, *sradaev@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 5, 2010.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–19787 Filed 8–10–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director (ACD), Centers for Disease Control and Prevention (CDC)—National Biosurveillance Advisory Subcommittee (NBAS)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the CDC announces the following meeting of aforementioned subcommittee:

Time and Date: 8 a.m.–3:30 p.m., August 24, 2010.

Place: Emory Conference Center Hotel, 1615 Clifton Road, N.E., Atlanta, GA 30329.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people. The public is welcome to participate during the public comment periods. The public comment periods are tentatively scheduled for 10 a.m.–10:05 a.m. and 3:25 p.m.–3:30 p.m.

Purpose: As a subcommittee to the CDC's ACD, the NBAS will provide counsel to the CDC and the Federal government through the ACD regarding a broad range of human health surveillance issues arising from the development and implementation of a roadmap for the human health component of a national biosurveillance system.

Matters to be Discussed: Agenda items will include establishing task force action plans for developing recommendations and guidance in order to expand and strengthen the national portfolio of activities in biosurveillance practice and scientific assessment.

The agenda is subject to change as priorities dictate.

Contact Person for More Information: Pamela Diaz, M.D., Designated Federal Officer, ACD,CDC—NBAS, 1600 Clifton Road, NE., M/S E–33, Atlanta, GA 30333. Telephone: (770) 488–8806. E-mail: *pdiaz@cdc.gov.* For security reasons, members of the public interested in attending the meeting should contact Mark Byers, Telephone: (770) 488–8619, E-mail: *mbyers@cdc.gov.* The deadline for notification of attendance is August 13, 2010.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 4, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–19783 Filed 8–10–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0004]
[FDA 225–10–0010]

Memorandum of Understanding Between United States Food and Drug Administration and the Centers for Medicare and Medicaid Services

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA and the Centers for Medicare and Medicaid Services (CMS), both part of the U.S. Department of Health and Human Services. The purpose of the MOU is to promote collaboration and enhance knowledge of efficiency by providing for the sharing of information and expertise between the Federal partners. The goals of the collaboration are to explore ways to further enhance information sharing efforts through more efficient and robust inter-agency activities; promote efficient utilization of tools and expertise for product analysis, validation, and risk identification; and build infrastructure and processes that meet the common needs for evaluating the safety, efficacy, utilization, coverage, payment, and clinical benefit of drugs, biologics, and medical devices.

DATES: The agreement became effective June 25, 2010.

FOR FURTHER INFORMATION CONTACT: David H. Dorsey, Office of Policy, Planning and Budget, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 4222, Silver Spring, MD 20993, 301–796–4800.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c),

which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: August 4, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

BILLING CODE 4160–01–S

MOU Number 225-10-0010

MEMORANDUM OF UNDERSTANDING

BETWEEN

UNITED STATES FOOD AND DRUG ADMINISTRATION

AND

CENTERS FOR MEDICARE & MEDICAID SERVICES

1. Preamble

The Food and Drug Administration (FDA) and the Centers for Medicare & Medicaid Services (CMS), both as part of the Department of Health and Human Services, and hereinafter also referred to as "Federal partners," agree to work together to promote initiatives related to the review and use of FDA-regulated drugs, biologics, medical devices, and foods, including dietary supplements, as defined by the Federal Food, Drug and Cosmetic Act (see 21 U.S.C. 321) and the Public Health Service Act. (See 42 U.S.C. 262).

2. Purpose and Goals

The purpose of the MOU is to promote collaboration and enhance knowledge and efficiency by providing for the sharing of information and expertise between the Federal partners. The goals of the collaboration are to explore ways to:

a. Further enhance information sharing efforts through more efficient and robust inter-agency activities.

b. Promote efficient utilization of tools and expertise for product analysis, validation and risk identification.

c. Build infrastructure and processes that meet the common needs for evaluating the safety, efficacy, utilization, coverage, payment, and clinical benefit of drugs, biologics and medical devices.

3. Substance of the Agreement - Program Areas and Responsibilities/Activities

a. Each Federal partner will establish a principal point of contact to facilitate the actions carried out under this MOU.

b. FDA and CMS agree to attend an initial meeting to establish the specific procedures and safeguards necessary to implement this MOU. The initial meeting will take place within 30 days of signing and approval of this MOU. Periodic meetings will be scheduled thereafter on an as needed basis. FDA and CMS agree not to share information under this MOU unless, and until, adequate procedures and safeguards are established and implemented by each Federal partner.

c. FDA and CMS agree that each initial request for information will be made by and transmitted to the Agency principal point of contacts designated according to Section 3.a. of this MOU. Subsequent communications pertaining to that issue may occur between other staff as outlined in the initial request for information.

d. FDA and CMS agree that any Federal partner may decide not to share information or expertise in response to a particular request for information made according to the procedures established under Section 3.b., or to limit the scope of information and expertise sharing in response to a particular request. A decision not to share information in response to a specific request may be based on several factors, including, for example, the amount of resources necessary to fulfill the request, the reasonableness of the request, the responding Federal partner's priorities, or legal restrictions. In the event that Federal partners can not reach consensus on a decision to share or not share information, the issue will be referred to the FDA Deputy Commissioner and CMS Administrator for a final decision.

e. FDA and CMS agree to establish reasonable timelines for responding to information requests and to refer instances of delays to the Agency point of contact for resolution.

f. FDA and CMS recognize that the following types of information transmitted between them in any medium and from any source must be protected from unauthorized disclosure: (1) trade secret and other confidential commercial information that would be protected from public disclosure pursuant to Exemption 4 of the Freedom of Information Act (FOIA); (2) personal privacy information, such as the information that would be protected from public disclosure pursuant to Exemption 6 or 7(c) of the FOIA; or (3) information that is otherwise protected from public disclosure by Federal statutes and their implementing regulations (e.g., the Trade Secrets Act (18 U.S.C. § 1905), the Privacy Act (5 U.S.C. § 552a), the Freedom of Information Act (5 U.S.C. § 552), the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), and the Health Insurance Portability and Accountability Act (HIPAA), Pub. L. 104-191).

g. FDA and CMS agree to promptly notify the relevant Federal partner(s) of any actual or suspected unauthorized disclosure of information shared under this MOU.

4. General Provisions

a. Safeguarding & Limiting Access to Shared Information

The procedures established under Section 3.b. must include proper safeguards against unauthorized use and disclosure of the information exchanged under this MOU. Proper safeguards shall include the adoption of policies and procedures to ensure that the information shared under this MOU shall be used solely in accordance with Trade Secrets Act [18 U.S.C. § 1905], the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.], the Privacy Act of 1974, as amended [5 U.S.C. § 552a], the Freedom of Information Act [5 U.S.C. § 552], and their implementing regulations, as well as the HIPAA Privacy Rule [45 C.F.R. Parts 160 and 164]. FDA and CMS shall establish appropriate administrative, technical, procedural, and physical safeguards to protect the confidentiality of the information and to prevent unauthorized access to the information provided by the other Federal partner.

Access to the information shared under this MOU shall be restricted to authorized FDA and CMS employees, agents, and officials who require access to perform their official duties in accordance with the uses of the information as authorized in this MOU. Such personnel shall be advised of (1) the confidential nature of the information; (2) safeguards required to protect the information, and (3) the administrative, civil and criminal penalties for noncompliance contained in applicable Federal laws.

If an agency that has received information under this MOU receives a Freedom of Information Act (FOIA) request for the shared information, it will refer the request to the originating agency for it to respond directly to the requestor regarding the releasability of the information. In such cases, the agency making the referral will notify the requestor that a referral has been made and that a response will issue directly from the originating agency.

b. Restriction on Use of Information

All information provided by FDA or CMS shall be used solely for the purposes outlined in Section 2. If FDA or CMS wish to use the information provided by the other Federal agency under this MOU for any purpose other than those outlined above, the requesting agency shall make a written request to the other agency describing the additional purposes for which it seeks to use the information. If the agency receiving this request determines that the request to use the information provided hereunder is acceptable, it shall provide the requesting agency with written approval of the additional use of the information.

c. Effect on Existing Statutes and Regulations

FDA and CMS agree to take actions under this collaboration that are consistent with existing laws and regulations, and that nothing in the MOU shall be construed as changing the current requirements under the statutes and regulations administered and enforced by FDA and CMS including but not limited to: Title 42 of the United States Code, the Public Health Service Act, and the Federal Food, Drug, and Cosmetic Act. Further, nothing contained in this MOU constitutes a mandate or a requirement imposed on FDA or CMS that is additional to the mandates or requirements imposed on FDA or CMS by Federal statutes and regulations.

d. Resource Obligations

FDA and CMS will designate respective project managers to oversee the administration of, and adherence to, the content of this MOU. These project managers shall include one or more designated individuals from any of the following: FDA's Office of the Commissioner and CMS' Office of the Administrator; FDA's Center for Drug Evaluation and Research, Center for Devices and Radiological Health, Center for Biologics Evaluation and Research, Center for Food Safety and Applied Nutrition, and Office of Regulatory Affairs; and CMS' Office of Clinical Standards and Quality and Centers for Medicare Management.

FDA and CMS will make reasonable efforts to provide the necessary staff to implement this MOU in an efficient and effective manner.

5. Assessment Mechanisms

FDA and CMS staff involved in implementing the MOU will provide regular and consistent oversight and reevaluation of all terms and conditions contained herein.

6. Terms, Termination or Modification

This MOU becomes effective upon the signature of both the FDA and CMS and will remain in effect for 5 years, unless otherwise terminated. This agreement may be modified by unanimous consent or terminated by any party upon 60 days written notice. This agreement may be modified by consent of both Federal partners or terminated by any party immediately upon written notice in the event that a Federal statute is enacted or a regulation is issued by a Federal partner that materially affects this MOU.

MOU Number 225-10-0010

7. **Principal Point of Contacts**

David H. Dorsey, J.D.
Acting Deputy Commissioner for Policy, Planning and Budget
Office of Policy, Planning and Budget
Office of the Commissioner
U.S. Food and Drug Administration
10903 New Hampshire Avenue, WO-1
Silver Spring, MD 20993
301 -796-4800

Barry M. Straube, M.D.
CMS Chief Medical Officer
Director. Office of Clinical Standards and Quality
Centers for Medicare & Medicaid Services
7500 Security Boulevard, S3-02-01
Baltimore, MD 21244
410-786-6841

APPROVED AND ACCEPTED FOR CENTERS FOR MEDICARE & MEDICAID SERVICES

By: Marilyn Tavenner
Marilyn Tavenner
Acting Administrator and Chief Operating Officer, Centers for Medicare & Medicaid Services

Date: 6-18-2010

APPROVED AND ACCEPTED FOR THE FOOD AND DRUG ADMINISTRATION

By: Margaret A. Hamburg
Margaret A. Hamburg, M.D.

Commissioner of Food and Drugs

Date: 6-25-2010

MOU Number 225-10-0010

APPENDIX A

PROCESS FOR INFORMATION SHARING

Pursuant to Section 3.d of the Memorandum Of Understanding (MOU) entered into by the Food and Drug Administration (FDA) and the Centers for Medicare & Medicaid Services (CMS) any Federal partner "may decide not to share information or expertise in response to a particular request for information made according to the procedures established under Section 3.b., or to limit the scope of information and expertise sharing in response to a particular request." Nothing in the process described below changes Section 3.d.

When, under the current MOU, staff at the FDA or CMS request from the other agency information that may contain confidential material, the request should be in writing, which includes an informal email, and need only identify the subject for which information is requested. Although a more specific description of the information asked for may be helpful, it would not be required for purposes of making a request. However, the following language should be included in the request:

"Information that is shared under this request will be under the 2010 FDA-CMS Memorandum of Understanding to Share Information. We agree not to disclose any shared information in any manner without your written permission or as required by law with advance notice to the originating agency." With the inclusion of this statement, requestors would not have to use a particular format or include other pre-specified text.

A response to a request should also be in writing, but it, too, can be an informal email that acknowledges transmission of information in response to the request. Although identifying each piece of information/document provided may be helpful, it would not be required for purposes of responding to a request. However, the following language should be included in the response:

"Pursuant to the 2010 FDA-CMS Memorandum of Understanding to Share Information, this communication may contain privileged and/or confidential information exempt from public disclosure. It may not be disclosed or shared in any manner without our express written consent or as required by law with advance notice to the originating agency." With the inclusion of this statement, responders would not have to use a particular format or include other pre-specified text.

[FR Doc. 2010–19772 Filed 8–10–10; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Proposed Vaccine Information Materials for Rotavirus Vaccine

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: Under the National Childhood Vaccine Injury Act (NCVIA) (42 U.S.C. 300aa–26), the CDC must develop vaccine information materials that all health care providers are required to give to patients/parents prior to administration of specific vaccines. CDC seeks written comment on proposed new vaccine information materials for rotavirus vaccine.

DATES: Written comments are invited and must be received on or before October 12, 2010.

ADDRESSES: Written comments should be addressed to Anne Schuchat, M.D., Director, National Center for Immunization and Respiratory Diseases, Centers for Disease Control and Prevention, Mailstop E–05, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

FOR FURTHER INFORMATION CONTACT: Skip Wolfe, National Center for Immunization and Respiratory Diseases, Centers for Disease Control and Prevention, Mailstop E–52, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–8809.

SUPPLEMENTARY INFORMATION: The National Childhood Vaccine Injury Act of 1986 (Pub. L. 99–660), as amended by section 708 of Public Law 103–183, added section 2126 to the Public Health Service Act. Section 2126, codified at 42 U.S.C. 300aa–26, requires the Secretary of Health and Human Services to develop and disseminate vaccine information materials for distribution by all health care providers in the United States to any patient (or to the parent or legal representative in the case of a child) receiving vaccines covered under the National Vaccine Injury Compensation Program.

Development and revision of the vaccine information materials, also known as Vaccine Information Statements (VIS), have been delegated by the Secretary to the Centers for Disease Control and Prevention (CDC). Section 2126 requires that the materials be developed, or revised, after notice to the public, with a 60-day comment period, and in consultation with the Advisory Commission on Childhood Vaccines, appropriate health care provider and parent organizations, and the Food and Drug Administration. The law also requires that the information contained in the materials be based on available data and information, be presented in understandable terms, and include:

(1) A concise description of the benefits of the vaccine,

(2) A concise description of the risks associated with the vaccine,

(3) A statement of the availability of the National Vaccine Injury Compensation Program, and

(4) Such other relevant information as may be determined by the Secretary.

The vaccines initially covered under the National Vaccine Injury Compensation Program were diphtheria, tetanus, pertussis, measles, mumps, rubella and poliomyelitis vaccines. Since April 15, 1992, any health care provider in the United States who intends to administer one of these covered vaccines is required to provide copies of the relevant vaccine information materials prior to administration of any of these vaccines. Since then, the following vaccines have been added to the National Vaccine Injury Compensation Program, requiring use of vaccine information materials for them as well: hepatitis B, *haemophilus influenzae* type b (Hib), varicella (chickenpox), pneumococcal conjugate, rotavirus, hepatitis A, meningococcal, human papillomavirus (HPV), and trivalent influenza vaccines. Instructions for use of the vaccine information materials and copies of the materials can be found on the CDC Web site at: *http://www.cdc.gov/vaccines/pubs/VIS/*. In addition, single camera-ready copies may be available from State health departments. A list of State health department contacts for obtaining copies of these materials is included in a December 17, 1999 **Federal Register** notice (64 FR 70914).

Proposed Rotavirus Vaccine Information Materials

With the publication in 2009 of updated Advisory Committee on Immunization Practices (ACIP) recommendations for rotavirus vaccine, incorporating information about both the pentavalent and newer monovalent formulations, CDC, as required under 42 U.S.C. 300aa-26, is proposing vaccine information materials covering rotavirus vaccine, which are included in this notice. Interim materials have been available for use pending completion of the formal development process.

Development of Vaccine Information Materials

The vaccine information materials referenced in this notice are being developed in consultation with the Advisory Commission on Childhood Vaccines, the Food and Drug Administration, and parent and health care provider groups.

In addition, we invite written comment on the proposed vaccine information materials that follow, entitled "Rotavirus Vaccine: What You Need to Know." Comments submitted will be considered in finalizing these materials. When the final materials are published in the **Federal Register**, the notice will include an effective date for their mandatory use.

We also propose to revise the June 9, 2010 Instructions for the Use of Vaccine Information Statements to update references to these vaccine information materials.

* * * * *

Proposed Rotavirus Vaccine Information Statement:

Rotavirus Vaccine: What You Need To Know

1. What is rotavirus?

Rotavirus is a virus that causes severe diarrhea, mostly in babies and young children. It is often accompanied by vomiting and fever. Rotavirus is not the only cause of severe diarrhea, but it is one of the most serious. Before rotavirus vaccine was used, rotavirus was responsible for:

- More than 400,000 doctor visits,
- More than 200,000 emergency room visits,
- 55,000 to 70,000 hospitalizations, and
- 20–60 deaths in the United States each year.

Almost all children in the U.S. are infected with rotavirus before their 5th birthday.

Children are most likely to get rotavirus diarrhea between November and May, depending on the part of the country.

2. Rotavirus Vaccine

Better hygiene and sanitation have not reduced rotavirus diarrhea very much in the United States. The best way to protect your baby is with rotavirus vaccine.

Rotavirus vaccine is an oral (swallowed) vaccine, not a shot.

Rotavirus vaccine will not prevent diarrhea or vomiting caused by other germs, but it is very good at preventing diarrhea and vomiting caused by rotavirus. Most babies who get the vaccine will not get rotavirus diarrhea at

all, and almost all of them will be protected from severe rotavirus diarrhea.

Babies who get the vaccine are also much less likely to be hospitalized or to see a doctor because of rotavirus diarrhea.

A virus (or parts of the virus) called porcine circovirus is in both rotavirus vaccines. This virus is not known to infect people and there is no known safety risk. For more information, see *http://www.fda.gov*, and search for "porcine circovirus."

3. Who should get rotavirus vaccine and when?

There are two brands of rotavirus vaccine. A baby should get either 2 or 3 doses, depending on which brand is used.

The doses are recommended at these ages:

First Dose: 2 months of age
Second Dose: 4 months of age
Third Dose: 6 months of age (if needed)

The first dose may be given as early as 6 weeks of age, and should be given by age 14 weeks 6 days. The last dose should be given by 8 months of age.

Rotavirus vaccine may be given at the same time as other childhood vaccines.

4. Some Babies Should Not Get Rotavirus Vaccine or Should Wait

- A baby who has had a severe (life-threatening) allergic reaction to a dose of rotavirus vaccine should not get another dose. A baby who has a severe (life threatening) allergy to any component of rotavirus vaccine should not get the vaccine. Tell your doctor if your baby has any severe allergies that you know of, including a severe allergy to latex.
- Babies with "severe combined immunodeficiency" (SCID) should not get rotavirus vaccine.
- Babies who are moderately or severely ill at the time the vaccination is scheduled should probably wait until they recover. This includes babies who have moderate or severe diarrhea or vomiting. Ask your doctor or nurse. Babies with mild illnesses should usually get the vaccine.
- Check with your doctor if your baby's immune system is weakened because of:

—HIV/AIDS, or any other disease that affects the immune system
—Treatment with drugs such as long-term steroids
—Cancer, or cancer treatment with x-rays or drugs

In the late 1990s a different type of rotavirus vaccine was used. This vaccine was found to be associated with an uncommon type of bowel obstruction called "intussusception," and it was taken off the market.

The new rotavirus vaccines have not been associated with intussusception.

However, babies who have had intussusception, from any cause, are at higher risk for getting it again. If your baby has ever had intussusception, discuss this with your doctor.

5. What are the risks from rotavirus vaccine?

A vaccine, like any medicine, could possibly cause serious problems, such as severe allergic reactions. The risk of any vaccine causing serious harm, or death, is extremely small.

Most babies who get rotavirus vaccine do not have any problems with it.

- Babies might become irritable, or have mild, temporary diarrhea or vomiting after a dose of rotavirus vaccine.
- Rotavirus vaccine does not appear to cause any serious side effects.

6. What if there is a moderate or severe reaction?

What should I look for?

- Any unusual condition, such as a high fever or behavior changes. Signs of a serious allergic reaction can include difficulty breathing, hoarseness or wheezing, hives, paleness, weakness, a fast heart beat or dizziness.

What should I do?

- Call a doctor, or get the person to a doctor right away.
- Tell your doctor what happened, the date and time it happened, and when the vaccination was given.
- Ask your doctor, nurse, or health department to report the reaction by filing a Vaccine Adverse Event Reporting System (VAERS) form.

Or you can file this report through the VAERS web site at *http://www.vaers.hhs.gov*, or by calling 1–800–822–7967.

VAERS does not provide medical advice.

7. The National Vaccine Injury Compensation Program

The National Vaccine Injury Compensation Program (VICP) was created in 1986.

Persons who believe they may have been injured by a vaccine can learn about the program and about filing a claim by calling 1–800–338–2382 or visiting the VICP Web site at *http://www.hrsa.gov/vaccinecompensation.*

8. How can I learn more?

- Your provider can give you the vaccine package insert or suggest other sources of information.
- Call your local or state health department.
- Contact the Centers for Disease Control and Prevention (CDC):

—Call 1–800–232–4636 (1–800–CDC–INFO) or
—Visit CDC's Web site at *http://www.cdc.gov/vaccines.*

Department of Health and Human Services, Centers for Disease Control and Prevention, Vaccine Information Statement, Rotavirus Vaccine, (00/00/0000) (Proposed), 42 U.S.C. 300aa–26.

Dated: August 3, 2010.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2010–19782 Filed 8–10–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Proposed Vaccine Information Materials for Pneumococcal Conjugate Vaccine and Human Papillomavirus Vaccines

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with Comment Period.

SUMMARY: Under the National Childhood Vaccine Injury Act (NCVIA) (42 U.S.C. 300aa–26), the CDC must develop vaccine information materials that all health care providers are required to give to patients/parents prior to administration of specific vaccines. CDC seeks written comment on proposed new vaccine information materials for pneumococcal conjugate vaccine and human papillomavirus vaccines.

DATES: Written comments are invited and must be received on or before October 12, 2010.

ADDRESSES: Written comments should be addressed to Anne Schuchat, M.D., Director, National Center for Immunization and Respiratory Diseases, Centers for Disease Control and Prevention, Mailstop E–05, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

FOR FURTHER INFORMATION CONTACT: Skip Wolfe, National Center for Immunization and Respiratory Diseases, Centers for Disease Control and Prevention, Mailstop E–52, 1600 Clifton

Road, NE., Atlanta, Georgia 30333, telephone (404) 639–8809.

SUPPLEMENTARY INFORMATION: The National Childhood Vaccine Injury Act of 1986 (Pub. L. 99–660), as amended by section 708 of Public Law 103–183, added section 2126 to the Public Health Service Act. Section 2126, codified at 42 U.S.C. 300aa–26, requires the Secretary of Health and Human Services to develop and disseminate vaccine information materials for distribution by all health care providers in the United States to any patient (or to the parent or legal representative in the case of a child) receiving vaccines covered under the National Vaccine Injury Compensation Program.

Development and revision of the vaccine information materials, also known as Vaccine Information Statements (VIS), have been delegated by the HHS Secretary to the Centers for Disease Control and Prevention (CDC). Section 2126 requires that the materials be developed, or revised, after notice to the public, with a 60-day comment period, and in consultation with the Advisory Commission on Childhood Vaccines, appropriate health care provider and parent organizations, and the Food and Drug Administration. The law also requires that the information contained in the materials be based on available data and information, be presented in understandable terms, and include:

(1) A concise description of the benefits of the vaccine,

(2) A concise description of the risks associated with the vaccine,

(3) A statement of the availability of the National Vaccine Injury Compensation Program, and

(4) Such other relevant information as may be determined by the Secretary.

The vaccines initially covered under the National Vaccine Injury Compensation Program were diphtheria, tetanus, pertussis, measles, mumps, rubella and poliomyelitis vaccines. Since April 15, 1992, any health care provider in the United States who intends to administer one of these covered vaccines is required to provide copies of the relevant vaccine information materials prior to administration of any of these vaccines. Since then, the following vaccines have been added to the National Vaccine Injury Compensation Program, requiring use of vaccine information materials for them as well: hepatitis B, *haemophilus influenzae* type b (Hib), varicella (chickenpox), pneumococcal conjugate, rotavirus, hepatitis A, meningococcal, human papillomavirus (HPV), and trivalent influenza vaccines.

Instructions for use of the vaccine information materials and copies of the materials can be found on the CDC Web site at: *http://www.cdc.gov/vaccines/pubs/VIS/.* In addition, single camera-ready copies may be available from State health departments. A list of State health department contacts for obtaining copies of these materials is included in a December 17, 1999 **Federal Register** notice (64 FR 70914).

Proposed Pneumococcal Conjugate Vaccine (13-Valent) Information Materials

Proposed Human Papillomavirus Vaccine Information Materials

With the February 1, 2007 addition of human papillomavirus vaccine to the National Vaccine Injury Compensation Program, updating of ACIP's HPV recommendations in December 2009, and the licensure of 13-valent pneumococcal conjugate vaccine in April 2010, CDC, as required under 42 U.S.C. 300aa–26, is proposing vaccine information materials covering those vaccines, which are included in this notice. Interim materials have been available for use pending completion of the formal development process.

Development of Vaccine Information Materials

The vaccine information materials referenced in this notice are being developed in consultation with the Advisory Commission on Childhood Vaccines, the Food and Drug Administration, and parent and health care provider groups.

In addition, we invite written comment on the proposed vaccine information materials that follow, entitled "Human Papillomavirus (HPV) Vaccine: What You Need to Know (Gardasil®)," "Human Papillomavirus (HPV) Vaccine: What You Need to Know (Cervarix®)," and "Pneumococcal Conjugate Vaccine: What You Need to Know." Comments submitted will be considered in finalizing these materials. When the final materials are published in the **Federal Register**, the notice will include an effective date for their mandatory use.

We also propose to revise the June 9, 2010 Instructions for the Use of Vaccine Information Statements to update references to these vaccine information materials.

* * * * *

Proposed Pneumococcal Conjugate Vaccine Information Statement

Pneumococcal Conjugate Vaccine: What You Need to Know

1. Pneumococcal Disease

Infection with *Streptococcus pneumoniae* bacteria can make children very sick.

It causes blood infections, pneumonia, and meningitis, mostly in young children. (Meningitis is an infection of the covering of the brain.) Although pneumococcal meningitis is relatively rare (less than 1 case per 100,000 people each year) it is fatal in about 1 of 10 cases in children.

Pneumococcal meningitis can also lead to other health problems, including deafness and brain damage.

Before routine use of pneumococcal conjugate vaccine, pneumococcal infections caused:

- Over 700 cases of meningitis,
- 13,000 blood infections,
- About 5 million ear infections, and
- About 200 deaths

annually in the United States in children under five.

Children younger than 2 years of age are at higher risk for serious disease than older children.

Pneumococcal bacteria are spread from person to person through close contact.

Pneumococcal infections may be hard to treat because some strains of the bacteria have become resistant to the drugs that are used to treat them. This makes prevention of pneumococcal infections through vaccination even more important.

2. Pneumococcal Conjugate Vaccine (PCV13)

There are more than 90 types of pneumococcal bacteria. The new pneumococcal conjugate vaccine (PCV13) protects against 13 of them. These bacteria types are responsible for most severe pneumococcal infections among children. PCV13 replaces a previous conjugate vaccine (PCV7), which protected against 7 pneumococcal types and has geen in use since 2000. During that time severe pneumococcal disease has dropped by nearly 80% among children under 5.

PCV13 can also prevent some cases of pneumonia and some ear infections. But pneumonia and ear infections have many causes, and PCV13 only works against the types of pneumococcal bacteria targeted by the vaccine.

PCV is given to infants and toddlers, to protect them when they are at greatest risk for serious diseases caused by pneumococcal bacteria.

In addition to receiving PCV13, older children with certain chronic illnesses may get a different vaccine called PPSV23. There is a separate Vaccine Information Statement for that vaccine.

3. Who should get PCV13 vaccine and when?

Infants and Children Under 2 Years of Age

PCV13 is recommended as a series of 4 doses, one dose at each of these ages:

—2 months.
—4 months.
—6 months.
—12 through 15 months.

Children who miss their shots at these ages should still get the vaccine. The number of doses and the intervals between doses will depend on the child's age. Ask your health care provider for details.

Children who have begun their immunization series with PCV7 should complete the series with PCV13.

Older Children and Adolescents

• Healthy children between their 2nd and 5th birthdays who have not completed the PCV7 or PCV13 series before age 2 years should get 1 dose.

• Children between the 2nd and 6th birthdays with medical conditions such as:

—Sickle cell disease,
—A damaged spleen or no spleen,
—Cochlear implants,
—Diabetes,
—HIV/AIDS or other diseases that affect the immune system (such as diabetes, cancer, or liver disease), or
—Chronic heart or lung disease

or who take medications that affect the immune system, such as immunosuppressive drugs or steroids, should get 1 dose of PCV13 (if they received 3 doses of PCV7 or PCV13 before age 2 years), or 2 doses of PCV13 (if they have received 2 or fewer doses of PCV7 or PCV13).

A dose of PCV13 may be administered to children and adolescents 6 through 18 years of age who have certain medical conditions, even if they have previously received PCV7 or PPSV23.

Children who have completed the 4-dose series with PCV7: Healthy children who have not yet turned 5, and children with medical conditions who have not yet turned 6, should get one additional dose of PCV13.

Ask your health care provider if you have any questions about any of these recommendations.

PCV13 may be given at the same time as other vaccines.

4. Some Children Should Not Get PCV13 or Should Wait

Children should not get PCV13 if they had a serious (life-threatening) allergic reaction to a previous dose of this vaccine, to PCV7, or to any vaccine containing diphtheria toxoid (for example DTaP).

Children who are known to have a severe allergy to any component of PCV7 or PCV13 should not get PCV13. Tell your health care provider if your child has any severe allergies.

Children with minor illnesses, such as a cold, may be vaccinated. But children who are moderately or severely ill should usually wait until they recover before getting the vaccine.

5. What are the risks from PCV13?

Any medicine, including a vaccine, could possibly cause a serious problem, such as a severe allergic reaction. However, the risk of any vaccine causing serious harm, or death, is extremely small.

In studies, most reactions after PCV13 were mild. They were similar to reactions reported after PCV7, which has been in use since 2000. Reported reactions varied by dose and age, but on average:

• About half of children were drowsy after the shot, had a temporary loss of appetite, or had redness or tenderness where the shot was given.

• About 1 out of 3 had swelling where the shot was given.

• About 1 out of 3 had a mild fever, and about 1 in 20 had a higher fever (over 102.2°F).

• Up to about 8 out of 10 became fussy or irritable.

Life-threatening allergic reactions from vaccines are very rare. If they do occur, it would be within a few minutes to a few hours after the vaccination.

6. What if there is a severe reaction?

What should I look for?

Any unusual condition, such as a high fever or behavior changes. Signs of a severe allergic reaction can include difficulty breathing, hoarseness or wheezing, hives, paleness, weakness, a fast heart beat or dizziness.

What should I do?

• Call a doctor, or get the person to a doctor right away.

• Tell the doctor what happened, the date and time it happened, and when the vaccination was given.

• Ask your provider to report the reaction by filing a Vaccine Adverse Event Reporting System (VAERS) form.

Or you can file this report through the VAERS Web site at *http://www.vaers.hhs.gov,* or by calling 1–800–822–7967.

VAERS does not provide medical advice.

7. The National Vaccine Injury Compensation Program

The National Vaccine Injury Compensation Program (VICP) was created in 1986.

Persons who believe they may have been injured by a vaccine may file a claim with VICP by calling 1–800–338–2382 or visiting their Web site at *http://www.hrsa.gov/vaccinecompensation.*

8. How can I learn more?

• Ask your provider. They can give you the vaccine package insert or suggest other sources of information.

• Call your local or State health department.

• Contact the Centers for Disease Control and Prevention (CDC):

—Call 1–800–232–4636 (1–800–CDC–INFO) or
—Visit CDC's Web site at *http://www.cdc.gov/vaccines.*

Department of Health and Human Services, Centers for Disease Control and Prevention, Vaccine Information Statement, PCV13, (00/00/0000) (Proposed), 42 U.S.C. 300aa–26.

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Proposed Human Papillomavirus Vaccine Information Statement (Gardasil)

HPV (Human Papillomavirus Virus) Vaccine (Gardasil®): What You Need to Know

1. What is HPV?

Genital human papillomavirus (HPV) is the most common sexually transmitted virus in the United States. More than half of sexually active men and women are infected with HPV at some time in their lives.

About 20 million Americans are currently infected, and about 6 million more get infected each year. HPV is usually spread through sexual contact.

Most HPV infections don't cause any symptoms, and go away on their own. But HPV can cause cervical cancer in women. Cervical cancer is the 2nd leading cause of cancer deaths among women around the world. In the United States, about 10,000 women get cervical cancer every year and about 4,000 are expected to die from it.

HPV is also associated with several less common cancers, such as vaginal and vulvar cancers in women and other types of cancer in both men and women. It can also cause genital warts and warts in the throat.

There is no cure for HPV infection, but some of the problems it causes can be treated.

2. HPV Vaccine—Why get vaccinated?

HPV vaccine is important because it can prevent most cases of cervical cancer in females, if it is given before a person is exposed to the virus.

Protection from HPV vaccine is expected to be long-lasting. But vaccination is not a substitute for cervical cancer screening. Women should still get regular Pap tests.

The vaccine you are getting is one of two vaccines that can be given to prevent HPV. It may be given to both males and females. In addition to preventing cervical cancer, it can also prevent vaginal and vulvar cancer in females, and genital warts in both males and females.

The other vaccine is given to females only, and only for prevention of cervical cancer.

3. Who should get this HPV vaccine and when?

Females: Routine Vaccination

- HPV vaccine is recommended for girls 11 or 12 years of age. It may be given to girls starting at age 9.

Why is HPV vaccine given to girls at this age?

It is important for girls to get HPV vaccine before their first sexual contact—because they won't have been exposed to human papillomavirus.

Once a girl or woman has been infected with the virus, the vaccine might not work as well or might not work at all.

Females: Catch-Up Vaccination

- The vaccine is also recommended for girls and women 13 through 26 years of age who did not get all 3 doses when they were younger.

Males

Males 9 through 26 years of age may get HPV vaccine to prevent genital warts. As with females, it is best to be vaccinated before the first sexual contact.

HPV vaccine is given as a 3-dose series

1st Dose: Now
2nd Dose: 1 to 2 months after Dose 1
3rd Dose: 6 months after Dose 1

Additional (booster) doses are not recommended.

HPV vaccine may be given at the same time as other vaccines.

4. Some People Should Not Get HPV Vaccine or Should Wait

- Anyone who has ever had a life-threatening allergic reaction to any component of HPV vaccine, or to a previous dose of HPV vaccine, should not get the vaccine. Tell your doctor if the person getting vaccinated has any severe allergies, including an allergy to yeast.
- HPV vaccine is not recommended for pregnant women. However, receiving HPV vaccine when pregnant is not a reason to consider terminating the pregnancy. Women who are breast feeding may get the vaccine.
- Any woman who learns she was pregnant when she got this HPV vaccine is encouraged to contact the manufacturer's HPV in pregnancy registry at 800–986–8999. This will help us learn how pregnant women respond to the vaccine.
- People who are mildly ill when a dose of HPV vaccine is planned can still be vaccinated. People with a moderate or severe illness should wait until they are better.

5. What are the risks from this vaccine?

This HPV vaccine has been used in the U.S. and around the world for several years and has been very safe.

However, any medicine could possibly cause a serious problem, such as a severe allergic reaction. The risk of any vaccine causing a serious injury, or death, is extremely small.

Life-threatening allergic reactions from vaccines are very rare. If they do occur, it would be within a few minutes to a few hours after the vaccination.

Several mild to moderate problems are known to occur with HPV vaccine. These do not last long and go away on their own.

- Reactions in the arm where the shot was given:

—Pain (about 8 people in 10).
— Redness or swelling (about 1 person in 4).

- Fever:

—Mild (100 °F) (about 1 person in 10).
—Moderate (102 °F) (about 1 person in 65).

- Other problems:

—Headache (about 1 person in 3).

- Fainting:

—Brief fainting spells and related symptoms (such as jerking movements) can happen after any medical procedure, including vaccination. Sitting or lying down for about 15 minutes after vaccination can help prevent fainting and injuries caused by falls. Tell your provider if the patient feels dizzy or light-headed, or has vision changes or ringing in the ears.

Like all vaccines, HPV vaccines will continue to be monitored for unusual or severe problems.

6. What if there is a severe reaction?

What should I look for?

Serious allergic reactions including rash; swelling of the hands and feet, face, or lips; and breathing difficulty.

What should I do?

- Call a doctor, or get the person to a doctor right away.
- Tell the doctor what happened, the date and time it happened, and when the vaccination was given.
- Ask your provider to report the reaction by filing a Vaccine Adverse Event Reporting System (VAERS) form. Or you can file this report through the VAERS Web site at *http://www.vaers.hhs.gov,* or by calling 1–800–822–7967.

VAERS does not provide medical advice.

7. The National Vaccine Injury Compensation Program

The National Vaccine Injury Compensation Program (VICP) was created in 1986.

Persons who believe they may have been injured by a vaccine may file a claim with VICP by calling 1–800–338–2382 or visiting their Web site at *http://www.hrsa.gov/vaccinecompensation.*

8. How can I learn more?

- Ask your provider. They can give you the vaccine package insert or suggest other sources of information.
- Call your local or State health department.
- Contact the Centers for Disease Control and Prevention (CDC):

—Call 1–800–232–4636 (1–800–CDC–INFO) or
—Visit CDC's Web site at *http://www.cdc.gov/std/hpv* and *http://www.cdc.gov/vaccines.*

Department of Health and Human Services, Centers for Disease Control and Prevention, Vaccine Information Statement, Human Papillomavirus Vaccine (Gardasil), (00/00/0000) (Proposed), 42 U.S.C. 300aa–26.

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Proposed Human Papillomavirus Vaccine Information Statement (Cervarix)

HPV (Human Papillomavirus Virus) Vaccine (Cervarix®): What You Need to Know

1. What is HPV?

Genital human papillomavirus (HPV) is the most common sexually transmitted virus in the United States. More than half of sexually active men and women are infected with HPV at some time in their lives.

About 20 million Americans are currently infected, and about 6 million more get infected each year. HPV is usually spread through sexual contact.

Most HPV infections don't cause any symptoms, and go away on their own. But HPV can cause cervical cancer in women. Cervical cancer is the 2nd leading cause of cancer deaths among women around the world. In the United States, about 10,000 women get cervical cancer every year and about 4,000 are expected to die from it.

HPV is also associated with several less common cancers, such as vaginal and vulvar cancers in women and other types of cancer in both men and women. It can also cause genital warts and warts in the throat.

There is no cure for HPV infection, but some of the problems it causes can be treated.

2. HPV Vaccine—Why get vaccinated?

HPV vaccine is important because it can prevent most cases of cervical cancer in females, if it is given before a person is exposed to the virus.

Protection from HPV vaccine is expected to be long-lasting. But vaccination is not a substitute for cervical cancer screening. Women should still get regular Pap tests.

The vaccine you are getting is one of two vaccines that can be given to prevent HPV. It is given to females only.

The other vaccine may be given to both males and females, and can also prevent some vaginal and vulvar cancers, and genital warts.

3. Who should get this HPV vaccine (Cervarix) and when?

Routine Vaccination

- HPV vaccine is recommended for girls 11 or 12 years of age. It may be given to girls starting at age 9.

Why is HPV vaccine given to girls at this age?

It is important for girls to get HPV vaccine before their first sexual contact—because they won't have been exposed to human papillomavirus.

Once a girl or woman has been infected with the virus, the vaccine might not work as well or might not work at all.

Catch-Up Vaccination

- The vaccine is also recommended for girls and women 13 through 26 years of age who did not get all 3 doses when they were younger.

HPV vaccine is given as a 3-dose series:

1st Dose: Now
2nd Dose: 1 to 2 months after Dose 1
3rd Dose: 6 months after Dose 1

Additional (booster) doses are not recommended.

HPV vaccine may be given at the same time as other vaccines.

4. Some People Should Not Get HPV Vaccine or Should Wait

- Anyone who has ever had a life-threatening allergic reaction to any component of HPV vaccine, or to a previous dose of HPV vaccine, should not get the vaccine. Tell your doctor if the person getting vaccinated has any severe allergies, including an allergy to latex.
- HPV vaccine is not recommended for pregnant women. However, receiving HPV vaccine when pregnant is not a reason to consider terminating the pregnancy. Women who are breast feeding may get the vaccine.

Any woman who learns she was pregnant when she got this HPV vaccine is encouraged to contact the manufacturer's HPV in pregnancy registry at 888–452–9622. This will help us learn how pregnant women respond to the vaccine.

- People who are mildly ill when a dose of HPV vaccine is planned can still be vaccinated. People with a moderate or severe illness should wait until they are better.

5. What are the risks from this vaccine?

This HPV vaccine has been in use around the world for several years and has been very safe.

However, any medicine could possibly cause a serious problem, such as a severe allergic reaction. The risk of any vaccine causing a serious injury, or death, is extremely small.

Life-threatening allergic reactions from vaccines are very rare. If they do occur, it would be within a few minutes to a few hours after the vaccination.

Several mild to moderate problems are known to occur with HPV vaccine. These do not last long and go away on their own.

- Reactions where the shot was given:

—Pain (about 9 people in 10).
—Redness or swelling (about 1 person in 2).

- Other mild reactions:

—Fever of 99.5 °F or higher (about 1 person in 8).
—Headache or fatigue (about 1 person in 2).
—Nausea, vomiting, diarrhea, or abdominal pain (about 1 person in 4).
—Muscle or joint pain (up to 1 person in 2).

- Fainting:

—Brief fainting spells and related symptoms (such as jerking movements) can happen after any medical procedure, including vaccination. Sitting or lying down for about 15 minutes after a vaccination can help prevent fainting and injuries caused by falls. Tell your provider if the patient feels dizzy or light-headed, or has vision changes or ringing in the ears.

Like all vaccines, HPV vaccines will continue to be monitored for unusual or severe problems.

6. What if there is a severe reaction?

What should I look for?

Serious allergic reactions including rash; swelling of the hands and feet, face, or lips; and breathing difficulty.

What should I do?

- Call a doctor, or get the person to a doctor right away.
- Tell the doctor what happened, the date and time it happened, and when the vaccination was given.
- Ask your provider to report the reaction by filing a Vaccine Adverse Event Reporting System (VAERS) form. Or you can file this report through the VAERS Web site at *http://www.vaers.hhs.gov,* or by calling 1–800–822–7967.

VAERS does not provide medical advice.

7. The National Vaccine Injury Compensation Program

The National Vaccine Injury Compensation Program (VICP) was created in 1986.

Persons who believe they may have been injured by a vaccine may file a claim with VICP by calling 1–800–338–2382 or visiting their Web site at *http://www.hrsa.gov/vaccinecompensation.*

8. How can I learn more?

- Ask your provider. They can give you the vaccine package insert or suggest other sources of information.
- Call your local or State health department.
- Contact the Centers for Disease Control and Prevention (CDC):

—Call 1–800–232–4636 (1–800–CDC–INFO) or
—Visit CDC's Web site at *http://www.cdc.gov/std/hpv* and *http://www.cdc.gov/vaccines.*

Department of Health and Human Services, Centers for Disease Control and Prevention, Vaccine Information Statement, Human Papillomavirus Vaccine (Cervarix) (00/00/0000) (Proposed), 42 U.S.C. 300aa–26.

Dated: August 3, 2010.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2010–19784 Filed 8–10–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Proposed Vaccine Information Materials for Influenza Vaccine

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with Comment Period.

SUMMARY: Under the National Childhood Vaccine Injury Act (NCVIA) (42 U.S.C. 300aa–26), the CDC must develop vaccine information materials that all health care providers are required to give to patients/parents prior to administration of specific vaccines. CDC seeks written comment on proposed new vaccine information materials for trivalent influenza vaccines. In addition, to ensure that influenza vaccine information materials are available at the beginning of the upcoming influenza vaccination season, the proposed materials included in this notice are also considered interim vaccine information materials covering influenza vaccines for use pending issuance of final influenza materials following completion of the formal NCVIA development process.

DATES: Written comments are invited and must be received on or before October 12, 2010.

ADDRESSES: Written comments should be addressed to Anne Schuchat, M.D., Director, National Center for Immunization and Respiratory Diseases, Centers for Disease Control and Prevention, Mailstop E–05, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

FOR FURTHER INFORMATION CONTACT: Skip Wolfe, National Center for Immunization and Respiratory Diseases, Centers for Disease Control and Prevention, Mailstop E–52, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–8809.

SUPPLEMENTARY INFORMATION: The National Childhood Vaccine Injury Act of 1986 (Pub. L. 99–660), as amended by section 708 of Public Law 103–183, added section 2126 to the Public Health Service Act. Section 2126, codified at 42 U.S.C. 300aa-26, requires the Secretary of Health and Human Services to develop and disseminate vaccine information materials for distribution by all health care providers in the United States to any patient (or to the parent or legal representative in the case of a child) receiving vaccines covered under the National Vaccine Injury Compensation Program.

Development and revision of the vaccine information materials, also known as Vaccine Information Statements (VIS), have been delegated by the Secretary to the Centers for Disease Control and Prevention (CDC). Section 2126 requires that the materials be developed, or revised, after notice to the public, with a 60-day comment period, and in consultation with the Advisory Commission on Childhood Vaccines, appropriate health care provider and parent organizations, and the Food and Drug Administration. The law also requires that the information contained in the materials be based on available data and information, be presented in understandable terms, and include:

(1) A concise description of the benefits of the vaccine,

(2) A concise description of the risks associated with the vaccine,

(3) A statement of the availability of the National Vaccine Injury Compensation Program, and

(4) Such other relevant information as may be determined by the Secretary.

The vaccines initially covered under the National Vaccine Injury Compensation Program were diphtheria, tetanus, pertussis, measles, mumps, rubella and poliomyelitis vaccines. Since April 15, 1992, any health care provider in the United States who intends to administer one of these covered vaccines is required to provide copies of the relevant vaccine information materials prior to administration of any of these vaccines. Since then, the following vaccines have been added to the National Vaccine Injury Compensation Program, requiring use of vaccine information materials for them as well: hepatitis B, *haemophilus influenzae* type b (Hib), varicella (chickenpox), pneumococcal conjugate, rotavirus, hepatitis A, meningococcal, human papillomavirus (HPV), and trivalent influenza vaccines. Instructions for use of the vaccine information materials and copies of the materials can be found on the CDC Web site at: *http://www.cdc.gov/vaccines/pubs/VIS/*. In addition, single camera-ready copies may be available from State health departments.

Proposed Influenza Vaccine Information Materials

The Advisory Committee on Immunization Practices (ACIP) recommendations for use of trivalent influenza have changed only slightly since the previous Vaccine Information Statements were published. For the 2010–2011 influenza season, 2009 H1N1 influenza vaccine is being incorporated into the seasonal vaccine formulation.

Development of Vaccine Information Materials

The vaccine information materials referenced in this notice are being developed in consultation with the Advisory Commission on Childhood Vaccines, the Food and Drug Administration, and parent and health care provider groups.

In addition, we invite written comment on the proposed vaccine information materials that follow, entitled "Inactivated Influenza Vaccine: What You Need to Know" and "Live Intranasal Influenza Vaccine: What You Need to Know." Comments submitted will be considered in finalizing these materials. When the final materials are published in the **Federal Register**, the notice will include an effective date for their mandatory use. We also propose to revise the June 9, 2010 Instructions for the Use of Vaccine Information Statements to update references to these vaccine information materials.

Influenza Vaccine Information Materials—Additional Considerations

CDC has traditionally issued a new Vaccine Information Statement annually for influenza vaccines since the formulation of antigens contained in the vaccine is specific for each year. However, known benefits and risks for each year's influenza vaccine are generally the same. In such cases, the only revision to the influenza VIS is the notation of the flu season for which the VIS has been issued (*e.g.,* 2009–10). Therefore, we propose that when the VIS for a particular influenza season is identical to the previous year's edition, except for the date notation and any reference to the influenza strain content of that year's vaccine (if the safety profile is expected to be comparable to that of previous years' influenza vaccines), CDC will no longer publish a **Federal Register** notice seeking comment on such edition. Instead, each new year's edition of the influenza VIS will be published on the CDC Web site at: *http://www.cdc.gov/vaccines/publications/VIS/*. In addition, the Instructions for the Use of Vaccine Information Statements will be updated at that time to note new edition dates for influenza Vaccine Information Statements. New edition influenza Vaccine Information Statements for the upcoming flu season will generally be

available on the CDC Web site by [insert month] of each year.

Whenever substantive revisions are going to be made to an influenza VIS, the full development process, including consultation and publication of a **Federal Register** notice with opportunity for comment, will be utilized.

We invite comment on this proposed method of issuing revised influenza Vaccine Information Statements in the future.

* * * * *

As noted above, the vaccine information materials which follow will serve as interim influenza Vaccine Information Statements for use when administering any 2010–11 influenza vaccine until final materials are effective and available for distribution.

* * * * *

Proposed (and Interim) Influenza Vaccine Information Statements:

Inactivated Influenza Vaccine: What You Need to Know 2010–2011

Vaccine Information Statements are available in Spanish and many other languages. See www.immunize.org/vis

1. Why get vaccinated?

Influenza ("flu") is a contagious disease.

It is caused by the influenza virus, which can be spread by coughing, sneezing, or nasal secretions.

Other illnesses can have the same symptoms and are often mistaken for influenza. But only an illness caused by the influenza virus is really influenza.

Anyone can get influenza, but rates of infection are highest among children. For most people, it lasts only a few days. It can cause:

- Fever
- Sore throat
- Chills
- Fatigue
- Cough
- Headache
- Muscle aches

Some people, such as infants, elderly, and those with certain health conditions, can get much sicker. Flu can cause high fever and pneumonia, and make existing medical conditions worse. It can cause diarrhea and seizures in children. Each year thousands of people die from seasonal influenza and even more require hospitalization. Influenza vaccine can prevent influenza.

2. Inactivated influenza vaccine

There are two types of influenza vaccine:

1. Inactivated (killed) vaccine, or the "flu shot" is given by injection into the muscle.

2. Live, attenuated (weakened) influenza vaccine is sprayed into the nostrils. *This vaccine is described in a separate Vaccine Information Statement.*

A high-dose inactivated influenza vaccine is available for people 65 years of age and older. Ask your provider.

Influenza viruses are always changing. Because of this, influenza vaccines are updated every year, and an annual vaccination is recommended.

Each year scientists try to match the viruses in the vaccine to those most likely to cause flu that year. When there is a close match the vaccine protects most people from serious influenza-related illness. But even when there is not a close match, the vaccine provides some protection. The 2010–2011 vaccine provides protection against H1N1 (pandemic) influenza, which is expected to be one of the viruses causing influenza this season. Influenza vaccine will not prevent "influenza-like" illnesses caused by other viruses.

It takes up to 2 weeks for protection to develop after the shot. Protection lasts up to a year. Some inactivated influenza vaccine contains a preservative called thimerosal. Some people have suggested that thimerosal may be related to autism in children. In 2004 the Institute of Medicine reviewed many studies looking into this theory and concluded that there is no evidence of such a relationship. Thimerosal-free influenza vaccine is available.

3. Who should get inactivated influenza vaccine and when ?

Who

- All people 6 months of age and older.

People who got the 2009 H1N1 vaccine still need to get vaccinated with the 2010–2011 influenza vaccine.

When

You can get the vaccine as soon as it is available, usually in the fall, and for as long as illness is occurring in your community. Influenza can occur any time, but most influenza occurs from November through May. In most seasons, most infections occur in January and February. Getting vaccinated in December, or even later, will still be beneficial in most years.

Adults and older children need one dose of influenza vaccine each year. But some children younger than 9 years of age need 2 doses to be protected. Ask your provider.

Influenza vaccine may be given at the same time as other vaccines, including pneumococcal vaccine.

4. Some people should not get inactivated influenza vaccine or should wait

- Tell your doctor if you have any severe (life-threatening) allergies. Allergic reactions to influenza vaccine are rare.

—Influenza vaccine virus is grown in eggs. People with a severe egg allergy should not get the vaccine.

—A severe allergy to any vaccine component is also a reason to not get the vaccine.

—If you ever had a severe reaction after a dose of influenza vaccine, tell your doctor.

- Tell your doctor if you ever had Guillain-Barré Syndrome (a severe paralytic illness, also called GBS). You may be able to get the vaccine, but your doctor should help you make the decision.
- People who are moderately or severely ill should usually wait until they recover before getting flu vaccine. If you are ill, talk to your doctor or nurse about whether to reschedule the vaccination. People with a mild illness can usually get the vaccine.

5. What are the risks from inactivated influenza vaccine?

A vaccine, like any medicine, could possibly cause serious problems, such as severe allergic reactions. The risk of a vaccine causing serious harm, or death, is extremely small.

Serious problems from influenza vaccine are very rare. The viruses in inactivated influenza vaccine have been killed, so you cannot get influenza from the vaccine. Mild problems:

- Soreness, redness, or swelling where the shot was given
- Hoarseness; sore, red or itchy eyes; cough
- Fever
- Aches

If these problems occur, they usually begin soon after the shot and last 1–2 days. People 65 and older who get the high-dose vaccine may be more likely to experience some of these problems.

Severe problems:

- Life-threatening allergic reactions from vaccines are very rare. If they do occur, it is usually within a few minutes to a few hours after the shot.
- In 1976, a type of influenza (swine flu) vaccine was associated with Guillain-Barré Syndrome (GBS). Since then, flu vaccines have not been clearly linked to GBS. However, if there is a risk of GBS from current flu vaccines, it would be no more than 1 or 2 cases per million people vaccinated. This is much lower than the risk of severe influenza, which can be prevented by vaccination.

6. What if there is a severe reaction?

What should I look for?

Any unusual condition, such as a high fever or behavior changes. Signs of a severe allergic reaction can include difficulty breathing, hoarseness or wheezing, hives, paleness, weakness, a fast heart beat or dizziness.

What should I do?

- Call a doctor, or get the person to a doctor right away.
- Tell the doctor what happened, the date and time it happened, and when the vaccination was given.
- Ask your provider to report the reaction by filing a Vaccine Adverse Event Reporting System (VAERS) form. Or you can file this report through the VAERS Web site at *http://www.vaers.hhs.gov,* or by calling 1–800–822–7967.

VAERS does not provide medical advice.

7. The National Vaccine Injury Compensation Program

The National Vaccine Injury Compensation Program (VICP) was created in 1986.

Persons who believe they may have been injured by a vaccine can learn about the program and about filing a claim by calling 1–800–338–2382, or visiting the VICP Web site at *www.hrsa.gov/vaccinecompensation.*

8. How can I learn more?

- Ask your provider. They can give you the vaccine package insert or suggest other sources of information.
- Call your local or state health department.
- Contact the Centers for Disease Control and Prevention (CDC):

—Call 1–800–232–4636 (1–800–CDC–INFO) or

—Visit CDC's Web site at *www.cdc.gov/flu.*

Department of Health and Human Services, Centers for Disease Control and Prevention, Vaccine Information Statement, Inactivated Influenza Vaccine, (00/00/0000) (Proposed), 42 U.S.C. 300aa–26.

Live, Intranasal Influenza Vaccine: What You Need To Know 2010–2011

Vaccine Information Statements are available in Spanish and many other languages.

See http://www.immunize.org/vis.

1. Why get vaccinated?

Influenza ("flu") is a contagious disease.

It is caused by the influenza virus, which can be spread by coughing, sneezing, or nasal secretions.

Other illnesses can have the same symptoms and are often mistaken for influenza. But only an illness caused by the influenza virus is really influenza.

Anyone can get influenza, but rates of infection are highest among children. For most people, it lasts only a few days. It can cause:

- Fever
- Sore throat
- Chills
- Fatigue
- Cough
- Headache
- Muscle aches

Some people, such as infants, elderly, and those with certain health conditions, can get much sicker. Flu can cause high fever and pneumonia, and make existing medical conditions worse. It can cause diarrhea and seizures in children. Each year thousands of people die from seasonal influenza and even more require hospitalization. Influenza vaccine can prevent influenza.

2. Live, Intranasal Influenza Vaccine—LAIV (Nasal Spray)

There are two types of influenza vaccine:

1. Live, attenuated influenza vaccine (LAIV) contains live but attenuated (weakened) influenza virus. It is sprayed into the nostrils. 2. Inactivated influenza vaccine, or the "flu shot," is given by injection. *Inactivated influenza vaccine is described in a separate Vaccine Information Statement.*

Influenza viruses are always changing. Because of this, influenza vaccines are updated every year, and an annual vaccination is recommended.

Each year scientists try to match the viruses in the vaccine to those most likely to cause flu that year. When there is a close match the vaccine protects most people from serious influenza-related illness. But even when there is not a close match, the vaccine provides some protection. The 2010–2011 vaccine provides protection against H1N1 (pandemic) influenza, which is expected to be one of the viruses causing influenza this season. Influenza vaccine will not prevent "influenza-like" illnesses caused by other viruses.

It takes up to 2 weeks for protection to develop after the vaccination. Protection lasts up to a year. LAIV does not contain thimerosal or other preservatives.

3. Who can receive LAIV?

LAIV is recommended for healthy people from 2 through 49 years of age, who are not pregnant and do not have certain health conditions (*see* #4, below).

People who got the 2009 H1N1 vaccine still need to get vaccinated with the 2010–2011 influenza vaccine.

4. Some People Should Not Receive LAIV

LAIV is not recommended for everyone. The following people should get the inactivated vaccine (flu shot) instead:

- Adults 50 years of age and older or children between 6 months and 2 years of age. (Children younger than 6 months should not get either influenza vaccine.)
- Children younger than 5 with asthma or one or more episodes of wheezing within the past year.
- People who have long-term health problems with:

—Heart disease

—Kidney or liver disease

—Lung disease

—Metabolic disease, such as diabetes

—Asthma

—Anemia, and other blood disorders

- Anyone with certain muscle or nerve disorders (such as seizure disorders or cerebral palsy) that can lead to breathing or swallowing problems.
- Anyone with a weakened immune system.
- Anyone in close contact with someone whose immune system is so weak they require care in a protected environment (such as a bone marrow transplant unit). *Close contacts of other people with a weakened immune system (such as those with HIV)* may receive *LAIV. Healthcare personnel in neonatal intensive care units or oncology clinics may receive LAIV.*
- Children or adolescents on long-term aspirin treatment.
- Pregnant women.

Tell your doctor if you ever had Guillain-Barré Syndrome (a severe paralytic illness, also called GBS). You may be able to get the vaccine, but your doctor should help you make the decision.

Tell your doctor if you have gotten any other vaccines in the past 4 weeks.

Anyone with a nasal condition serious enough to make breathing difficult, such as a very stuffy nose, should get the flu shot instead.

Some people should talk with a doctor before getting either influenza vaccine:

- Anyone who has ever had a serious allergic reaction to eggs or another vaccine component, or to a previous dose of influenza vaccine. *Tell your doctor if you have any severe allergies.*
- People who are moderately or severely ill should usually wait until they recover before getting flu vaccine. If you are ill, talk to your doctor or nurse about whether to reschedule the

vaccination. People with a mild illness can usually get the vaccine.

5. When should I get influenza vaccine?

You can get the vaccine as soon as it is available, usually in the fall, and for as long as illness is occurring in your community. Influenza can occur any time, but most influenza occurs from November through May. In most seasons, most infections occur in January and February.

Getting vaccinated in December, or even later, will still be beneficial in most years. Adults and older children need one dose of influenza vaccine each year. But some children younger than 9 years of age need 2 doses to be protected. Ask your provider.

Influenza vaccine may be given at the same time as other vaccines.

6. What are the risks from LAIV?

A vaccine, like any medicine, could possibly cause serious problems, such as severe allergic reactions. The risk of a vaccine causing serious harm, or death, is extremely small.

Live influenza vaccine viruses very rarely spread from person to person. Even if they do, they are not likely to cause illness.

LAIV is made from weakened virus and does not cause influenza. The vaccine can cause mild symptoms in people who get it (see below).

Mild problems:

Some children and adolescents 2–17 years of age have reported mild reactions, including:

- Runny nose, nasal congestion or cough
- Fever
- Headache and muscle aches
- Wheezing
- Abdominal pain or occasional vomiting or diarrhea

Some adults 18–49 years of age have reported:

- Runny nose or nasal congestion
- Sore throat
- Cough, chills, tiredness/weakness
- Headache

Severe problems:

- Life-threatening allergic reactions from vaccines are very rare. If they do occur, it is usually within a few minutes to a few hours after the vaccination.
- If rare reactions occur with any product, they may not be identified until thousands, or millions, of people have used it. Millions of doses of LAIV have been distributed since it was licensed, and no serious problems have been identified. Like all vaccines, LAIV will continue to be monitored for unusual or severe problems.

7. What if there is a severe reaction?

What should I look for?

Any unusual condition, such as a high fever or behavior changes. Signs of a severe allergic reaction can include difficulty breathing, hoarseness or wheezing, hives, paleness, weakness, a fast heart beat or dizziness.

What should I do?

- Call a doctor, or get the person to a doctor right away.
- Tell the doctor what happened, the date and time it happened, and when the vaccination was given.
- Ask your provider to report the reaction by filing a Vaccine Adverse Event Reporting System (VAERS) form. Or you can file this report through the VAERS Web site at *www.vaers.hhs.gov,* or by calling 1–800–822–7967.

VAERS does not provide medical advice.

8. The National Vaccine Injury Compensation Program

The National Vaccine Injury Compensation Program (VICP) was created in 1986.

Persons who believe they may have been injured by a vaccine can learn about the program and about filing a claim by calling 1–800–338–2382, or visiting the VICP Web site at *www.hrsa.gov/vaccinecompensation.*

9. How can I learn more?

- Ask your provider. They can give you the vaccine package insert or suggest other sources of information.
- Call your local or state health department.
- Contact the Centers for Disease Control and Prevention (CDC):

—Call 1–800–232–4636 (1–800–CDC–INFO) or

—Visit CDC's Web site at *www.cdc.gov/flu.*

Department of Health and Human Services, Centers for Disease Control and Prevention, Vaccine Information Statement, Live, Attenuated Influenza Vaccine, (00/00/0000) (Proposed) 42 U.S.C. 300aa–26.

Dated: August 3, 2010.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2010–19788 Filed 8–10–10; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Proposed Vaccine Information Materials for Measles, Mumps, Rubella, and Varicella Vaccines

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: Under the National Childhood Vaccine Injury Act (NCVIA) (42 U.S.C. 300aa–26), the CDC must develop vaccine information materials that all health care providers are required to give to patients/parents prior to administration of specific vaccines. CDC seeks written comment on proposed new vaccine information materials for measles, mumps rubella (MMR); varicella, and measles, mumps, rubella; and varicella (MMRV).

DATES: Written comments are invited and must be received on or before October 12, 2010.

ADDRESSES: Written comments should be addressed to Anne Schuchat, M.D., Director, National Center for Immunization and Respiratory Diseases, Centers for Disease Control and Prevention, Mailstop E–05, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

FOR FURTHER INFORMATION CONTACT: Skip Wolfe, National Center for Immunization and Respiratory Diseases, Centers for Disease Control and Prevention, Mailstop E–52, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–8809.

SUPPLEMENTARY INFORMATION: The National Childhood Vaccine Injury Act of 1986 (Pub L. 99–660), as amended by section 708 of Public Law 103–183, added section 2126 to the Public Health Service Act. Section 2126, codified at 42 U.S.C. 300aa–26, requires the Secretary of Health and Human Services to develop and disseminate vaccine information materials for distribution by all health care providers in the United States to any patient (or to the parent or legal representative in the case of a child) receiving vaccines covered under the National Vaccine Injury Compensation Program.

Development and revision of the vaccine information materials, also known as Vaccine Information Statements (VIS), have been delegated by the Secretary to the Centers for Disease Control and Prevention (CDC). Section 2126 requires that the materials be developed, or revised, after notice to the public, with a 60-day comment

period, and in consultation with the Advisory Commission on Childhood Vaccines, appropriate health care provider and parent organizations, and the Food and Drug Administration. The law also requires that the information contained in the materials be based on available data and information, be presented in understandable terms, and include:

(1) A concise description of the benefits of the vaccine,

(2) A concise description of the risks associated with the vaccine,

(3) A statement of the availability of the National Vaccine Injury Compensation Program, and

(4) Such other relevant information as may be determined by the Secretary.

The vaccines initially covered under the National Vaccine Injury Compensation Program were diphtheria, tetanus, pertussis, measles, mumps, rubella and poliomyelitis vaccines. Since April 15, 1992, any health care provider in the United States who intends to administer one of these covered vaccines is required to provide copies of the relevant vaccine information materials prior to administration of any of these vaccines. Since then, the following vaccines have been added to the National Vaccine Injury Compensation Program, requiring use of vaccine information materials for them as well: Hepatitis B, *haemophilus influenzae* type b (Hib), varicella (chickenpox), pneumococcal conjugate, rotavirus, hepatitis A, meningococcal, human papillomavirus (HPV), and trivalent influenza vaccines. Instructions for use of the vaccine information materials and copies of the materials can be found on the CDC Web site at: *http://www.cdc.gov/vaccines/pubs/VIS/.* In addition, single camera-ready copies may be available from State health departments. A list of State health department contacts for obtaining copies of these materials is included in a December 17, 1999 **Federal Register** notice (64 FR 70914).

Proposed Measles, Mumps, Rubella (MMR); Varicella; and Measles, Mumps, Rubella & Varicella (MMRV) Vaccine Information Materials

On May 7, 2010 the Advisory Committee on Immunization Practices (ACIP) published recommendations on the use of combined Measles, Mumps, Rubella and Varicella (MMRV) vaccine. Because CDC/ACIP are now expressing a preference for use of MMRV vaccine (over MMR + V given separately) in some circumstances and the two separate vaccines in other circumstances, CDC is proposing publication of unique vaccine information materials for MMRV vaccine, which are included in this notice. In addition, CDC is proposing updated versions of the separate MMR and varicella vaccine information materials, containing information about MMRV vaccine.

Development of Vaccine Information Materials

The vaccine information materials referenced in this notice are being developed in consultation with the Advisory Commission on Childhood Vaccines, the Food and Drug Administration, and parent and health care provider groups.

In addition, we invite written comment on the proposed vaccine information materials that follow, entitled "Measles, Mumps, Rubella (MMR) Vaccine: What You Need to Know;" "Varicella Vaccine: What You Need to Know;" and "Measles, Mumps, Rubella and Varicella (MMRV) Vaccine: What You Need to Know." Comments submitted will be considered in finalizing these materials. When the final materials are published in the **Federal Register**, the notice will include an effective date for their mandatory use.

We also propose to revise the June 9, 2010 Instructions for the Use of Vaccine Information Statements to include a reference to these vaccine information materials.

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Proposed MMR Vaccine Information Statement

Measles, Mumps and Rubella (MMR) Vaccines: What You Need to Know

1. Why get vaccinated?

Measles, mumps, and rubella are serious diseases.

Measles

- Measles virus causes rash, cough, runny nose, eye irritation, and fever.
- It can lead to ear infection, pneumonia, seizures (jerking and staring), brain damage, and death.

Mumps

- Mumps virus causes fever, headache, and swollen glands.
- It can lead to deafness, meningitis (infection of the brain and spinal cord covering), painful swelling of the testicles or ovaries, and rarely sterility or death.

Rubella (German Measles)

- Rubella virus causes rash, mild fever, and arthritis (mostly in women).
- If a woman gets rubella while she is pregnant, she could have a miscarriage or her baby could be born with serious birth defects.

You or your child could catch these diseases by being around someone who has them. They spread from person to person through the air.

Measles, mumps, and rubella (MMR) vaccine can prevent these diseases. Most children who get their MMR shots will not get these diseases. Many more children would get them if we stopped vaccinating.

2. Who should get MMR vaccine and when?

Children should get 2 doses of MMR vaccine:

—The first at 12–15 months of age

—and the second at 4–6 years of age.

These are the recommended ages. But children can get the second dose at any age, as long as it is at least 28 days after the first dose.

Some adults should also get MMR vaccine: Generally, anyone 18 years of age or older who was born after 1956 should get at least one dose of MMR vaccine, unless they can show that they have had either the vaccines or the diseases.

Ask your provider for more information.

MMR vaccine may be given at the same time as other vaccines.

Note: Children 12 years of age and younger can receive a "combination" vaccine called MMRV, which contains both MMR and varicella (chickenpox) vaccines. See the MMRV Vaccine Information Statement for more information.

3. Some People Should Not Get MMR Vaccine or Should Wait

- People should not get MMR vaccine who have ever had a life-threatening allergic reaction to gelatin, the antibiotic neomycin, or to a previous dose of MMR vaccine.
- People who are moderately or severely ill at the time the shot is scheduled should usually wait until they recover before getting MMR vaccine.
- Pregnant women should wait to get MMR vaccine until after they have given birth. Women should avoid getting pregnant for 4 weeks after getting MMR vaccine.
- Some people should check with their doctor about whether they should get MMR vaccine, including anyone who:

—Has HIV/AIDS, or another disease that affects the immune system.

—Is being treated with drugs that affect the immune system, such as steroids, for 2 weeks or longer.

—Has any kind of cancer.

—Is taking cancer treatment with x-rays or drugs.
—Has ever had a low platelet count (a blood disorder).

• People who recently had a transfusion or were given other blood products should ask their doctor when they may get MMR vaccine.

Ask your provider for more information.

4. What are the risks from MMR vaccine?

A vaccine, like any medicine, is capable of causing serious problems, such as severe allergic reactions. The risk of MMR vaccine causing serious harm, or death, is extremely small.

Getting MMR vaccine is much safer than getting any of these three diseases.

Most people who get MMR vaccine do not have any problems with it.

Mild Problems

• Fever (up to 1 person out of 6)
• Mild rash (about 1 person out of 20)
• Swelling of glands in the cheeks or neck (rare)

If these problems occur, it is usually within 7–12 days after the shot. They occur less often after the second dose.

Moderate Problems

• Seizure (jerking or staring) caused by fever (about 1 out of 3,000 doses)
• Temporary pain and stiffness in the joints, mostly in teenage or adult women (up to 1 out of 4)
• Temporary low platelet count, which can cause a bleeding disorder (about 1 out of 30,000 doses)

Severe Problems (Very Rare)

• Serious allergic reaction (less than 1 out of a million doses).
• Several other severe problems have been known to occur after a child gets MMR vaccine. But this happens so rarely, experts cannot be sure whether they are caused by the vaccine or not. These include:

—Deafness,
—Long-term seizures, coma, or lowered consciousness,
—Permanent brain damage.

Note: The first dose of MMRV vaccine has been associated with rash and higher rates of fever than MMR and varicella vaccines given separately. Rash has been reported in about 1 person in 20 and fever in about 1 person in 5.

Seizures caused by a fever are also reported more often after MMRV. These usually occur 5–12 days after the first dose.

5. What if there is a severe or moderate reaction?

What should I look for?

Any unusual condition, such as a high fever or behavior changes. Signs of a severe allergic reaction can include difficulty breathing, hoarseness or wheezing, hives, paleness, weakness, a fast heart beat or dizziness.

What should I do?

• Call a doctor, or get the person to a doctor right away.
• Tell the doctor what happened, the date and time it happened, and when the vaccination was given.
• Ask your provider to report the reaction by filing a Vaccine Adverse Event Reporting System (VAERS) form. Or you can file this report through the VAERS Web site at *http://www.vaers.hhs.gov,* or by calling 1–800–822–7967.

VAERS does not provide medical advice.

6. The National Vaccine Injury Compensation Program

The National Vaccine Injury Compensation Program (VICP) was created in 1986.

Persons who believe they may have been injured by a vaccine may file a claim with VICP by calling 1–800–338–2382 or visiting their Web site at *http://www.hrsa.gov/vaccinecompensation.*

7. How can I learn more?

• Ask your provider. They can give you the vaccine package insert or suggest other sources of information.
• Call your local or state health department.
• Contact the Centers for Disease Control and Prevention (CDC):

—Call 1–800–232–4636 (1–800–CDC–INFO)
—Visit CDC's Web site at *http://www.cdc.gov/vaccines*

Department of Health and Human Services
Centers for Disease Control and Prevention
Vaccine Information Statement
MMR Vaccine
(00/00/0000) (Proposed)
42 U.S.C. 300aa–26

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Proposed Varicella (Chickenpox) Vaccine Information Statement

Chickenpox Vaccine: What You Need to Know

1. Why get vaccinated?

Chickenpox (also called varicella) is a common childhood disease. It is usually mild, but it can be serious, especially in young infants and adults.

• It causes a rash, itching, fever, and tiredness.
• It can lead to severe skin infection, scars, pneumonia, brain damage, or death.
• The chickenpox virus can be spread from person to person through the air, or by contact with fluid from chickenpox blisters.
• A person who has had chickenpox can get a painful rash called shingles years later.
• Before the vaccine, about 11,000 people were hospitalized for chickenpox each year in the United States.
• Before the vaccine, about 100 people died each year as a result of chickenpox in the United States.

Chickenpox vaccine can prevent chickenpox.

Most people who get chickenpox vaccine will not get chickenpox. But if someone who has been vaccinated does get chickenpox, it is usually very mild. They will have fewer blisters, are less likely to have a fever, and will recover faster.

2. Who should get chickenpox vaccine and when?

Routine

Children who have never had chickenpox should get 2 doses of chickenpox vaccine at these ages:

1st Dose: 12–15 months of age
2nd Dose: 4–6 years of age (may be given earlier, if at least 3 months after the 1st dose)

People 13 years of age and older (who have never had chickenpox or received chickenpox vaccine) should get two doses at least 28 days apart.

Catch-Up

Anyone who is not fully vaccinated, and never had chickenpox, should receive one or two doses of chickenpox vaccine. The timing of these doses depends on the person's age. Ask your provider.

Chickenpox vaccine may be given at the same time as other vaccines.

Note: Children 12 years of age and younger can receive a "combination" vaccine called MMRV, which contains both MMR and varicella (chickenpox) vaccines. See the MMRV Vaccine Information Statement for more information.

3. Some People Should Not Get Chickenpox Vaccine or Should Wait

• People should not get chickenpox vaccine if they have ever had a life-threatening allergic reaction to a previous dose of chickenpox vaccine or to gelatin or the antibiotic neomycin.
• People who are moderately or severely ill at the time the shot is scheduled should usually wait until they recover before getting chickenpox vaccine.
• Pregnant women should wait to get chickenpox vaccine until after they have

given birth. Women should not get pregnant for 1 month after getting chickenpox vaccine.

• Some people should check with their doctor about whether they should get chickenpox vaccine, including anyone who:

—Has HIV/AIDS or another disease that affects the immune system

—Is being treated with drugs that affect the immune system, such as steroids, for 2 weeks or longer

—Has any kind of cancer

—Is getting cancer treatment with radiation or drugs

• People who recently had a transfusion or were given other blood products should ask their doctor when they may get chickenpox vaccine.

Ask your provider for more information.

4. What are the risks from chickenpox vaccine?

A vaccine, like any medicine, is capable of causing serious problems, such as severe allergic reactions. The risk of chickenpox vaccine causing serious harm, or death, is extremely small.

Getting chickenpox vaccine is much safer than getting chickenpox disease. Most people who get chickenpox vaccine do not have any problems with it. Reactions are usually more likely after the first dose than after the second.

Mild Problems

• Soreness or swelling where the shot was given (about 1 out of 5 children and up to 1 out of 3 adolescents and adults)

• Fever (1 person out of 10, or less)

• Mild rash, up to a month after vaccination (1 person out of 25). It is possible for these people to infect other members of their household, but this is extremely rare.

Moderate Problems

• Seizure (jerking or staring) caused by fever (very rare).

Severe Problems

• Pneumonia (very rare).

Other serious problems, including severe brain reactions and low blood count, have been reported after chickenpox vaccination. These happen so rarely experts cannot tell whether they are caused by the vaccine or not. If they are, it is extremely rare.

Note: The first dose of MMRV vaccine has been associated with rash and higher rates of fever than MMR and varicella vaccines given separately. Rash has been reported in about 1 person in 20 and fever in about 1 person in 5.

Seizures caused by a fever are also reported more often after MMRV. These usually occur 5–12 days after the first dose.

5. What if there is a severe or moderate reaction?

What should I look for?

Any unusual condition, such as a high fever or behavior changes. Signs of a severe allergic reaction can include difficulty breathing, hoarseness or wheezing, hives, paleness, weakness, a fast heart beat or dizziness.

What should I do?

• Call a doctor, or get the person to a doctor right away.

• Tell the doctor what happened, the date and time it happened, and when the vaccination was given.

• Ask your provider to report the reaction by filing a Vaccine Adverse Event Reporting System (VAERS) form. Or you can file this report through the VAERS Web site at *http://w.vaers.hhs.gov,* or by calling 1–800–822–7967.

VAERS does not provide medical advice.

6. The National Vaccine Injury Compensation Program

The National Vaccine Injury Compensation Program (VICP) was created in 1986.

Persons who believe they may have been injured by a vaccine may file a claim with VICP by calling 1–800–338–2382 or visiting their Web site at *http://www.hrsa.gov/vaccinecompensation.*

7. How can I learn more?

• Ask your provider. They can give you the vaccine package insert or suggest other sources of information.

• Call your local or state health department.

• Contact the Centers for Disease Control and Prevention (CDC):

—Call 1–800–232–4636 (1–800–CDC–INFO)

—Visit CDC's Web site at *http://www.cdc.gov/vaccines*

Department of Health and Human Services

Centers for Disease Control and Prevention

Vaccine Information Statement

Varicella Vaccine

(00/00/0000) (Proposed)

42 U.S.C. 300aa–26

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Proposed MMRV Vaccine Information Statement

Measles, Mumps, Rubella & Varicella (MMRV) Vaccine: What You Need To Know

1. Measles, Mumps, Rubella, and Varicella

Measles, Mumps, Rubella, and Varicella (chickenpox) can be serious diseases:

Measles

• Causes rash, cough, runny nose, eye irritation, fever.

• Can lead to ear infection, pneumonia, seizures (jerking and staring), brain damage, and death.

Mumps

• Causes fever, headache, swollen glands.

• Can lead to deafness, meningitis (infection of the brain and spinal cord covering), infection of the pancreas, painful swelling of the testicles or ovaries, and rarely sterility or death.

Rubella (German Measles)

• Causes rash and mild fever; and can cause arthritis (mostly in women).

• If a woman gets rubella while she is pregnant, she could have a miscarriage or her baby could be born with serious birth defects.

Varicella (Chickenpox)

• Causes rash, itching, fever, tiredness.

• Can lead to severe skin infection, scars, pneumonia, brain amage, or death.

• Can re-emerge years later as a painful rash called shingles.

These diseases can spread from person to person through the air. Varicella can also be spread through contact with fluid from chickenpox blisters.

Before vaccines, these diseases were very widespread in the United States.

2. MMRV Vaccine

MMRV vaccine may be given to children from 1 through 12 years old to protect them from these four diseases.

Two doses of MMRV vaccine are recommended:

—The first dose at 12 through 15 months of age

—The second dose at 4 through 6 years of age

These are recommended ages. But children can get the second dose up through 12 years as long as it is at least 3 months after the first dose.

Children may also get these vaccines as 2 separate shots: MMR (measles, mumps and rubella) and varicella.

1 Shot (MMRV) or 2 Shots (MMR & Varicella)?

• Both options give the same protection.
• Fewer injections with MMRV.
• MMRV has been associated with more fevers and fever-related seizures than MMR and varicella vaccines given separately (first dose only).

Unless you specifically request otherwise, CDC recommends separate MMR and varicella vaccines for the first dose and MMRV vaccine for the second dose.

Your health-care provider can give you more information, including the Vaccine Information Statements for MMR and Varicella vaccines.

Anyone 13 or older who needs protection from these diseases should get MMR and varicella vaccines separately.

MMRV may be given at the same time as other vaccines.

3. Some Children Should Not Get MMRV Vaccine or Should Wait

Children should not get MMRV vaccine if they:

• Have ever had a life-threatening allergic reaction to a previous dose of MMRV vaccine, or to either MMR or varicella vaccine
• Have ever had a life-threatening allergic reaction to any component of the vaccine, including gelatin or the antibiotic neomycin. Tell the doctor if your child has any severe allergies.
• Have HIV/AIDS, or another disease that affects the immune system
• Are being treated with drugs that affect the immune system, such as high doses of steroids by mouth, for 2 weeks or longer
• Have any kind of cancer
• Are being treated for cancer with radiation or drugs

Check with your doctor if the child:

• Has a history of seizures, or has a parent, brother or sister with a history of seizures
• Has a parent, brother or sister with a history of immune system problems
• Has ever had a low platelet count, or another blood disorder
• Recently had a transfusion or received other blood products
• Might be pregnant

Children who are moderately or severely ill at the time the shot is scheduled should usually wait until they recover before getting MMRV vaccine.

Ask your provider for more information.

4. What are the risks from MMRV vaccine?

A vaccine, like any medicine, is capable of causing serious problems, such as severe allergic reactions. The risk of MMRV vaccine causing serious harm, or death, is extremely small.

Getting MMRV vaccine is much safer than getting any of these four diseases.

Most children who get MMRV vaccine do not have any problems with it.

Mild Problems

• Fever (about 1 child out of 5)
• Mild rash (about 1 child out of 20)
• Swelling of glands in the cheeks or neck (rare)

If these problems occur, it is usually within 5–12 days after the first dose. They occur less often after the second dose.

Moderate Problems

• Seizure caused by fever (about 1 child in 1,250). These seizures usually occur 5–12 days after the first dose. They occur less often when MMR and varicella vaccines are given together as separate injections (about 1 child in 2,500), and rarely after a 2nd dose of MMRV.
• Temporary low platelet count, which can cause a bleeding disorder (about 1 child out of 40,000)

Severe Problems (Very Rare)

Several severe problems have been reported following MMR vaccine, and might also occur after MMRV. These include severe allergic reactions (fewer than 4 per million), and problems such as:

—Deafness
—Long-term seizures, coma, lowered consciousness
—Permanent brain damage

Because these problems occur so rarely, we can't be sure whether they are caused by the vaccine or not.

5. What if there is a severe reaction?

What should I look for?

Any unusual condition, such as a high fever or behavior changes. Signs of a severe allergic reaction can include difficulty breathing, hoarseness or wheezing, hives, paleness, weakness, a fast heart beat or dizziness.

What should I do?

• Call a doctor, or get the person to a doctor right away.
• Tell the doctor what happened, the date and time it happened, and when the vaccination was given.
• Ask your provider to report the reaction by filing a Vaccine Adverse Event Reporting System (VAERS) form. Or you can file this report through the VAERS Web site at *http://www.vaers.hhs.gov,* or by calling 1–800–822–7967.

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6. The National Vaccine Injury Compensation Program

The National Vaccine Injury Compensation Program (VICP) was created in 1986.

Persons who believe they may have been injured by a vaccine may file a claim with VICP by calling 1–800–338–2382 or visiting their Web site at *http://www.hrsa.gov/vaccinecompensation.*

7. How can I learn more?

• Ask your provider. They can give you the vaccine package insert or suggest other sources of information.
• Call your local or state health department.
• Contact the Centers for Disease Control and Prevention (CDC):

—Call 1–800–232–4636 (1–800–CDC–INFO)
—Visit CDC's Web site at *http://www.cdc.gov/vaccines.*

Department of Health and Human Services,
Centers for Disease Control and Prevention,
Vaccine Information Statement,
MMRV Vaccine,
(00/00/0000) (Proposed)
42 U.S.C. 300aa–26.

* * * * *

Dated: August 3, 2010.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2010–19785 Filed 8–10–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1923–DR; Docket ID FEMA–2010–0002]

Wyoming; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Wyoming (FEMA–1923–DR), dated July 14, 2010, and related determinations.

DATES: *Effective Date:* August 4, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate,

Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Wyoming is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of July 14, 2010.

Platte County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–19844 Filed 8–10–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1922–DR; Docket ID FEMA–2010–0002]

Montana; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Montana (FEMA–1922–DR), dated July 10, 2010, and related determinations.

DATES: *Effective Date:* July 30, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 30, 2010.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–19846 Filed 8–10–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1925–DR; Docket ID FEMA–2010–0002]

Kentucky; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–1925–DR), dated July 23, 2010, and related determinations.

DATES: *Effective Date:* August 5, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of July 23, 2010.

Carter and Lewis Counties for Individual Assistance.

Carter, Elliott, and Lewis Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–19845 Filed 8–10–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5374–N–13]

Buy American Exceptions Under the American Recovery and Reinvestment Act of 2009

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: In accordance with the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–05, approved February 17, 2009) (Recovery Act), and implementing guidance of the Office of Management and Budget (OMB), this notice advises that certain exceptions to the Buy American requirement of the Recovery Act have been determined applicable for work using Capital Fund Recovery Formula and Competition (CFRFC) grant funds. Specifically, an exception was granted to the Chicago Housing Authority for the purchase and installation of marmoleum and linoleum floor tiles, dishwashers that are compliant with the Americans with Disabilities Act (ADA-compliant dishwashers), Ground Fault Circuit Interrupter (GFCI) outlets and an Audio/Video entry and dwelling communications system at the Pomeroy Apartments.

FOR FURTHER INFORMATION CONTACT: Dominique G. Blom, Deputy Assistant Secretary for Public Housing Investments, Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4130, Washington, DC 20410–4000, telephone number 202–402–8500 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this

number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Section 1605(a) of the Recovery Act provides that none of the funds appropriated or made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Section 1605(b) provides that the Buy American requirement shall not apply in any case or category in which the head of a Federal department or agency finds that: (1) Applying the Buy American requirement would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality, or (3) inclusion of iron, steel, and manufactured goods will increase the cost of the overall project by more than 25 percent. Section 1605(c) provides that if the head of a Federal department or agency makes a determination pursuant to section 1605(b), the head of the department or agency shall publish a detailed written justification in the **Federal Register**.

In accordance with section 1605(c) of the Recovery Act and OMB's implementing guidance published on April 23, 2009 (74 FR 18449), this notice advises the public that, in 2010, upon request of the Chicago Housing Authority, HUD granted an exception to the applicability of the Buy American requirements with respect to work, using CFRFC grant funds, based on the fact that the relevant manufactured goods (marmoleum and linoleum floor tiles, ADA-compliant dishwashers, GFCI outlets and an Audio/Video entry and dwelling communications system) are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality.

Dated: August 2, 2010.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2010–19743 Filed 8–10–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

National Park Service

Minor Boundary Revision at Sitka National Historical Park

AGENCY: National Park Service, Interior.

ACTION: Notification of Boundary Revision.

SUMMARY: Notice is hereby given that, pursuant to 16 U.S.C. 460l–9(c)(1), the boundary of Sitka National Historical Park, Sitka, Alaska, is modified to include an additional two tracts totaling 4.03 acres of land. These lands are adjacent to the western boundary of the park and are depicted on a map entitled "Sitka National Historical Park, Proposed Boundary" dated October 2009, and numbered 314/80,013.

FOR FURTHER INFORMATION CONTACT: National Park Service, Chief, Land Resources Program Center, 240 W. 5th Avenue, Anchorage, Alaska 99501; telephone (907) 644–3426. The map depicting the revision is on file and available for inspection at this address and at Sitka National Historical Park, 103 Monastery Street, Sitka, Alaska 99853.

DATES: The effective date of this boundary revision is August 11, 2010.

SUPPLEMENTARY INFORMATION: 16 U.S.C. 460l–9(c)(1) provides that, after notifying the House Committee on Natural Resources and the Senate Committee on Energy and Natural Resources, the Secretary of the Interior is authorized to make this boundary revision upon publication of notice in the **Federal Register**. The Committees have been notified of this boundary revision. Inclusion of these lands within the park boundary will enable acquisition of the subject tracts by the National Park Service, one by purchase and one by donation. The lands are necessary for watershed and scenic vista protection, and will provide an opportunity to add a scenic waterfront walkway leading to the park.

Dated: July 12, 2010.

Sue E. Masica,

Regional Director, Alaska Region.

[FR Doc. 2010–19738 Filed 8–10–10; 8:45 am]

BILLING CODE 4312–HY–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Environmental Impact Statement on Nabesna Off-Road Vehicle Management Plan, Wrangell-St. Elias National Park and Preserve

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of the Draft Environmental Impact Statement, Nabesna Off-Road Vehicle Management Plan, Wrangell-St. Elias National Park and Preserve.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4332(2)(C) the National Park Service (NPS) announces the availability of a Draft Environmental Impact Statement (DEIS) on Off-Road Vehicle Management in the Nabesna District of Wrangell-St. Elias National Park and Preserve. The DEIS evaluates the environmental impacts of a preferred alternative and three action alternatives for management of off-road vehicles in the Nabesna District. The purpose is to consider opportunities for appropriate and reasonable access to wilderness and backcountry recreational activities, which also accommodates subsistence and access to inholdings while protecting scenic quality, fish and wildlife habitat, and other park resource values. A no action alternative is also evaluated. This notice announces the public comment period, the locations of public meetings, and solicits comments on the DEIS. This DEIS also provides notice of a proposed technical correction to the wilderness eligibility assessment which was approved in the 1986 Wrangell-St. Elias National Park and Preserve General Management Plan. Public comment on the revised wilderness eligibility map for the Nabesna District is specifically requested.

DATES: The NPS will accept comments on the DEIS for 90 days following publication by the Environmental Protection Agency (EPA) of the Notice of Availability of the Draft Environmental Impact Statement. After the EPA Notice of Availability is published, the NPS will schedule public meetings during the comment period. Dates, times and locations of these meetings will be announced in press releases, local media and on the NPS Planning, Environment and Public Comment (PEPC) Web site for the project at *http://parkplanning.nps.gov/wrst.*

ADDRESSES: Copies of the DEIS will be available for public review at *http://parkplanning.nps.gov/wrst.* Hard copies are available at park headquarters, or may be requested from Meg Jensen, Superintendent, Wrangell-St. Elias National Park and Preserve, P.O. Box 439, Copper Center, Alaska 99573.

SUPPLEMENTARY INFORMATION: This DEIS evaluates the impacts of a range of alternatives for managing off-road vehicles (ORVs) for recreational and subsistence use in the Nabesna District of Wrangell-St. Elias National Park and Preserve. The nine trails under evaluation were in existence at the time the 13.2 million acre park and preserve was established in 1980. The use of

ORVs was determined to be traditionally employed for subsistence activities in the 1986 General Management Plan. Beginning in 1983, the park issued permits for recreational ORV use of these established trails, initially in accordance with 36 CFR 13.14(c), which was replaced by 43 CFR 36.11(g)(2) in 1986. The park issues 200 recreational ORV permits per year on average. The trails also provide for subsistence ORV use and access to inholdings. On June 29, 2006, the National Parks Conservation Association, Alaska Center for the Environment, and The Wilderness Society (Plantiffs) filed a lawsuit against NPS in the United States District Court for the District of Alaska regarding recreational ORV use on the nine trails that are the subject of this EIS. The plaintiffs challenged the NPS issuance of recreational ORV permits asserting that NPS failed to make the required finding that recreational ORV use is compatible with the purposes and values of the Park and Preserve. They also claimed that the NPS failed to prepare an environmental analysis of recreational ORV use as required by NEPA.

In the May 15, 2007, settlement agreement, NPS agreed to endeavor to complete an EIS, Record of Decision (ROD) and compatibility determination by December 31, 2010, during which time recreational use of ORVs on the Suslota Lake Trail, Tanada Lake Trail, and a portion of the Copper Lake Trail will be permitted only when the ground is frozen. The NPS may continue to issue permits for recreational ORV use of the remaining six trails through the year 2010.

The DEIS considers a reasonable range of alternatives based on project purpose and need, and considering park resources and values, and public input. For recreational ORV use in national preserves, Section 4.10(b) of the NPS regulations in Title 36 of the Code of Federal Regulations (CFR) implements Executive Orders 11644 and 11989 and provides that routes and areas designated for off-road vehicle use be promulgated as special regulations. Alternatives that consider recreational ORV use on park land or closure of areas to subsistence use of ORVs (confined to trails) would also require a park-specific regulation.

Alternative 1 evaluates the impacts of the no-action and describes conditions under the lawsuit settlement. Recreational ORV use would be permitted on all trails except Suslota, Tanada Lake, or Copper Lake trails, until the ground is frozen. There would be no change to subsistence ORV use and no trail improvements.

Alternative 2 would permit recreational ORV use on all nine trails. There would be no change to subsistence ORV use and no trail improvements.

Alternative 3 would prohibit recreational ORV use. Subsistence ORV use would continue, and some trail improvements would be made. Trail conditions would be monitored, and adaptive management steps would be taken to prevent further resource degradation.

Alternative 4 would permit recreational ORV use on designated trails in the preserve (Caribou Creek, Lost Creek, Trail Creek, Soda Lake, Reeve Field) once improvements are made, but not in the park (Tanada Lake, Copper Lake, Boomerang). All trails (except Suslota) would be improved to at least a maintainable condition through trail hardening, tread improvement, or constructed re-routes. Subsistence ORV use would continue subject to monitoring and management activities in the same manners as alternative 3.

Alternative 5 would permit recreational ORV use on all nine trails. All trails (except Suslota) would be improved to at least a maintainable condition as under alternative 4. Until improved, recreational ORV use would not be permitted on trails with the most resource degradation (Tanada Lake, Suslota, and Copper Lake) and subsistence ORV use would continue to be subject to monitoring and adaptive management steps in the same manner as alternative 3, and would be confined to trails in park wilderness. Alternative 5 is the NPS Preferred Alternative.

Public meetings will be held in Anchorage, Fairbanks, Tok, Slana, and Glennallen, Alaska. The specific dates and times will be announced in local media.

If you wish to submit comments electronically, you may submit your comments online in the PEPC Web site by visiting *http://parkplanning.nps.gov/wrst.* NPS encourages commenting electronically through PEPC. If you wish to submit written comments in hard copy (*e.g.* in a letter) you may send them by U.S. Postal Service or other mail delivery service or hand-delivered to Meg Jensen, Superintendent, Wrangell-St. Elias National Park and Preserve, P.O. Box 439, Copper Center, Alaska 99573. Oral statements and written comments will also be accepted during the public meetings. Bulk comments in any format (hard copy or electronic) submitted on behalf of others will not be considered. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Bruce Rogers, Project Manager, Wrangell-St. Elias National Park and Preserve, P.O. Box 439, Copper Center, Alaska 99573. Telephone: 907–822–7276.

Victor W. Knox,

Acting Regional Director, Alaska.

[FR Doc. 2010–19737 Filed 8–10–10; 8:45 am]

BILLING CODE 5312–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–10–L19100000–BJ0000–LRCM08RS4029]

Notice of Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, September 10, 2010.

FOR FURTHER INFORMATION CONTACT: Randy Thomas, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5134 or (406) 896–5009.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Superintendent, Fort Peck Agency, through the Rocky Mountain Regional Director, Bureau of Indian Affairs, and was necessary to determine boundaries of trust or tribal interest lands.

Principal Meridian, Montana

T. 26 N., R. 44 E.

The plat, in 1 sheet, representing the dependent resurvey of a portion of the west

and north boundaries, the corrective dependent resurvey of the line between sections 6 and 7, the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 6, and the adjusted original meanders of the former left bank of the Missouri River, downstream, through sections 5, 6, and 7, the subdivision of section 6, and the survey of the informative traverse of the left bank of a relicted channel of the Missouri River, downstream, through a portion of section 7, the informative traverse of a portion of the present left bank of the Missouri River, downstream, through a portion of section 7, the meanders of the present left bank of the Missouri River, downstream, through section 6 and a portion of section 5, and certain division of accretion lines, Township 26 North, Range 44 East, Principal Meridian, Montana, was accepted August 3, 2010.

We will place a copy of the plat, in 1 sheet, and related field notes we described in the open files. They will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in 1 sheet, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in 1 sheet, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority: 43 U.S.C. Chap. 3.

Dated: August 4, 2010.

James D. Claflin,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2010–19801 Filed 8–10–10; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDT000000.L11200000.DD0000.241A.00]

Notice of Public Meetings, Twin Falls District Resource Advisory Council, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA), the Federal Advisory Committee Act of 1972 (FACA) and the Federal Lands Recreation Enhancement Act of 2004 (FLREA), the U.S. Department of the Interior Bureau of Land Management (BLM) Twin Falls District Resource Advisory Council (RAC) and subcommittees will meet as indicated below.

DATES: On September 9, 2010, the Twin Falls District RAC subcommittee members will meet at the Sawtooth Best Western Inn, 2653 S. Lincoln Ave., Jerome, Idaho from 10 a.m. to 3:30 p.m. A public comment period will take place from 10:15 a.m.–10:45 a.m.

On September 16, 2010, the Twin Falls District RAC members will meet at the Sawtooth Best Western Inn, in Jerome, Idaho. The meeting will begin at 9 a.m. and end no later than 5 p.m. The public comment period for the full RAC meeting will take place 9:15 a.m. to 9:45 a.m. on September 16.

FOR FURTHER INFORMATION CONTACT: Heather Tiel-Nelson, Twin Falls District, Idaho, 2536 Kimberly Road, Twin Falls, Idaho 83301, (208) 736–2352.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Idaho. During the September 9th meeting, RAC subcommittee members will discuss the West Camas Forest Restoration project and other projects as a follow up to the July tour and meeting. During the September 16th meeting, RAC members will discuss the subcommittee reports and the current status of BLM's strategy for wild horse and burro management. Additional topics may be added and will be included in local media announcements. More information is available at *www.blm.gov/id/st/en/res/resource_advisory.3.html.* RAC meetings are open to the public.

Dated: August 4, 2010.

Bill Baker,

District Manager.

[FR Doc. 2010–19770 Filed 8–10–10; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–MB–2010–N165; 91100–3782–GRNT 7C]

Meeting Announcement: Neotropical Migratory Bird Conservation Advisory Group

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Advisory Group for the Neotropical Migratory Bird Conservation Act (NMBCA) grants program (Advisory Group) will meet in person and via conference call to discuss strategic planning and communication, budget and legislation updates, and other topics. This meeting is open to the public, and interested persons may present oral or written statements.

DATES: *Advisory Group Meeting:* September 9, 2010, 12 p.m. to 4 p.m. ET. *Presenters:* If you are interested in presenting oral or written information at the public meeting, provide a written copy of all comments to the Council Coordinator no later than August 27, 2010 (*see* **FOR FURTHER INFORMATION CONTACT**).

ADDRESSES: The meeting will be held at U.S. Fish and Wildlife Service, Room 2073—2nd Floor, 4501 N. Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Michael J. Johnson, Advisory Group Council Coordinator, by phone at (703) 358–1784; by e-mail at *dbhc@fws.gov;* or by U.S. mail at U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Mail Stop MBSP 4075, Arlington, VA 22203.

SUPPLEMENTARY INFORMATION: Recognizing the importance of conserving migratory birds, the U.S. Congress passed the NMBCA (Pub. L. 106–247, 114 Stat. 593, July 20, 2000) in 2000. The U.S. Fish and Wildlife Service, with assistance from an international Advisory Group, manages a grants program to implement the terms of the NMBCA.

This competitive, matching grants program supports public-private partnerships carrying out projects in the United States, Canada, Latin America, and the Caribbean that promote the long-term conservation of neotropical migratory birds and their habitats. The goals of the NMBCA include perpetuating healthy populations of these birds, providing financial resources for bird conservation initiatives, and fostering international cooperation for such initiatives.

The NMBCA Advisory Group, named by the Secretary of the Interior under the NMBCA, will hold its meeting to advise the Director, Fish and Wildlife Service, on the strategic direction and management of the NMBCA grants program. Grant proposal due dates, application instructions, and eligibility requirements are available on the NMBCA Web site at *http://www.fws.gov/birdhabitat/Grants/NMBCA/index.shtm.*

The agenda of this meeting will include strategic planning, strategic communication, and budget and legislation updates.

If you are interested in presenting information at this public meeting, contact the Council Coordinator, and provide a written copy of all comments to the Council Coordinator, no later than the date under **DATES**.

Dated: August 5, 2010.

Robert J. Blohm,

Acting Assistant Director, Migratory Birds.

[FR Doc. 2010–19807 Filed 8–10–10; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain Adjustable-Height Beds and Components Thereof;* DN 2747; the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: Marilyn Abbott, Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint filed on behalf of Invacare Corporation on August 5, 2010. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain adjustable-height beds and components thereof. The complaint names as respondents Medical Depot, Inc. d/b/a Drive Medical Design and Manufacturing of Port Washington, NY; and Shanghai Shunlong Physical Therapy Equipment Co., Ltd. of Shanghai, China.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number ("Docket No. 2747") in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–19763 Filed 8–10–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1063, 1064, 1066–1068 (Review)]

Frozen Warmwater Shrimp From Brazil, China, India, Thailand, and Vietnam

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the antidumping duty orders on frozen warmwater shrimp from Brazil, China, India, Thailand, and Vietnam.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders on frozen warmwater shrimp from Brazil, China, India, Thailand, and Vietnam would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined that these reviews are extraordinarily complicated, and will therefore exercise its authority to extend its time for making its determinations by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B). For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through

E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* April 28, 2010.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for theses reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On April 9, 2010, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act (75 FR 22424, April 28, 2010). The Commission found that both the domestic and respondent interested party group responses to its notice of institution (75 FR 1078, January 8, 2010) were adequate for each order under review. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the reviews and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on January 12, 2011, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on February 1, 2011, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 25, 2011. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 25, 2011, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is January 20, 2011. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is February 10, 2011; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before February 10, 2011. On March 7, 2011, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 9, 2011, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(c) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: August 5, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–19766 Filed 8–10–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–244 (Third Review)]

Natural Bristle Paintbrushes From China

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year review.

SUMMARY: On July 30, 2010, the Department of Commerce published notice in the **Federal Register** of the final results of its changed circumstances review concerning natural bristle paintbrushes from China (75 FR 44939). Commerce announced that it was revoking the subject antidumping duty order based on the fact that domestic parties have expressed a lack of interest in antidumping duty relief from imports of subject merchandise. Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the subject review is terminated.

DATES: *Effective Date:* July 30, 2010.

FOR FURTHER INFORMATION CONTACT: Keysha Martinez (202–205–2136), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this five-year review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

Authority: This five-year review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

By order of the Commission.

Issued: August 5, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–19765 Filed 8–10–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Resource Conservation and Recovery Act

Notice is hereby given that on August 6, 2010, a proposed Consent Decree in *United States et al.* v. *CF Industries, Inc.*, Civil Action No. 8:10–CV–1756T24EAJ was lodged with the United States District Court for the Middle District of Florida.

In this action the United States sought injunctive relief and civil penalties for civil violations of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901 to 6992k, together with its implementing regulations by CF Industries, Inc. ("CFI"). CFI manufactures phosphoric acid, sulfuric acid, and nitrogen and phosphate fertilizer products at a single production facility in Plant City, Florida that has been in operation at the current approximate 3,300 acre site since 1965.

The settlement reflected in the proposed Consent Decree will resolve the violations alleged in the Complaint of Sections 3004 and 3005 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C.A. 6924 and 6925, and the implementing regulations at 40 CFR Parts 261, 262, 264, 265, 268 and 270 that govern the identification, treatment, storage and disposal of hazardous waste, and specifically involve the commingling of hazardous wastes with wastes exempted from RCRA under the Bevill Amendment for mineral processing wastes pursuant to 40 CFR 261.4(b)(7)(ii) (D) and (P).

Under the proposed settlement, CFI has re-engineered its plant to cease generating hazardous wastewater previously commingled with RCRA-exempt mineral processing wastes. CFI also will install a neutralization system to treat 6 million pounds per year of residual hazardous waste; implement a comprehensive leak detection and reduction program; install synthetic protective barriers beneath its production plants; provide $163.5 million in financial assurance to guarantee appropriate closure and long term care of the facility; and pay a penalty of $701,500. Florida is a co-plaintiff in this action, and will share in the penalty and coordinate with EPA to monitor and enforce compliance with the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer *to United States* v. *CF Industries, Inc.*, D.J. Ref. #90–7–1–08388/5.

The Consent Decree may be examined at the Office of the United States Attorney for the Middle District of Florida: 400 N. Tampa Street, Suite 3200, Tampa, Florida 33602, 813.274.6000; 813.274.6358 (Fax); and at the offices of EPA Region 4, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–3104, *Phone:* (404) 562–9900 *Fax:* (404) 562–8174, *Toll free:* (800) 241–1754.

During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $82.75 for the entire Consent Decree with Appendices (25 cents per page reproduction cost for 331 pages), or $13.50 for the Consent Decree without Appendices (54 pages), payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section Environment and Division, Natural Resources.

[FR Doc. 2010–19799 Filed 8–10–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0026]

Mechanical Power Presses Standard; Extension of the Office of Management and Budget's (OMB) Approval of the Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements contained in the Mechanical Power Presses Standard for General Industry (29 CFR 1910.217(e)(1)).

DATES: Comments must be submitted (postmarked, sent, or received) by October 12, 2010.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2010–0026, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., *e.t.*

Instructions: All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA–2010–0026). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov*. For further information on submitting comments see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The collections of information contained in the Mechanical Power Presses Standard for General Industry are necessary to reduce workers' risk of death or serious injury by ensuring that employers maintain the mechanical power presses used by the workers in safe operating condition.

The following section describes who uses the information collected under each requirement, as well as how they use it.

Section 1910.217(e)(1)(i)

Paragraph (e)(1)(i) requires employers to establish and follow a program of periodic and regular inspections of power presses to ensure that all their parts, auxiliary equipment, and safeguards are in safe operating condition and adjustment. Employers must maintain a certification record of inspections that includes the date of inspection, the signature of the person who performed the inspection, and the serial number, or other identifiers, of the power press that was inspected.

Section 1910.217(e)(1)(ii)

Paragraph (e)(1)(ii) requires employers to inspect and test each press no less than weekly to determine the condition of the clutch/brake mechanism, antirepeat feature, and single-stroke mechanism. Employers must perform and complete necessary maintenance or repair or both before the press is operated. In addition, employers must maintain a record of inspections, tests, and maintenance work. The record must include the date of the inspection, test, or maintenance; the signature of the person who performed the inspection, test, or maintenance; and the serial number, or other identifiers, of the press that was inspected, tested, or maintained.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Mechanical Power Presses Standard for General Industry (29 CFR 1910.217(e)(1). There are no program changes or adjustments associated with the information collection requirements of the Standard; thus, the burden hours will remain at 1,373,054. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Mechanical Power Presses (29 CFR 1910.217(e)(1)).

OMB Number: 1218–0229.

Affected Public: Business or other for-profits; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 295,000.

Frequency of Response: On occasion, Weekly, Monthly.

Average Time per Response: Two minutes (.03 hour) to disclose the certification records to 20 minutes (.33 hour) to inspect the parts, auxiliary equipment, and safeguards of each press.

Estimated Total Burden Hours: 1,373,054.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2010–0026). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (*see* the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31160).

Signed at Washington, DC, this 6th day of August 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–19790 Filed 8–10–10; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0025]

The Hydrostatic Testing Provision of the Portable Fire Extinguishers Standard; Extension of the Office of Management and Budget's (OMB) Approval of the Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements contained in the Hydrostatic Testing provision of the Portable Fire Extinguishers Standard for General Industry (29 CFR 1910.157(f)(16)).

DATES: Comments must be submitted (postmarked, sent, or received) by October 12, 2010.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2010–0025, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., *e.t.*

Instructions: All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA–2010–0025). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The collections of information contained in the Hydrostatic Testing provision of the Portable Fire Extinguishers Standard are necessary to reduce workers' risk of death or serious injury by ensuring that portable fire extinguishers are in safe operating condition. The following section describes who uses the information in the testing certification record, as well as how they use it.

Test Records (§ 1910.157(f)(16))

Paragraph (f)(16) requires employers to develop and maintain a certification record of hydrostatic testing of portable fire extinguishers. The certification record must include the date of inspection, the signature of the person who performed the test, and the serial number (or other identifier) of the fire extinguisher that was tested.

Disclosure of Test Certification Records

The certification record must be made available to the Assistant Secretary or his/her representative upon request. The certification record provides assurance to employers, workers, and OSHA compliance officers that the fire extinguishers have been hydrostatically tested in accordance with and at the intervals specified in § 1910.157(f)(16), thereby ensuring that they will operate properly in the event workers need to use them. Additionally, these records provide the most efficient means for the compliance officers to determine that an employer is complying with the hydrostatic testing provision.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Hydrostatic Testing provision of the Portable Fire Extinguishers Standard for General Industry (29 CFR 1910.157(f)(16)). OSHA is proposing to decrease the burden hours in the currently approved information collection request from 125,952 burden hours to 124,084 burden hours (a total decrease of 1,868 hours). This decrease is due to updated data showing a decrease in the number of firms affected by the Standard. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: The Hydrostatic Testing provision of the Portable Fire Extinguishers Standard (29 CFR 1910.157(f)(16)).

OMB Number: 1218–0218.

Affected Public: Business or other for-profits; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 9,066,000.

Frequency of Response: On occasion.

Average Time per Response: One minute (.02 hour) to maintain the certification records to 33 minutes (.55 hour) to test an extinguisher, and to generate and maintain the certification record.

Estimated Total Burden Hours: 124,084 hours.

Estimated Cost (Operation and Maintenance): $16,696,550.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2010–0025). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (*see* the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31160).

Signed at Washington, DC, this 6th day of August 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–19793 Filed 8–10–10; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting; Notice

TIME AND DATE: The Legal Services Corporation Board of Directors' Operations and Regulations Committee ("Committee") will meet *telephonically* on August 17, 2010. The meeting will begin at 11 a.m., Eastern Time and continue until conclusion of the Committee's agenda.

LOCATION: Legal Services Corporation, 3333 K Street, NW., Washington, DC 20007.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed to the public pursuant to a vote of the Board of Directors authorizing the Committee to consider and perhaps act on an employee benefits matter.

This closure will be authorized by the relevant provisions of the government in the Sunshine Act [5 U.S.C. 552b(c)(2)]

and LSC's implementing regulation 45 CFR 1622.5(a).[1]

A *verbatim* written transcript will be made of the closed session of the Board meeting. However, the transcript of any portions of the closed session falling within the relevant provisions of the government in the Sunshine Act [5 U.S.C. 552b(c)(4) and (6)] and LSC's implementing regulation 45 CFR 1622.5(c) and (e), will not be available for public inspection. A copy of the General Counsel's Certification that in his opinion the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of minutes of the Committee's Open Session meeting of July 30, 2010.
3. Consider and act on potential initiation of rulemaking to amend 45 CFR Part 1622 to remove from its requirements the Board's Search and Development Committees and the Board's Governance & Performance Review Committee when it is meeting to consider performance evaluations of the President and the Inspector General:
   - Presentation by Mattie Cohan, Senior Assistant General Counsel;
   - Comment by Laurie Tarantowicz, Assistant Inspector General and Legal Counsel;
   - Public Comment.
4. Public comment.
5. Consider and act on other business.

Closed Session

6. Approval of minutes of the Committee's Closed Session meeting of July 31, 2010.
7. Consider and act on an employee benefits matter.
8. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President for Legal Affairs & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Katherine Ward at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov.*

[1] 45 CFR 1622.5(a)—Relate solely to the internal personnel rules and practices of the Corporation.

Dated: August 6, 2010.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 2010–19884 Filed 8–9–10; 11:15 am]

BILLING CODE 7050–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 75 FR 32508, and no substantial comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.* Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725-17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

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

Title of Collection: Evaluation of the Robert Noyce Teacher Scholarship Program.

OMB Control No.: 3145–(NEW).

Abstract: The National Science Foundation (NSF) requests a three-year clearance for research, evaluation and data collection (*e.g.,* surveys and interviews) about the Noyce Program. NSF established the Robert Noyce Teacher Scholarship Program to encourage talented STEM majors and professionals to become K–12 mathematics and science teachers. The Noyce Program awards scholarships, stipends, fellowships and internships to support the preparation of K–12 teachers in mathematics and science. For specific details and the most updated information regarding Noyce program operations, please visit the NSF Web site at: *http://www.nsf.gov/funding/pgm_summ.jsp?pims_id=5733.*

The study will survey Principal Investigators of the Noyce Program, Science, Technology, Engineering, or Mathematics (STEM) Faculty involved in the Noyce Program, Noyce Recipients, and K–12 Principals in schools where former recipients are teaching. Noyce recipients may be undergraduates majoring in a science, technology, engineering, or mathematics (STEM) discipline; STEM post-baccalaureates; STEM professionals; or exemplary mathematics and science teachers, who have master's degrees. The Noyce program evaluation will include all awards made between 2003 and 2009.

NSF has contracted a program evaluation of the Noyce Program, to be conducted by Abt Associates Inc. Through this evaluation of the Noyce Program, NSF aims to examine and document:

(1) The strategies and programs Noyce grantees use to recruit and retain teacher candidates, both during teacher preparation and during the induction period;

(2) The institutional change occurring within STEM departments regarding the preparation of future mathematics and science teachers;

(3) The relationships between characteristics of the Noyce Program, types of Noyce recipients, characteristics of the schools in which Noyce recipients teach, and recipients' plans to teach in high-need schools and to pursue leadership roles; and

(4) The impacts of the Noyce program on teacher recruitment and retention and on teacher effectiveness.

The methods of data collection will include both primary and secondary data collections. Primary data collection will include surveys and telephone interviews; secondary data sources include open sources, records at NSF and grantee institutions, and state departments of education and teacher retirement funds. There is a bounded (or limited) number of respondents within the general public who will be affected by this research, including current and former Noyce grantees and associated faculty, STEM majors, post-baccalaureates, or professionals eligible who are supported by Noyce funding, and K–12 principals and district administrators. NSF will use the Noyce program evaluation data and analyses to respond to requests from Committees of Visitors (COV), Congress and the Office of Management and Budget, particularly as related to the Government Performance and Results Act (GPRA) and the Program Assessment Rating Tool (PART) or its replacement. NSF will also use the program evaluation to share the broader impacts of the Noyce program with the general public.

Respondents: Individuals, Federal Government, State, Local or Tribal Government and not-for-profit institutions.

Estimated Number of Respondents: 5000.

Burden on the Public: 2400 hours.

Dated: August 6, 2010.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2010–19842 Filed 8–10–10; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Availability for Public Comment on the Draft Joint Subcommittee on Ocean Science and Technology—Interagency Ocean Observation Committee Public-Private Use Policy

AGENCY: National Science Foundation.

ACTION: Notice of availability; request for comments.

SUMMARY: The NOAA Integrated Ocean Observing System (IOOS) Program publishes this notice on behalf of the Joint Subcommittee on Ocean Science and Technology—Interagency Ocean Observation Committee (JSOST–IOOC) to announce a 60-day public comment period for the Public-Private Use Policy mandated by the Integrated Coastal and Ocean Observation System Act of 2009. This policy defines the process the IOOC will use to make decisions about the roles of the federal government, the States, regional information coordination entities, the academic community and the private sector in providing IOOS environmental information, products, technologies and services to end-user communities.

DATES: Written, faxed or emailed comments must be received no later than 5 p.m. eastern standard time on October 12, 2010.

ADDRESSES: The JSOST–IOOC Public-Private Use Policy is available for review at Web site URL: *http://www.iooc.us.* For the public unable to access the internet, printed copies can be requested by contacting the IOOC Support Office at the address below. The public is encouraged to submit comments electronically to *iooc@oceanleadership.org.* If you are unable to access the internet, comments may be submitted via fax or regular mail. Faxed comments should be sent to 202–332–8887 with Attn: IOOC Support Office. Comments may be submitted in writing to the Consortium for Ocean Leadership, Attention: IOOC Support Office, 1201 New York Avenue, NW., 4th Floor, Washington, DC 20005

FOR FURTHER INFORMATION CONTACT: For further information about this notice, please contact the IOOC Support Office, telephone: 202–787–1622; E-mail: *iooc@oceanleadership.org.*

SUPPLEMENTARY INFORMATION: On 30 March 2009, President Barack Obama signed into law the Integrated Coastal and Ocean Observation Act of 2009. Among the requirements in the Act is a directive to the National Ocean Research Leadership Council (NORLC) to develop a Public-Private Use Policy. In April 2007 the NORLC jointly agreed with the Committee on Ocean Policy supporting body, the Interagency Committee on Ocean Science and Resource Management Integration (ICOSRMI), to allow future actions taken by ICOSRMI to be deemed actions of the NORLC for the purpose of maintaining interagency progress. The IOOC, the federal interagency group established to lead the interagency planning and coordination of ocean observing activities including IOOS, is represented by seventeen federal agencies, with NOAA identified as the lead federal agency by the Administration. As defined in the IOOC Charter, the purpose of the IOOC is to advise and assist the JSOST on matters relating to all aspects of ocean observations within the scope of an end-to-end concept of ocean observations. The JSOST is under the governance of the NORLC and, by the April 2007 agreement, the ICOSRMI.

Dated: August 5, 2010.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2010–19762 Filed 8–10–10; 8:45 am]

BILLING CODE 7555–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62655; File No. SR–FINRA–2010–042]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt FINRA Rule 4160 (Verification of Assets)

August 5, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 4, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by 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 adopt FINRA Rule 4160 (Verification of Assets). The proposed rule provides that a member, when notified by FINRA, may not continue to custody or retain record ownership of assets, at a non-member financial institution, which, upon FINRA staff's request, fails promptly to provide FINRA with written verification of assets maintained by the member at

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

such financial institution. The proposed rule change also would add a supplementary material section to the new rule.

The text of the proposed rule change is below. Proposed new language is underlined.

* * * * *

4000. FINANCIAL AND OPERATIONAL RULES

4100. FINANCIAL CONDITION

* * * * *

4160. Verification of Assets

A member, when notified by FINRA, may not continue to custody or retain record ownership of assets, whether such assets are proprietary or customer assets, at a financial institution that is not a member of FINRA, which, upon FINRA staff's request, fails promptly to provide FINRA with written verification of assets maintained by the member at such financial institution.

• • • *Supplementary Material:*

.01 Asset Transfers. Any member required to transfer its proprietary and/or customer assets pursuant to this Rule shall effect such transfer within a reasonable period of time.

.02 Member Obligations Under SEA Rule 15c3–3. Nothing in this Rule shall be construed as altering in any manner a member's obligations under SEA Rule 15c3–3.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning 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

FINRA is proposing a rule designed to ensure that FINRA can independently verify assets maintained by a member at a non-member financial institution. While FINRA currently may request such independent verification, it generally cannot compel a financial institution that is not a member to comply with the request because FINRA's rules apply only to members. This inability to obtain such information directly from a non-member financial institution may limit FINRA's ability to effectively detect fraud and protect investors.

To address these jurisdictional constraints, FINRA is proposing a rule providing that a member, when notified by FINRA, may not continue to custody or retain record ownership of assets, whether such assets are proprietary or customer assets, at a non-member financial institution, which, upon FINRA staff's request, fails promptly [3] to provide FINRA with written verification of assets maintained by the member at such financial institution. FINRA believes there would be significant incentive on the part of non-member financial institutions to promptly comply with staff requests for asset verification in order to continue to retain members' proprietary or customer assets. Similarly, members would seek to assure that non-member financial institutions maintaining their proprietary or customer assets comply with such requests to avoid having to transfer assets to another institution. At this time, FINRA is not proposing to require a member to enter into a written contract with a non-member financial institution maintaining its proprietary or customer assets that would obligate the institution to comply with FINRA staff's requests for verification; however, FINRA would strongly encourage a member to enter into such a contract. A non-member financial institution that has a written contractual obligation with a member but still refuses to provide FINRA with prompt written verification may be in breach of contract, and the member could seek appropriate remedies against the institution. The proposed rule, however, would preclude the member from continuing to maintain assets at that financial institution and require the member to transfer the assets to another financial institution. In this regard, FINRA is mindful of the potential challenges of an asset transfer, and is proposing to adopt Supplementary Material .01 (Asset Transfers), providing that any member required to transfer its proprietary and/or customer assets pursuant to the proposed rule shall effect such transfer within a reasonable period of time.

Additionally, FINRA is proposing to adopt Supplementary Material .02 (Member Obligations Under SEA Rule 15c3–3) to clarify that nothing in the proposed rule shall be construed as altering in any manner a member's obligations under SEA Rule 15c3–3.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 30 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[4] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is consistent with the provisions of the Act noted above in that independent verification will further strengthen FINRA's ability to effectively detect fraud and protect investors.

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.

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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 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 or disapprove 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

[3] The proposed rule does not define the term "promptly," which would be assessed based on the particular facts and circumstances.

[4] 15 U.S.C. 78*o*–3(b)(6).

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2010–042 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2010–042. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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–2010–042 and should be submitted on or before September 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–19750 Filed 8–10–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62641; File No. SR–EDGA–2010–10]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGA Exchange, Inc. Fee Schedule

August 4, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 30, 2010, the EDGA Exchange, Inc. (the "Exchange" or the "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGA Rule 15.1(a) and (c) by making several technical amendments to its fee schedule.

All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make several technical amendments to its fee schedule. First, it proposes to move the text in footnote 1 that states that "upon a Member's request, EDGA will aggregate share volume calculations for wholly owned affiliates on a prospective basis" to new footnote "a." Then, the Exchange proposes adding a reference to footnote "a" next to all numbered footnotes (except footnote 4 since it states that it is "intentionally omitted.") This amendment clarifies that the ability of Members to request aggregation and the Exchange to aggregate share volume calculations for wholly owned affiliates on a prospective basis applies across all fee and volume threshold calculations and not just to the language found in footnote 1.

The Exchange proposes to delete the reference to footnote 4 found on Flags E and 5 since footnote 4 is "intentionally omitted" and leaving the reference intact leads to confusion by Members.

EDGA Exchange proposes to implement these amendments to the Exchange fee schedule on August 1, 2010.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[4] in general, and furthers the objectives of Section 6(b)(4),[5] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act[6] and Rule 19b–4(f)(2)[7] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend 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–EDGA–2010–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2010–10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission,[8] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2010–10 and should be submitted on or before September 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–19759 Filed 8–10–10; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 19b–4(f)(2).

[8] The text of the proposed rule change is available on Exchange's Web site at *http://www.directedge.com*, on the Commission's Web site at *http://www.sec.gov,* at EDGA, and at the Commission's Public Reference Room.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62640; File No. SR–EDGX–2010–10]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

August 4, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 30, 2010, the EDGX Exchange, Inc. (the "Exchange" or the "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members[3] of the Exchange pursuant to EDGX Rule 15.1(a) and (c) to (i) establish a rebate; (ii) charge for legacy International Securities Exchange ("ISE") FIX session fees; and (iii) make other technical amendments to the fee schedule.

All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

(i) ISE FIX Session Fees

The Exchange proposes to charge for legacy ISE[4] Financial Information Exchange ("FIX") sessions ("Sessions") used to connect to EDGX and thereby,

[3] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

[4] A wholly-owned subsidiary of Direct Edge Holdings, LLC (prior to July 16, 2010) previously operated the ISE Stock Exchange as a facility of ISE. These Session fees are identical to the fees filed previously filed by and billed for by the ISE. *See* Securities Exchange Act Release No. 56379 (September 10, 2007), 72 FR 52591 (September 14, 2007) (SR–ISE–2007–79).

amend its fee schedule accordingly.[5] These are logical ports used to enter orders into the Exchange's trading system and to receive order messages from the Exchange. The Sessions are currently being used to send orders to EDGX by certain legacy Members of the ISE who became Members of EDGX. The amendment to the fee schedule enables the Exchange to continue to bill Members for these Sessions until they are terminated. Members will be charged $250/month for the first two Sessions and $50/month for each Session thereafter. The Exchange believes that the fees obtained will enable it to cover certain costs. First, the fees would enable the Exchange to charge for existing infrastructure costs for a legacy system that the Exchange is planning to discontinue using. Secondly, the fees would cover those costs associated with allowing Members to continue to use this legacy infrastructure until they have successfully transitioned to EDGX Sessions (which are currently provided at no charge). Finally, switching over to the EDGX Sessions involves no additional costs nor software changes by Members.

(ii) Other Technical Amendments

The Exchange proposes to make several technical amendments to its fee schedule. The Exchange proposes to move the text in footnote 1 that states that "upon a Member's request, EDGX will aggregate share volume calculations for wholly owned affiliates on a prospective basis" to new footnote "a." Then, the Exchange proposes adding a reference to footnote "a" next to all numbered footnotes (except footnotes 2 and 4 since these say "intentionally omitted.") This amendment clarifies that the ability of Members to request aggregation and the Exchange to aggregate share volume calculations for wholly owned affiliates on a prospective basis applies across all fee and volume threshold calculations and not just to the language found in footnote 1.

The Exchange proposes to delete the reference to footnote 4 found on Flags E and 5 since footnote 4 is "intentionally omitted" and leaving the reference intact leads to confusion by Members.

(iii) Proposed Rebate

Currently, Members can qualify for a rebate of $0.0032 per share for all liquidity posted on EDGX if they add or route at least 5,000,000 shares of average daily volume prior to 9:30 AM or after 4:00 PM (includes all flags except 6) AND add a minimum of 50,000,000 shares of average daily volume on EDGX in total, including during both market hours and pre and post-trading hours.

The Exchange proposes to add an additional rebate to footnote 1 of its fee schedule which will provide Members a $0.0031 rebate per share for liquidity added on EDGX if the Member on a daily basis, measured monthly posts 0.75% of the Total Consolidated Volume ("TCV") in average daily volume. TCV is defined as volume reported by all exchanges and trade reporting facilities to the consolidated transaction reporting plans for Tapes A, B and C securities. The Exchange believes that this pricing is appropriate since this rebate ($ 0.0031 per share), which is $0.0001 lower than the $0.0032 per share rebate mentioned above, is also easier to meet. For example, 0.75% of the average TCV for June 2010 (9.3 billion) was approximately 70 million shares, but this volume need *not* be posted (like that required for the $0.0032 rebate per share) only during pre and post-trading hours, a more limited time period. Therefore, this threshold is not as restrictive as the criteria to qualify for the $0.0032 rebate. In addition, the rebate also results in part from lower administrative costs associated with higher volume.

EDGX Exchange proposes to implement these amendments to the Exchange fee schedule on August 1, 2010.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[6] in general, and furthers the objectives of Section 6(b)(4),[7] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the fees obtained from legacy ISE Sessions will enable it to cover its infrastructure costs associated with allowing Members to continue to use this legacy infrastructure until they have successfully transitioned to EDGX Sessions. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members and provide higher rebates for higher volume thresholds, resulting from lower administrative costs. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act[8] and Rule 19b–4(f)(2)[9] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend 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:

[5] As stated in SR–ISE–2007–79, the ISE used the Financial Information Exchange (FIX) protocol, which Members program to in order to develop applications that send trading commands and/or queries to and receive broadcasts and/or transactions from the trading system. The protocol processes quotes, receives orders from Members, tracks activity in the underlying markets, when applicable, executes trades in the matching engine, and broadcasts trade details to participating Members.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 19b–4(f)(2).

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–EDGX–2010–10 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2010–10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission,[10] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2010–10 and should be submitted on or before September 1, 2010.

[10] The text of the proposed rule change is available on Exchange's Web site at *http://www.directedge.com*, on the Commission's Web site at *http://www.sec.gov*, at EDGX, and at the Commission's Public Reference Room.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–19760 Filed 8–10–10; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7117]

Culturally Significant Objects Imported for Exhibition Determinations: "Kurt Schwitters: Color and Collage"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition "Kurt Schwitters: Color and Collage," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Menil Collection, Houston, TX, from on or about October 22, 2010, until on or about January 22, 2011; the Princeton University Art Museum, Princeton, NJ, from on or about March 26, 2011, until on or about June 26, 2011; the UC Berkeley Art Museum and Pacific Film Archive, Berkeley, CA, from on or about August 3, 2011, until on or about November 27, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* 202/632–6473). The address is U.S. Department of State, SA–5, L/PD, Fifth Floor, Washington, DC 20522–0505.

Dated: August 3, 2010.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–19836 Filed 8–10–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7118]

Culturally Significant Objects Imported for Exhibition Determinations: "Miró: The Dutch Interiors"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition "Miró: The Dutch Interiors," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, NY, from on or about October 4, 2010, until on or about January 17, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: August 5, 2010.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–19837 Filed 8–10–10; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Notice Regarding the Announcement of Petitions Accepted for the 2009 Annual GSP Country Practices Review, Acceptance of Pre-Hearing Comments and Requests To Testify for the 2009 Annual GSP Country Practices Review Hearing, and the Initiation of the 2010 Annual GSP Country Practices Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and solicitation for public petitions.

SUMMARY: The Office of the United States Trade Representative (USTR) accepted petitions in connection with the 2009 GSP Annual Review to modify the GSP status of certain GSP beneficiary developing countries because of country practices. This notice sets forth the schedule for comment and public hearings on the newly accepted petitions for the 2009 Country Eligibility Practices Review, for requesting participation in the hearings, and for submitting pre-hearing and post-hearing briefs, and determines that the deadline for submitting pre-hearing comments and requesting participation in the hearings is 5 p.m., Friday, September 3, 2010. The list of newly accepted petitions is available at: *http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preference-gsp/current-review-1* in "List of Country Practice Petitions Accepted in the 2009 GSP Annual Review." The petitions accepted include a Worker Rights petition regarding Sri Lanka filed by the AFL–CIO and two Arbitral Awards petitions regarding Argentina filed by Azurix Corporation and Blue Ridge Investments, LLC. The petitions themselves can be found in docket USTR–2009–0015 at *http://www.regulations.gov.*

This notice also announces the initiation of the 2010 Annual GSP Country Eligibility Practices Review and determines that the deadline for new country practice petitions is 5 p.m., Friday, September 10, 2010. Any new country practice petitions accepted for review and any hearing schedule would be announced in the **Federal Register** at a later date.

FOR FURTHER INFORMATION CONTACT: Tameka Cooper, GSP Program, Office of the United States Trade Representative, 1724 F Street, NW., Room 601, Washington, DC 20508. The telephone number is (202) 395–6971, the fax number is (202) 395–2961, and the e-mail address is *Tameka_Cooper@ustr.eop.gov.*

DATES: The GSP regulations (15 CFR part 2007) provide the schedule of dates for conducting an annual review unless otherwise specified in a **Federal Register** notice. The current schedule follows. Notification of any other changes will be given in the **Federal Register**.

September 3, 2010: Due date for submission of pre-hearing briefs and requests to appear at the GSP Subcommittee Public Hearing that include the name, address, telephone, fax, e-mail address and organization of witnesses to address accepted country practice petitions.

September 10, 2010: Due date for submission of petitions for country practices review as part of the 2010 Annual GSP Review.

September 24, 2010: GSP Subcommittee Public Hearing, for all country practice petitions accepted for the 2009 GSP Annual Review, to be held in the Truman Room, White House Conference Center, 726 Jackson Place, Washington, DC, beginning at 9:30 a.m.

October 15, 2010: Due date for submission of post-hearing briefs.

SUPPLEMENTARY INFORMATION: The GSP provides for the duty-free importation of designated articles when imported from designated beneficiary developing countries. The GSP is authorized by title V of the Trade Act of 1974 (19 U.S.C. 2461, *et seq.*), as amended (the "1974 Act"), and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

Petitions for Review Regarding Country Practices

Pursuant to 15 CFR 2007.0(b), the GSP Subcommittee of the TPSC has recommended, and the TPSC has accepted the review of three country practice petitions. The list of newly accepted petitions is available at: *http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preference-gsp/current-review-1* in "List of Country Practice Petitions Accepted in the 2009 GSP Annual Review." The petitions accepted include a Worker Rights petition regarding Sri Lanka filed by the AFL–CIO and two Arbitral Awards petitions regarding Argentina filed by Azurix Corporation and Blue Ridge Investments, LLC.

Opportunities for Public Comment and Inspection of Comments

The GSP Subcommittee of the TPSC invites comments in support of or in opposition to any petition that has been accepted for the 2009 GSP Annual Review. Submissions should comply with 15 CFR part 2007, except as modified below. All submissions should identify the subject article(s) in terms of the case number, if applicable, as shown in the "List of Country Practice Petitions Accepted in the 2009 GSP Annual Review," available at: *http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preference-gsp/current-review-1.*

Requirements for Submissions

All submissions for the 2009 GSP Country Practices Eligibility Review must conform to the GSP regulations set forth at 15 CFR part 2007, except as modified below. These regulations are available on the USTR Web site at *http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preference-gsp/gsp-program-inf.*

To ensure their timely and expeditious receipt and consideration, 2009 Annual Review submissions in response to this notice must be submitted online at *http://www.regulations.gov,* docket number USTR–2009–0015. Hand-delivered submissions will not be accepted. Submissions must be submitted in English by the applicable deadlines set forth in this notice.

To make a submission using *http://www.regulations.gov,* enter docket number USTR–2009–0015 on the home page and click "search." The site will list all documents associated with this docket. Find a reference to this notice by selecting "Notices" under "Document Type" on the left side of the search results page, and click on the link entitled "Submit a Comment." The *http://www.regulations.gov* Web site offers the option of providing comments by filling in the "Type Comment and Upload File" field or by attaching a document. Given the detailed nature of the information sought by the GSP Subcommittee, it is preferred that comments and submissions be provided in an attached document. When attaching a document, type: (1) 2009 GSP Annual Review (2) The Country and subject area of the petition (3) "See attached" in the "Type Comment and Upload File" field on the online submission form, and indicate on the attachment whether the document is, as appropriate, "Written Comments,"

"Notice of Intent to Testify," "Pre-hearing brief" or a "Post hearing brief." The list of petitions for the 2009 Annual Review can be found in "List of Country Practice Petitions Accepted in the 2009 GSP Annual Review," found on the USTR Web site at: *http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preference-gsp/current-review-1.* Submissions must be in English, with the total submission not to exceed 30 single-spaced standard letter-size pages in 12-point type, including attachments. Any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Petitions for the 2010 Country Practices Review must conform to the regulations at 15 CFR part 2007. Petitions for the 2010 Country Practices Eligibility Review in response to this notice must be submitted to docket USTR–2010–0017. To make a submission using *http://www.regulations.gov,* enter docket number USTR–2010–0017 on the home page and click "search." The site will list all documents associated with this docket. Find a reference to this notice by selecting "Notices" under "Document Type" on the left side of the search results page, and click on the link entitled "Submit a Comment." The *http://www.regulations.gov* Web site offers the option of providing comments by filling in a "Type Comment and Upload File" field or by attaching a document. Given the detailed nature of the information sought by the GSP Subcommittee, it is preferred that comments and submissions be provided in an attached document. Any data attachments to the submission should be included in the same file as the submission itself, and not as separate files. When attaching a document, type: (1) 2010 GSP Annual Review (2) The Country and subject area of the petition (3) "See attached" in the "Type Comment and Upload File" field on the online submission form, and indicate on the attachment whether the document is a petition. Submissions must be in English, with the total submission not to exceed 30 single-spaced standard letter-size pages in 12-point type, including attachments.

Each submitter will receive a submission tracking number upon completion of the submissions procedure at *http://www.regulations.gov.* The tracking number will be the submitter's confirmation that the submission was received, and it should be kept for the submitter's records. USTR is not able to provide technical assistance for the website. Documents not submitted in accordance with these instructions may not be considered in this review. If unable to provide submissions as requested, please contact the GSP Program to arrange for an alternative method of transmission.

Business Confidential Comments

A person requesting that information contained in a submission submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such, the submission must be marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page, and the submission should indicate, via brackets, the specific information that is confidential. Additionally, "Business Confidential" must be included in the "Type Comment & Upload File" field. Anyone submitting a comment containing business confidential information must also submit as a separate submission a non-confidential version of the confidential submission, indicating where confidential information has been redacted. The non-confidential version will be placed in the docket and open to public inspection.

Notice of Public Hearing

A hearing will be held by the GSP Subcommittee of the TPSC on Friday, September 24, 2010 for country practice petitions newly accepted in the 2009 GSP Annual Review beginning at 9:30 a.m. at the White House Conference Center. The hearing will be open to the public, and a transcript of the hearing will be made available for public inspection or can be purchased from the reporting company. No electronic media coverage (recording devices) will be allowed.

All interested parties wishing to make an oral presentation at the hearing must submit, following the above "Requirements for Submissions", the name, address, telephone number, and facsimile number and email address, if available, of the witness(es) representing their organization to Seth Vaughn, Director of the GSP Program by 5 p.m., September 3, 2010. Requests to present oral testimony must be accompanied by a written brief or statement, in English. Oral testimony before the GSP Subcommittee will be limited to five-minute presentations that summarize or supplement information contained in briefs or statements submitted for the record. Post-hearing briefs or statements will be accepted if they conform with the regulations cited above and are submitted, in English, by 5 p.m., October 15, 2010. Parties not wishing to appear at the public hearing may submit pre-hearing briefs or statements, in English, by 5 p.m., September 3, 2010, and post-hearing written briefs or statements, in English, by 5 p.m., October 15, 2010.

2010 Annual GSP Country Eligibility Practices Review

As noted above, the GSP regulations (15 CFR part 2007) provide the timetable for conducting an annual review, unless otherwise specified by **Federal Register** notice. Notice is hereby given that, in order to be considered in the 2010 Annual GSP Country Eligibility Practices Review, all petitions to review the GSP status of any beneficiary developing country must be received by the GSP Subcommittee of the Trade Policy Staff Committee no later than 5 p.m. on Friday, September 10, 2010. The announcement of any petitions accepted for review and any hearing schedule for the 2010 GSP Country Practice Eligibility Review will be announced by **Federal Register** at a later date.

Petitions and requests must be submitted, in English, to the Chairman of the GSP Subcommittee, Trade Policy Staff Committee, in accordance with the requirements for submissions set forth above. Submissions in response to this notice will be available for public inspection in docket USTR–2010–0017 at *http://www.regulations.gov.* Documents not submitted in accordance with these instructions may not be considered in this review.

Seth Vaughn,

Director, GSP Program; Chairman, GSP Subcommittee of the Trade Policy Staff Committee; Office of the U.S. Trade Representative.

[FR Doc. 2010–19745 Filed 8–10–10; 8:45 am]

BILLING CODE 3190–W0–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending July 28, 2010

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural

Regulations (*See* 14 CFR 301.201 *et seq.*).

The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2010–0190.

Date Filed: July 28, 2010.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 18, 2010.

Description: Application of Aviation Services, Ltd. (d/b/a Freedom Air (Guam)) ("Freedom Air") requesting a certificate of public convenience and necessity authorizing Freedom Air to engage in interstate scheduled air transportation of persons, property and mail.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2010–19761 Filed 8–10–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket OST–2009–0249]

Application of Gulf Coast Airways, Inc. for Commuter Air Carrier Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2010–8–4), Docket OST–2009–0249.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Gulf Coast Airways, Inc., fit, willing, and able, and awarding it commuter air carrier authority to conduct scheduled commuter service.

DATES: Persons wishing to file objections should do so no later than August 19, 2010.

ADDRESSES: Objections and answers to objections should be filed in Docket DOT–OST–2009–0249 and addressed to Docket Operations, (M–30, Room W12–140), U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Catherine O'Toole, Air Carrier Fitness Division (X–56, Room W86–489), U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–9721.

Dated: August 5, 2010.

Susan L. Kurland,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 2010–19758 Filed 8–10–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

[DOT Docket No. DOT–OST–2010–0074]

The Future of Aviation Advisory Committee (FAAC) Subcommittee on Competitiveness and Viability; Notice of Meeting

AGENCY: U.S. Department of Transportation, Office of the Secretary of Transportation.

ACTION: Notice of Meeting.

SUMMARY: The Department of Transportation (DOT), Office of the Secretary of Transportation, announces the third meeting of the FAAC Subcommittee on Competitiveness and Viability, which will be held in Chicago, Illinois. This notice provides details on the date, time, and location of the meeting, which will be open to the public. The purpose of the FAAC is to provide advice and recommendations to the Secretary of Transportation to ensure the competitiveness of the U.S. aviation industry and its capability to manage effectively the evolving transportation needs, challenges, and opportunities of the global economy. The Subcommittee on Competitiveness and Viability is charged with examining changes in the operating and competitive structures of the U.S. airline industry; considering innovative strategies to open up new international markets and expand commercial opportunities in existing markets; investigating strategies to encourage the development of cost-effective, cutting-edge technologies and equipment that are critical for a competitive industry coping with increasing economic and environmental challenges; and examining the adequacy of current Federal programs to address the availability of intermodal transportation options and alternatives, small and rural community access to the aviation transportation system, the role of State and local governments in contributing to such access, and how the changing competitive structure of the U.S. airline industry is likely to transform travel habits of small and rural communities.

DATES: The Subcommittee on Competitiveness and Viability meeting will be held on August 24, 2010, from 9 a.m. to noon Central Daylight time.

ADDRESSES: The meeting will be held at the corporate headquarters of United Airlines, 77 West Wacker Drive, Chicago, Illinois 60601.

Public Access: The meeting is open to the public. (See below for registration instructions.)

Public Comments: Persons wishing to offer written comments and suggestions concerning the activities of the advisory committee or subcommittee should file comments in the Public Docket (Docket Number DOT–OST–2010–0074 at *http://www.regulations.gov*) or alternatively through e-mail at *FAAC@dot.gov.* If comments and suggestions are intended specifically for the Subcommittee on Competitiveness and Viability, the term "Competition" should be listed in the subject line of the message. To ensure such comments can be considered by the subcommittee before its August 24th meeting, public comments must be filed by 5 p.m. Eastern Daylight time Wednesday, August 18, 2010.

SUPPLEMENTARY INFORMATION:

Agenda

Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we are giving notice of a meeting of the Subcommittee on Competitiveness and Viability of the Future of Aviation Advisory Committee taking place on August 24, 2010, at 9 a.m. Central Daylight Time, at 77 West Wacker Drive, Chicago, Illinois 60601. The agenda includes—

1. Reports from subcommittee members on assigned topics,
2. Further discussion of issues identified for possible referral to the full committee on the subject of competitiveness and viability of the aviation industry, and
3. Determination as to the issues that will be proposed for referral to the full committee.

Registration

The meeting room can accommodate up to 25 members of the public. Persons desiring to attend must pre-register by August 18, 2010, through e-mail to *FAAC@dot.gov.* The term "Registration: Competition" should be listed in the subject line of the message, and admission will be limited to the first 25 persons to pre-register and receive a confirmation of their pre-registration. No arrangements are being made for

audio or video transmission or for oral statements or questions from the public at the meeting. Minutes of the meeting will be taken and will be made available to the public.

Request for Special Accommodation

The DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, please send a request to *FAAC@dot.gov* with the term "Special Accommodations" listed in the subject line of the message by close of business Wednesday, August 18, 2010.

FOR FURTHER INFORMATION CONTACT: Todd Homan, Director, Office of Aviation Analysis, U.S. Department of Transportation; Room 86W–312, 1200 New Jersey Avenue SE., Washington, DC 20590; (202) 366–5903.

Issued in Washington, DC, on August 6, 2010.

Pamela Hamilton-Powell,

Designated Federal Official, Future of Aviation Advisory Committee.

[FR Doc. 2010–19757 Filed 8–10–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0095; Notice 1]

Volkswagen Group of America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

Volkswagen Group of America, Inc., (Volkswagen),[1] has determined that certain 2009 Model Year (MY) Audi A6 and S6 model passenger cars, 2010 MY Audi A6, S6, A5, A5 Cabrio, S5, S5 Cabrio, A4 and S4 passenger cars, and 2010 MY Audi Q5 multipurpose passenger vehicles (MPV) equipped with indirect Tire Pressure Monitoring Systems (TPMS), do not fully comply with paragraph S4.4 of Federal Motor Vehicle Safety Standard (FMVSS) No. 138, *Tire Pressure Monitoring Systems.* Volkswagen has filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Volkswagen has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Volkswagen's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are approximately 58,292 2009 MY Audi A6 and S6 model passenger cars, 2010 MY Audi A6, S6, A5, A5 Cabrio, S5, S5 Cabrio, A4 and S4 passenger cars, and 2010 MY Audi Q5 MPV with indirect TPMS manufactured between October 17, 2008 and April 27, 2010.

The National Highway Traffic Safety Administration (NHTSA) notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, these provisions only apply to the 58,292 [2] vehicles that have already passed from the manufacturer to an owner, purchaser, or dealer.

Paragraph S4.4 of FMVSS No. 138 require in pertinent part:

S4.4 TPMS Malfunction

(a) The vehicle shall be equipped with a tire pressure monitoring system that includes a telltale that provides a warning to the driver not more than 20 minutes after the occurrence of a malfunction that affects the generation or transmission of control or response signals in the vehicle's tire pressure monitoring system. The vehicle's TPMS malfunction indicator shall meet the requirements of either S4.4(b) or S4.4(c)

(b) *Dedicated TPMS malfunction telltale.* The vehicle meets the requirements of S4.4(a) when equipped with a dedicated TPMS malfunction telltale that:

(1) Is mounted inside the occupant compartment in front of and in clear view of the driver;

(2) Is identified by the word "TPMS" as described under the "Tire Pressure Monitoring System Malfunction" Telltale in table 1 of standard No. 101 (49 CFR 571.101);

(3) Continues to illuminate the TPMS malfunction telltale under the conditions specified in S4.4(a) for as long as the malfunction exists, whenever the ignition locking system is in the "On" ("Run") position; and

(4) (i) Except as provided in paragraph (ii) each dedicated TPMS malfunction telltale must be activated as a check of lamp function either when the ignition locking system is activated to the "On" ("Run") position when the engine is not running, or when the ignition locking system is in a position between "On" ("Run") and "Start" that is designated by the manufacturer as a check position.

ii. The dedicated TPMS malfunction telltale need not be activated when a starter interlock is in operation.

(c) Combination low tire pressure/TPMS malfunction telltale. The vehicle meets the requirements of S4.4(a) when equipped with a combined Low Tire Pressure/TPMS malfunction telltale that:

(1) Meets the requirements of S4.2 and S4.3; and

(2) Flashes for a period of at least 60 seconds but no longer than 90 seconds upon detection of any condition specified in S4.4(a) after the ignition locking system is activated to the "On" ("Run") position. After each period of prescribed flashing, the telltale must remain continuously illuminated as long as a malfunction exists and the ignition locking system is in the "On" ("Run") position. This flashing and illumination sequence must be repeated each time the ignition locking system is placed in the "On" ("Run") position until the situation causing the malfunction has been corrected. Multiple malfunctions occurring during any ignition cycle may, but are not required to, reinitiate the prescribed flashing sequence.

Volkswagen reported that the noncompliance was brought to their attention on October 15, 2009 and June 8, 2010, by the National Highway Traffic Safety Administration's (NHTSA) Office of Vehicle Safety Compliance (OVSC) regarding the results of OVSC's compliance test on a 2009 MY Audi A6 model passenger car to FMVSS No. 138.

After reviewing OVSC's test results Volkswagen determined that a noncompliance with FMVSS No. 138 existed in the OVSC tested vehicle as well as the other subject 2009 and 2010 MY vehicles. Volkswagen explained that the noncompliance is that the combination low tire pressure/TPMS malfunction telltale lamp (TPMS telltale lamp) does not remain illuminated during all scenarios required by paragraph S4.4 of FMVSS No. 138.

Volkswagen explained that when NHTSA tested the Audi A6 by driving it with three of the originally installed 245/40 RI8 tires and one incompatible 215/35 ZRI8 tire (7% smaller in diameter), the Electronic Stability System (ESC) will initially detect a malfunction and illuminate the ESC malfunction indicator telltale lamp (ESC telltale lamp). That ESC malfunction detection will also cause the TPMS malfunction telltale lamp to illuminate.

[1] Volkswagen Group of America, Inc. (Volkswagen) is a vehicle manufacturer incorporated under the laws of the State of New Jersey.

[2] Volkswagen's petition, which was filed under 49 CFR Part 556, requests an agency decision to exempt Volkswagen as a manufacturer from the notification and recall responsibilities of 49 CFR Part 573 for 58,292 of the affected vehicles. However, the agency cannot relieve Volkswagen distributors of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Volkswagen recognized that the subject noncompliance existed.

Both telltale lamps will then remain illuminated during the rest of the ignition cycle independent of vehicle speed. When the ignition is subsequently cycled, both the ESC and TPMS telltale lamps will re-illuminate. Depending on the subsequent scenario of the drive cycle, the two telltale lamps can behave in different ways. The nonconforming scenario occurs when the vehicle is maintained at a speed range between 6.2–12.5 miles per hour (mph) for a period of time where the ESC malfunction logic code could be cleared from the control system and cause the ESC and TPMS telltale lamps to extinguish. If the 6.2–12.5 mph speed range is maintained for a longer period of time after the ESC and TPMS telltale lamps extinguish (about 5 minutes), the TPMS will recognize the incompatible tire and set the TPMS malfunction logic code and re-illuminate the TPMS telltale lamp. The TPMS telltale lamp will stay illuminated for as long as the incompatible tire is mounted, independent of any ESC malfunctions.

Volkswagen argues that this noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. The TPMS telltale lamp will immediately re-illuminate if the vehicle is accelerated above 12.5 mph, and remain on throughout the ignition cycle regardless of the vehicles speed.

2. The TPMS telltale lamp would re-illuminate within several minutes (about 5 minutes) if the speed under 12.5 mph and over 6.2 mph was maintained.

3. The function of the TPMS telltale lamp given this condition would never lead to a "flicker" of the light or other such confusing performance of the signal except as required in FMVSS No. 138 S4.4(c).

4. Operation of the vehicle with an incompatible tire for a short distance under 12.5 mph presents no safety risk. Given that the TPMS telltale lamp would re-illuminate promptly upon the TPMS recognizing the incompatible tire at a lower speed or upon acceleration, the chance is insignificant that a driver might be confused by the signal, or even notice it.

5. Volkswagen is not aware of any field or customer complaints regarding this noncompliance.

Volkswagen also informed NHTSA that it has corrected the problem that caused this noncompliance so that it will not be repeated in future production.

In summation, Volkswagen believes that the described noncompliance of its vehicles to meet the requirements of FMVSS No. 138 is inconsequential as it relates to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. *By mail addressed to:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 am to 5 pm except Federal Holidays.

c. *Electronically:* by logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: September 10, 2010.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Issued on: August 2, 2010.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2010–19764 Filed 8–10–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Open Meeting of the President's Economic Recovery Advisory Board

AGENCY: Departmental Offices.

ACTION: Notice of Open Meeting.

SUMMARY: The President's Economic Recovery Advisory Board (the PERAB) will meet on August 27, 2010 via conference call beginning at 2 p.m. Eastern Time. The meeting will be open to the public via live audio stream at *http://www.whitehouse.gov/live*.

DATES: The meeting will be held on August 27, 2010 at 2 p.m. Eastern Time.

ADDRESSES: The PERAB will convene its next meeting via conference call. The public is invited to submit written statements to the Advisory Committee by either of the following methods:

Electronic Statements

• Send written statements to the PERAB's Web site at *http://www.whitehouse.gov/administration/eop/perab/comment;* or

Paper Statements

• Send paper statements in triplicate to Emanuel Pleitez, Designated Federal Officer, President's Economic Recovery Advisory Board, Office of the Under Secretary for Domestic Finance, Room 1325A, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

In general, all statements will be posted on the White House Web site (*http://www.whitehouse.gov*) without change, including any business or personal information provided such as names, addresses, e-mail addresses, or telephone numbers. The Department will also make such statements available for public inspection and copying in the Department's Library, Room 1428, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can

make an appointment to inspect statements by telephoning (202) 622–0990. All statements, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Emanuel Pleitez, Designated Federal Officer, President's Economic Recovery Advisory Board, Office of the Under Secretary for Domestic Finance, Department of the Treasury, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at (202) 622–2000.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. II, sec.10(a), and the regulations thereunder, Emanuel Pleitez, Designated Federal Officer of the Advisory Board, has ordered publication of this notice that the PERAB will convene its next meeting on August 27, 2010 via conference call beginning at 2 p.m. Eastern Time. The meeting will be broadcast on the internet via live audio stream at *http://www.whitehouse.gov/live.* The purpose of this meeting is to continue discussion of the issues impacting the strength and competitiveness of the Nation's economy. The discussion will include Board review of a report by the Tax Reform subcommittee. The report discusses a spectrum of reform ideas relating to tax simplification, enforcement of existing tax laws, and reform of the corporate tax system, without considering policies that would raise taxes on families making less than $250,000. The PERAB is not tasked with providing its own policy recommendations for the Administration and the final report will be an almanac of options from a broad range of viewpoints. The PERAB will vote on presenting the report as formal advice to the President.

Dated: August 3, 2010.

Alastair Fitzpayne,

Executive Secretary and Deputy Chief of Staff.

[FR Doc. 2010–19739 Filed 8–10–10; 8:45 am]

BILLING CODE 4810–25–P

TENNESSEE VALLEY AUTHORITY

Renewal of the Regional Resource Stewardship Council Charter

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of Charter Renewal.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. Appendix), the TVA Board of Directors has renewed the Regional Resource Stewardship Council (Council) charter for an additional two-year period beginning on February 3, 2011.

FOR FURTHER INFORMATION CONTACT: Beth A. Keel, 400 West Summit Hill Drive, WT 11B–K, Knoxville, Tennessee 37902–1499, (865) 632–6113.

SUPPLEMENTARY INFORMATION: Pursuant to FACA and its implementing regulations, and following consultation with the Committee Management Secretariat, General Services Administration (GSA), notice is hereby given that the Council has been renewed for a two-year period beginning February 3, 2011. The Council will provide advice to TVA on issues affecting natural resource stewardship activities.

Numerous public and private entities are traditionally involved in the stewardship of the natural resources of the Tennessee Valley region. The Council was originally established in 1999 to advise TVA on its natural resource stewardship activities through a balanced and broad range of diverse views and interests. It has been determined that the Council continues to be needed to provide an additional mechanism for public input regarding stewardship issues.

Dated: July 26, 2010.

Anda A. Ray,

Senior Vice President, Environment and Technology, Tennessee Valley Authority, WT 11A–K.

[FR Doc. 2010–19829 Filed 8–10–10; 8:45 am]

BILLING CODE 8120–01–P

Federal Register

Wednesday,
August 11, 2010

Part II

Environmental Protection Agency

40 CFR Part 98

Mandatory Reporting of Greenhouse Gases; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA–HQ–OAR–2008–0508; FRL–9179–8]

RIN 2060–AQ33

Mandatory Reporting of Greenhouse Gases

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: EPA is proposing to amend specific provisions in the GHG reporting rule to clarify certain provisions, to correct technical and editorial errors, and to address certain questions and issues that have arisen since promulgation. These proposed changes include providing additional information and clarity on existing requirements, allowing greater flexibility or simplified calculation methods for certain sources in a facility, amending data reporting requirements to provide additional clarity on when different types of GHG emissions need to be calculated and reported, clarifying terms and definitions in certain equations, and technical corrections.

DATES: *Comments.* Comments must be received on or before September 27, 2010.

Public Hearing. EPA does not plan to conduct a public hearing unless requested. To request a hearing, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by August 18, 2010. If requested, the hearing will be conducted August 26, 2010, at 1310 L St., NW., Washington, DC 20005 starting at 9 a.m., local time. EPA will provide further information about the hearing on its Web page if a hearing is requested.

ADDRESSES: You may submit your comments, identified by docket ID No. EPA–HQ–OAR–2008–0508 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *E-mail: MRR_Revisions@epa.gov.* Include docket ID No. EPA–HQ–OAR–2008–0508 [and/or RIN number 2060–aq33] in the subject line of the message.
- *Fax:* (202) 566–1741.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 2822T, Attention Docket ID No. EPA–HQ–OAR–2008–0508, 1200 Pennsylvania Avenue, NW., Washington, DC 20004.
- *Hand/Courier Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0508, Revision of Certain GHGMRR Provisions and Other Corrections. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER GENERAL INFORMATION CONTACT: Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9263; fax number: (202) 343–2342; e-mail address: *GHGReportingRule@epa.gov.* For technical information contact the Greenhouse Gas Reporting Rule Hotline at telephone number: (877) 444–1188; or e-mail: *ghgmrr@epa.gov.* To obtain information about the public hearings or to register to speak at the hearings, please go to *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.* Alternatively, contact Carole Cook at 202–343–9263.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposal will also be available through the WWW. Following the Administrator's signature, a copy of this action will be posted on EPA's greenhouse gas reporting rule Web site at *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.*

SUPPLEMENTARY INFORMATION: Additional Information on Submitting Comments: To expedite review of your comments by Agency staff, you are encouraged to send a separate copy of your comments, in addition to the copy you submit to the official docket, to Carole Cook, U.S. EPA, Office of Atmospheric Programs, Climate Change Division, Mail Code 6207–J, Washington, DC 20460, telephone (202) 343–9263, e-mail address: *GHGReportingRule@epa.gov.*

Regulated Entities. The Administrator determined that this action is subject to the provisions of Clean Air Act (CAA) section 307(d). *See* CAA section 307(d)(1)(V) (the provisions of section 307(d) apply to "such other actions as the Administrator may determine"). These are proposed amendments to existing regulations. If finalized, these amended regulations would affect owners or operators of certain fossil fuel and industrial gas suppliers, and direct emitters of GHGs. Regulated categories and entities include those listed in Table 1 of this preamble:

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

Category	NAICS	Examples of affected facilities
General Stationary Fuel Combustion Sources.	.....	Facilities operating boilers, process heaters, incinerators, turbines, and internal combustion engines.
	211	Extractors of crude petroleum and natural gas.
	321	Manufacturers of lumber and wood products.
	322	Pulp and paper mills.
	325	Chemical manufacturers.
	324	Petroleum refineries and manufacturers of coal products.
	316, 326, 339	Manufacturers of rubber and miscellaneous plastic products.
	331	Steel works, blast furnaces.
	332	Electroplating, plating, polishing, anodizing, and coloring.
	336	Manufacturers of motor vehicle parts and accessories.
	221	Electric, gas, and sanitary services.
	622	Health services.
	611	Educational services.
Electricity Generation	221112	Fossil-fuel fired electric generating units, including units owned by Federal and municipal governments and units located in Indian Country.
Adipic Acid Production	325199	Adipic acid manufacturing facilities.
Aluminum Production	331312	Primary aluminum production facilities.
Ammonia Manufacturing	325311	Anhydrous and aqueous ammonia production facilities.
Cement Production	327310	Portland Cement manufacturing plants.
Ferroalloy Production	331112	Ferroalloys manufacturing facilities.
Glass Production	327211	Flat glass manufacturing facilities.
	327213	Glass container manufacturing facilities.
	327212	Other pressed and blown glass and glassware manufacturing facilities.
HCFC–22 Production and HFC–23 Destruction.	325120	Chlorodifluoromethane manufacturing facilities.
Hydrogen Production	325120	Hydrogen production facilities.
Iron and Steel Production	331111	Integrated iron and steel mills, steel companies, sinter plants, blast furnaces, basic oxygen process furnace shops.
Lead Production	331419	Primary lead smelting and refining facilities.
	331492	Secondary lead smelting and refining facilities.
Lime Production	327410	Calcium oxide, calcium hydroxide, dolomitic hydrates manufacturing facilities.
Iron and Steel Production	331111	Integrated iron and steel mills, steel companies, sinter plants, blast furnaces, basic oxygen process furnace shops.
Lead Production	331419	Primary lead smelting and refining facilities.
Nitric Acid Production	325311	Nitric acid production facilities.
Petrochemical Production	32511	Ethylene dichloride production facilities.
	325199	Acrylonitrile, ethylene oxide, methanol production facilities.
	325110	Ethylene production facilities.
	325182	Carbon black production facilities.
Petroleum Refineries	324110	Petroleum refineries.
Phosphoric Acid Production ...	325312	Phosphoric acid manufacturing facilities.
Pulp and Paper Manufacturing.	322110	Pulp mills.
	322121	Paper mills.
	322130	Paperboard mills.
Silicon Carbide Production	327910	Silicon carbide abrasives manufacturing facilities.
Soda Ash Manufacturing	325181	Alkalies and chlorine manufacturing facilities.
	212391	Soda ash, natural, mining and/or beneficiation.
Titanium Dioxide Production ..	325188	Titanium dioxide manufacturing facilities.
Zinc Production	331419	Primary zinc refining facilities.
	331492	Zinc dust reclaiming facilities, recovering from scrap and/or alloying purchased metals.
Municipal Solid Waste Landfills.	562212	Solid waste landfills.
	221320	Sewage treatment facilities.
Manure Management[1]	112111	Beef cattle feedlots.
	112120	Dairy cattle and milk production facilities.
	112210	Hog and pig farms.
	112310	Chicken egg production facilities.
	112330	Turkey Production.
	112320	Broilers and other meat type chicken production.
Suppliers of Natural Gas and NGLs.	221210	Natural gas distribution facilities.
	211112	Natural gas liquid extraction facilities.
Suppliers of Industrial GHGs	325120	Industrial gas production facilities.
Suppliers of Carbon Dioxide (CO_2).	325120	Industrial gas production facilities.

[1] EPA will not be implementing subpart JJ of Part 98 using funds provided in its FY2010 appropriations due to a Congressional restriction prohibiting the expenditure of funds for this purpose.

Table 1 of this preamble is not intended to be exhaustive, but rather provides a guide for readers regarding facilities likely to be affected by this action. Table 1 of this preamble lists the types of facilities that EPA is now aware could potentially be affected by the reporting requirements. Other types of facilities than those listed in the table could also be subject to reporting requirements. To determine whether you are affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 98, subpart A or the relevant criteria in the sections related to fossil fuel and industrial gas suppliers, and direct emitters of GHGs. If you have questions regarding the applicability of this action to a particular facility, consult the person listed in the preceding **FOR FURTHER GENERAL INFORMATION CONTACT** Section.

Acronyms and Abbreviations. The following acronyms and abbreviations are used in this document.

ACC American Chemistry Council
AGA American Gas Association
API American Petroleum Institute
ARP Acid Rain Program
ASME American Society of Mechanical Engineers
ASTM American Society for Testing and Materials
BAMM best available monitoring method
Btu/scf British thermal unit per standard cubic foot
CAA Clean Air Act
CAIR Clean Air Interstate Rule
CBI confidential business information
cc cubic centimeters
CE calibration error
CEMS continuous emission monitoring system
CFR Code of Federal Regulations
CGA Cylinder gas audit
CH_4 methane
CO carbon monoxide
CO_2 carbon dioxide
CO_2e CO_2-equivalent
CWPB center worked prebake
EGU electricity generating unit
EIA Energy Information Administration
EO Executive Order
EPA U.S. Environmental Protection Agency
ERC Energy Recovery Council
FGD flue gas desulfurization
FR Federal Register
FTIR fourier transform infrared
GC gas chromatography
GHG greenhouse gas
GPA Gas Processors Association
GWP global warming potential
HCl hydrogen chloride
HHV high heat value
HSS horizontal stud Søderberg
IPCC Intergovernmental Panel on Climate Change
IR infrared
LDCs local natural gas distribution companies
mmBtu/hr million British thermal units per hour
mscf thousand standard cubic feet
MSW municipal solid waste
$mtCO_2e$ metric tons of CO_2 equivalents
MVC molar volume conversion factor
MWC municipal waste combustor
NESHAP National Emission Standards for Hazardous Air Pollutants
NIST National Institute of Standards and Technology
NMR nuclear magnetic resonance
NSPS New Source Performance Standards
N_2O nitrous oxide
NAICS North American Industry Classification System
NGLs natural gas liquids
O_2 oxygen
O&M operation and maintenance
OMB Office of Management and Budget
PFC perfluorocarbon
psia pounds per square inch absolute
QA quality assurance
QA/QC quality assurance/quality control
RATA relative accuracy test audit
RFA Regulatory Flexibility Act
RFG Refinery fuel gas
RGGI Regional Greenhouse Gas Initiative
scf standard cubic feet
scfm standard cubic feet per minute
SO_2 sulfur dioxide
SWPB side worked prebake
U.S. United States
UMRA Unfunded Mandates Reform Act of 1995
VSS vertical stud Søderberg

Table of Contents

I. Background

A. How is this preamble organized?

The first section of this preamble contains the basic background information about the origin of these proposed rule amendments and request for public comment. This section also discusses EPA's use of our legal authority under the Clean Air Act to collect data on GHGs.

The second section of this preamble describes in detail the changes that are being proposed to correct technical errors or to address implementation issues identified by EPA and others. This section also presents EPA's rationale for the proposed changes and identifies issues on which EPA is particularly interested in receiving public comments.

Finally, the last (third) section discusses the various statutory and executive order requirements applicable to this proposed rulemaking.

B. Background on This Action

The final Part 98 was signed by EPA Administrator Lisa Jackson on September 22, 2009 and published in the **Federal Register** on October 30, 2009 (74 FR 56260–56519, October 30, 2009). Part 98, which became effective on December 29, 2009, included reporting of GHG information from facilities and suppliers, consistent with the 2008 Consolidated Appropriations Act.[1] These source categories capture approximately 85 percent of U.S. GHG emissions through reporting by direct emitters as well as suppliers of fossil fuels and industrial gases.

This is the second time that EPA has published a notice proposing amendments to Part 98 to, among other things, correct certain technical and editorial errors that have been identified since promulgation and clarify or

[1] Consolidated Appropriations Act, 2008, Public Law 110–161, 121 Stat. 1844, 2128.

propose amendments to certain provisions that have been the subject of questions from reporting entities. The first proposal was published on June 15, 2010 (75 FR 33950). This proposal complements the proposal published on June 15, 2010 and is not intended to duplicate or replace the proposed amendments published on June 15, 2010. We are seeking public comment only on the issues specifically identified in this proposal for the identified subparts. We will not respond to any comments addressing other aspects of Part 98 or any other related rulemakings.

C. Legal Authority

EPA is proposing these rule amendments under its existing CAA authority, specifically authorities provided in section 114 of the CAA.

As stated in the preamble to the final Part 98 (74 FR 56260, October 30, 2009), CAA section 114 provides EPA broad authority to require the information proposed to be gathered by Part 98 because such data would inform and are relevant to EPA's obligation to carry out a wide variety of CAA provisions. As discussed in the preamble to the initial proposal (74 FR 16448, April 10, 2009), section 114(a)(1) of the CAA authorizes the Administrator to require emissions sources, persons subject to the CAA, manufacturers of control equipment, or persons whom the Administrator believes may have necessary information to monitor and report emissions and provide such other information the Administrator requests for the purposes of carrying out any provision of the CAA. For further information about EPA's legal authority, *see* the preambles to the proposed and final rule, and Response to Comments Documents.[2]

D. How would these amendments apply to 2011 reports?

EPA is planning to address the comments on these proposed amendments and publish the final amendments before the end of 2010. Therefore, reporters would be expected to calculate emissions and other relevant data for the reports that are submitted in 2011 using Part 98, as amended by this and the other revisions package (75 FR 33950), as finalized. We have determined that it is feasible for the sources to implement these changes for the 2010 reporting year since the revisions primarily provide additional clarifications or flexibility regarding the existing regulatory requirements, generally do not affect the type of information that must be collected, and do not substantially affect how emissions are calculated.

For example, many proposed revisions simply provide additional information and clarity on existing requirements. For example, we are proposing to amend 40 CFR 98.3(c)(5)(i) to clarify that suppliers of industrial flourinated GHGs need to calculate and report GHG emissions in metric tons of CO_2 equivalents ($mtCO_2e$) only for those flourinated GHGs that are listed in Table A–1. This proposed clarification is consistent with clarifications we have issued in response to industry questions and would not change how facilities collected data during 2010.

Some of the proposed amendments provide greater flexibility or simplified calculation methods for certain facilities. For example, we are proposing to amend subpart C by adding a new equation that would enable sources that receive natural gas billing data from their suppliers in therms to calculate CO_2 mass emissions directly from the information on the billing records, without having to request or obtain additional data from the fuel suppliers.

Some proposed amendments are to the data reporting requirements to provide additional clarity on when different types of GHG emissions need to be calculated and reported. For example, in subpart G, Ammonia Manufacturing, we are proposing to eliminate the calculation and reporting of CO_2 emissions associated with the use of the waste recycle stream or "purge" as fuel under subpart C because these emissions are already accounted for in the calculation of total process emissions in subpart G, which includes CO_2 emissions resulting from the use of purge gas as a fuel. We have concluded that amendments such as these can be implemented for the reports submitted to EPA in 2011 because the proposed changes are consistent with the calculation methodologies already in part 98 and the owners or operators are not required to actually report until March 2011, several months after we expect this proposal to be finalized.

For some subparts, we are proposing amendments to address issues identified as a result of working with the affected sources during rule implementation. These proposed revisions provide additional flexibility to the sources, or reduce the reporting burden. For example, in subparts X (Petrochemical Production) and Y (Petroleum Refineries), reporters have requested that allowance be made for alternative standard conditions within the molar volume conversion factor (MVC) used in various equations. Therefore, we are proposing to amend those subparts to include MVCs at standard conditions defined at both 60°F or 68°F, so the facilities will not have to make those corrections in their data.

We are also proposing corrections to terms and definitions in certain equations. For example, in subpart Y, Petroleum Refineries, we are proposing to clarify in an equation that for coke calcining units that recycle the collected coke dust, the mass of coke dust removed from the process is the mass of coke dust collected less the mass of coke dust recycled to the process. These clarifications do not result in additional requirements; therefore, we have concluded that reporters can follow Part 98, as amended, in submitting their first reports in 2011.

Finally, we are proposing other technical corrections that have no impact on facility's data collection efforts in 2010. For example, we are proposing to amend subpart C to remove a second copy of Table C–2 that was inadvertently included in the final Part 98 published on October 30, 2009.

In summary, these amendments would not require any additional monitoring or information collection above what was already included in Part 98. Therefore, we expect that sources can use the same information that they have been collecting under the current version of Part 98 to calculate and report GHG emissions for 2010 and submit reports in 2011 under the amended Part 98.

We seek comment on the conclusion that it is appropriate to implement these amendments and incorporate the requirements in the data reported to EPA by March 31, 2011. Further, we seek comment on whether there are specific subparts of Part 98 for which this timeline may not be feasible or appropriate due to the nature of the proposed changes or the way in which data have been collected thus far in 2010. We request that commenters provide specific examples of how the proposed implementation schedule would or would not work.

II. Revisions and Other Amendments

Following promulgation of Part 98, we have identified errors in the regulatory language that we are now proposing to correct. These errors were identified as a result of working with affected industries to implement the various subparts of Part 98. We have also identified certain rule provisions that should be amended to provide greater clarity. We are also proposing revisions to provide additional

[2] 74 FR 16448 (April 10, 2009) and 74 FR 56260 (October 30, 2009). Response to Comments Documents can be found at *http://www.epa.gov/climatechange/emissions/responses.html.*

flexibility for certain requirements based in part on our better understanding of various industries. Finally, we are also proposing to revise or remove certain applicability thresholds (for example for local distribution companies subject to subpart NN (Suppliers of Natural Gas and Natural Gas Liquids)) and monitoring thresholds and reporting requirements (for example for municipal solid waste combusters subject to subpart C (General Stationary Fuel Combustion) and for certain small sources subject to subpart X (Petrochemicals) or subpart Y (Petroleum Refineries)). The amendments we are now proposing include the following types of changes:

- Changes to correct cross references within and between subparts.
- Additional information to better or more fully understand compliance obligations in a specific provision, such as the reference to a standardized method that must be followed.
- Amendments to certain equations to better reflect actual operating conditions.
- Corrections to terms and definitions in certain equations.
- Corrections to data reporting requirements so that they more closely conform to the information used to perform emission calculations.
- Other amendments related to certain issues identified as a result of working with the affected sources during rule implementation and outreach.

As mentioned above in section I of this preamble, we published an earlier proposed rulemaking proposing technical corrections and other amendments to Part 98 on June 15, 2010 (75 FR 33950). This proposal complements the notice published on June 15, 2010 and is not intended to duplicate or replace the proposed amendments published on June 15, 2010. We are seeking public comment only on the issues specifically identified in this notice for the identified subparts. We will not respond to any comments addressing other aspects of Part 98 or any other related rulemakings.

A. Subpart A (General Provisions): Best Available Monitoring Methods

Certain owners and operators in the more complex hydrogen, petrochemical, and petroleum refinery industries have expressed concerns regarding the timing of the requirements to install meters and other measurement devices to comply with Part 98. Specifically, they were concerned that the safe installation of required measurement devices requires detailed engineering and planning and, therefore, stated that EPA should provide sufficient time for designing and safely engineering instrumentation installations or upgrades. Further, they claimed that in continuously operated plants there is typically not a scheduled shutdown for an entire facility and unit maintenance and turnarounds are not an annual occurrence for all units. Reporters in these industries have asserted that EPA has properly recognized this operational reality in the context of instrument calibration by allowing calibration to be delayed until the next scheduled shutdown. The reporters have noted, however, that parallel requirements have not been developed for installation of monitoring devices. Specifically, they requested that EPA should provide approval criteria for extending the use of "best available monitoring methods" (BAMM) beyond December 31, 2010 for equipment installation.

These types of concerns were the reason owners and operators were given the opportunity in Part 98 to request an extension from EPA to use BAMM beyond March 31, 2010 in situations where it was not reasonably feasible to acquire, install and operate the required monitoring equipment by that date. We recognize, however, that instances may occur where facilities subject to Part 98 may not have been scheduled to shutdown during 2010, and requiring the facility to shutdown solely to install the required measurement devices during 2010 could impose an unnecessary burden.

Therefore, we are proposing that a new petition process be established in a new paragraph 40 CFR 98.3(j) that would allow use of BAMM past December 31, 2010 for owners and operators required to report under subpart P (Hydrogen Production), subpart X (Petrochemicals Production), or subpart Y (Petroleum Refineries), under limited circumstances. We are proposing that owners or operators subject to these subparts could petition EPA to extend use of BAMM past December 31, 2010, if compliance with a specific provision in the regulation required measurement device installation, and installing the device(s) would necessitate an unscheduled process equipment or unit shutdown or could only be installed through a hot tap. If the petition is approved, the owner or operator could postpone installation of the measurement device until the next scheduled maintenance outage, but initially no later than December 31, 2013. If, in 2013, owners or operators still determine and certify that a scheduled shutdown will not occur by December 31, 2013, they may re-apply to use best available monitoring methods for an additional two years.

The initial process for use of best available monitoring methods in Part 98 ended December 31, 2010, because we concluded that it is important to establish a date by which all equipment must be installed and operating in order to ensure that consistent data are collected by all reporters. We maintain that it is important to have consistent methods being used by all reporters. However, we also recognize that some complex facilities have unique operating circumstances that justify additional flexibility. Therefore, although we are proposing to initially approve extension requests no later than December 31, 2013, owners or operators subject to these subparts would have a one time opportunity to re-apply for the extension request for an additional two years, with approval being granted no later than December 31, 2015. We believe that a date of December 31, 2013, four years after the effective date of Part 98, would accommodate the shutdown schedules for most, if not all facilities subject to subparts P, X, and/or Y. Because we recognize that all such facilities subject to Part 98 may not have a planned process equipment or unit shutdown prior to December 31, 2013, we have has concluded that it is reasonable to propose that owners or operators could re-apply one time for an additional two years. This timeline balances the need to gather consistent data, while recognizing the operational reality of such facilities.

Process for Requesting an Extension of Best Available Monitoring Methods. We are proposing to add a similar petition process to that recently concluded for the use of BAMM for 2010 in the new paragraph 40 CFR 98.3(j). The process would be available solely for facilties subject to subparts P, X and/or Y, and solely for the installation of measurement devices that cannot be installed safely except during full process equipment or unit shutdown or through installation via a hot tap. BAMM would be allowable initially until December 31, 2013. Subpart P, X, and/or Y owners or operators requesting to use BAMM beyond 2010 would be required to electronically notify EPA by January 1, 2011 that they intend to apply for BAMM for installation of measurement devices and certify that such installation would require a hot tap or unscheduled shutdown.

Owners or operators would be required to submit the full extension request for BAMM by February 15, 2011. The full extension requests would

include a description of the measurement devices that could not be installed in 2010 without a process equipment or unit shutdown, or through a hot tap, a clear explanation of why that activity would not be accomplished in 2010 with supporting material, an estimated date for the next planned maintenance outage, and a discussion of how emissions would be calculated in the interim. More specifically, the full extension request would need to identify the specific monitoring instrumentation for which the request is being made, indicate the locations where each piece of monitoring instrumentation will be installed, and note the specific rule requirements (by rule subpart, section, and paragraph numbers) for which the instrumentation is needed. The extension requests would also be required to include supporting documentation demonstrating that it is not practicable to isolate the equipment and install the monitoring instrument without a full process equipment or unit shutdown, or through a hot tap, as well as providing the dates of the three most recent process equipment or unit shutdowns, the typical frequency of shutdowns for the respective equipment or unit, and the date of the next planned shutdown.

Once subpart P, X, and/or Y owners or operators have notified EPA of their plan to apply for BAMM for measurement device installation, by January 1, 2011, and subsequently submitted a full extension request, by February 15, 2011, they would automatically be able to use BAMM through June 30, 2011. All measurement devices would need to be installed by July 1, 2011 unless EPA approves the BAMM request before that date.

Approval of Extension Requests. In an approval of an extension request, EPA would approve the extension itself, establish a date by which all measurement devices must be installed, and indicate the approved alternate method for calculating GHG emissions in the interim.

If EPA approves an extension request, the owner/operator would have until the date approved by EPA to install any remaining meters or other measurement devices, however initial approvals would not grant extensions beyond December 31, 2013. An owner/operator that already received approval from EPA to use BAMM during part or all of 2010 would be required to submit a new request for use of BAMM beyond 2010. Unless EPA has approved an extension request, all owners or operators that submit a timely request under this new proposed process for BAMM would be required to install all measurement devices by July 1, 2011.

We recognize that occasionally a facility may plan a scheduled process equipment or unit shutdown and the installation of required monitoring equipment, but the date of the scheduled shutdown is changed. We are proposing to include a process by which owners or operators who had received an extension would have the opportunity to extend the use of BAMM beyond the date approved by EPA if they can demonstrate to the Administrator's satisfaction that they are making a good faith effort to install the required equipment. At a minimum, facilities that determine that the date of a scheduled shutdown will be moved would be required to notify EPA within 4 weeks of such a determination, but no later than 4 weeks before the date of which the planned shutdown was scheduled.

One-time request to extend best available monitoring methods past December 31, 2013. If subpart P, X, and/or Y owners or operators determine that a scheduled shutdown will not occur by December 31, 2013, they would be required to re-apply to use best available monitoring methods for one additional time period, not to extend beyond December 31, 2015. To extend use of best available monitoring methods past December 13, 2013, owners or operators would be required to submit a new extension request by June 1, 2013 that contains the information required in proposed 40 CFR 98.3(j)(4). All owners or operators that submit a request under this paragraph to extend use of best available monitoring methods for measurement device installation would be required to install all measurement devices by December 31, 2013, unless the extension request under this paragraph is approved by EPA.

We seek comment on this approach to extend the deadline for installation of measurement devices in cases where such installation would require an unscheduled process equipment or unit shutdown at a subpart P, X, and/or Y facility. The proposed approach is consistent with the language and intent in Part 98 to defer calibration of required monitors in order to avoid unnecessary and unplanned shutdowns. The proposed approach is also modeled after the provision to request EPA to use BAMM during 2010. We considered, but did not propose, limiting this provision to only those subpart P, X, and/or Y owners and operators who submitted a request for use of BAMM by January 28, 2010. This option was considered based on an assumption that the full universe of reporters that had difficulty installing the necessary measurement devices according to the schedule in the rule would have already submitted a request for the use of BAMM in 2010. We still believe that all owners or operators that required a process equipment or unit shutdown to install measurement devices should have submitted an extension request to EPA by January 28, 2010. Nevertheless, we also recognize that this is a new regulation and facilities subject to Part 98 are making good faith efforts to understand all requirements. After careful consideration we are proposing to initiate a new process for BAMM, providing all facilties with units subject to subpart P, subpart X or subpart Y the opportunity to apply.

We are proposing to limit the provision to facilities with units subject to one or more of these three subparts because, based on questions received during implementation, the concerns raised about installation of measurement devices necessitating process equipment or unit shutdown have been from facilities subject to these subparts. A clear case was not presented by other industries as to any unique circumstances in those industries (*e.g.,* safety concerns associated with installation of measurement devices, frequency of shutdowns, complexities associated with shutting down, etc.) that might necessitate extending the deadline for BAMM for these other industries. We are seeking comment on this conclusion and whether there are other facilities beyond these subparts P, X, and Y that would need a shutdown, or a hot tap, in order to install the required measurement devices. If providing comments, please provide information on additional subparts, if any, that would need this flexibility, and include information on why installation could not be done in the absence of such a shutdown or why such shutdowns did not or could not occur in 2010 without unreasonable burden on the facility.

We are generally seeking comment on this new petition process for BAMM.

B. Subpart A (General Provisions): Calibration Requirements

Since the rule was published on October 30, 2009, EPA has received numerous questions about the intent and extent of the equipment calibration requirements specified in 40 CFR 98.3(i). The current rule could be interpreted to require all types of measurement equipment that provide data for the GHG emissions calculations, including flow meters and "other devices" such as belt scales, to be

calibrated to a specified accuracy (*i.e.,* 5.0 percent in most cases).

The perceived universal nature of the calibration requirements in 40 CFR 98.3(i) has caused a great deal of concern in the regulated community. For example, the appropriateness of a 5.0 percent accuracy specification for a wide variety of measurement devices has been questioned. Specifically, reporters have recommended that the initial and on-going calibration requirements be modified to allow the accuracy to be determined within an appropriate error range for each measurement technology, based on an applicable standard.

Also, for small combustion units using the Tier 1 or Tier 2 CO_2 calculation methodologies in 40 CFR 98.33(a), reporters were concerned that the calibration requirements and accuracy specifications appear to apply to flow meters that are used to quantify liquid and gaseous fuel usage. This contradicts the clear statements in the nomenclature of Equations C–1 and C–2a of Subpart C that company records can be used to measure fuel consumption for Tier 1 and 2 units. We note that the definition of "company records" in 40 CFR 98.6 is quite flexible and it does not require that any particular calibration methods be used or that specific accuracy percentages be met.

In view of these considerations, we are proposing to amend 40 CFR 98.3(i) as follows, to more clearly define the scope of the calibration requirements:

(a) We are proposing to amend 40 CFR 98.3(i)(1) to specify that the calibration accuracy requirements of 40 CFR 98.3(i)(2) and (i)(3) would be required only for flow meters that measure liquid and gaseous fuel feed rates, feedstock flow rates, or process stream flow rates that are used in the GHG emissions calculations, and only when the calibration accuracy requirement is specified in an applicable subpart of Part 98. For instance, the QA/QC requirements in 40 CFR 98.34(b)(1) of Subpart C require all flow meters that measure liquid and gaseous fuel flow rates for the Tier 3 CO_2 calculation methodology to be calibrated according to 40 CFR 98.3(i); therefore, the accuracy standards in 40 CFR 98.3(i)(2) and (i)(3) would continue to apply to these meters. EPA has many years of experience with fuel flow meter calibration, for example in the Acid Rain and NO_X Budget Programs, and the Agency is confident that the accuracy requirements specified in 40 CFR 98.3(i) are both reasonable and achievable for such meters. For more information please refer to the Background Technical Support Document at EPA–HQ–OAR–2008–0508. We are also proposing to add statements to 40 CFR 98.3(i) to clarify that the calibration accuracy specifications of 40 CFR 98.3(i)(2) and (i)(3) do not apply where the use of company records or the use of best available information is specified to quantify fuel usage or other parameters, nor do they apply to sources that use Part 75 methodologies to calculate CO_2 mass emissions because the Part 75 quality-assurance is sufficient. Although calibration accuracy requirements are not applicable for these data sources, per the requirements of 98.3(g)(5), reporters are still required to explain in their monitoring plan the processes and methods used to collect the necessary data for the GHG calculations.

(b) We are proposing to further amend 40 CFR 98.3(i)(1) to clarify that the calibration accuracy specifications in 40 CFR 98.3(i)(2) and (i)(3) do not apply to other measurement devices (e.g., weighing devices) that provide data for the GHG emissions calculations. Rather, these devices would have to be calibrated to meet the accuracy requirements of the relevant subpart(s), or, in the absence of such requirements, to meet appropriate, technology-based error-limits, such as industry consensus standards or manufacturer's accuracy specifications. Consistent with 40 CFR 98.3(g)(5)(i)(C), the procedures and methods used to quality-assure the data from the measurement devices would be documented in the written monitoring plan.

(c) We are proposing to add a new paragraph 40 CFR 98.3(i)(1)(ii) to clarify that flow meters and other measurement devices need to be installed and calibrated by the date on which data collection needs to begin, if a facility or supplier becomes subject to Part 98 after April 1, 2010.

(d) We are proposing to add a new paragraph 40 CFR 98.3(i)(1)(iii) to specify the frequency at which subsequent recalibrations of flow meters and other measurement devices need to be performed. Recalibration would be at the frequency specified in each applicable subpart, or at the frequency recommended by the manufacturer or by an industry consensus standard practice, if no recalibration frequency was specified in an applicable subpart.

(e) We are proposing to specify the consequences of a failed flow meter calibration in a new paragraph 40 CFR 98.3(i)(7). Data would become invalid prospectively, beginning at the hour of the failed calibration and continuing until a successful calibration is completed. Appropriate substitute data values would be used during the period of data invalidation.

(f) In 40 CFR 98.3(i)(2) and (3), we are proposing to add absolute value signs to the numerators of Equations A–2 and A–3. These were inadvertently omitted in the October 30, 2009 Part 98.

(g) We are proposing to amend 40 CFR 98.3(i)(3) to increase the alternative accuracy specification for orifice, nozzle, and venturi flow meters (*i.e.,* the arithmetic sum of the three transmitter calibration errors (CE) at each calibration level) from 5.0 percent to 6.0 percent, since each transmitter is individually allowed an accuracy of 2.0 percent. We are also proposing to amend 40 CFR 98.3(i)(3) for orifice, nozzle, and venturi flow meters to account for cases where not all three transmitters for total pressure, differential pressure, and temperature are located in the vicinity of a flow meter's primary element. Instead of being required to install additional transmitters, reporters would, as described below, conditionally be allowed to use assumed values for temperature and/or total pressure based on measurements of these parameters at remote locations. If only two of the three transmitters are installed and an assumed value is used for temperature or total pressure, the maximum allowable calibration error would be 4.0 percent. If two assumed values are used and only the differential pressure transmitter is calibrated, the maximum allowable calibration error would be 2.0 percent. We note that the use of an arithmetic sum of the calibration errors is consistent with the approach in Part 75, and is designed to introduce flexibility, by allowing the results of a calibration to be accepted as valid when the calibration error of one (or in some cases, two) of the transmitters exceeds 2.0 percent. We did not intend to introduce an uncertainty analysis, such as the square root of the sum of the squares, for quantifying uncertainty.

We are also proposing to amend 40 CFR 98.3(i)(3) to add five conditions that must be met in order for a source to use assumed values for temperature and/or total pressure at the flow meter location, based on measurements of these parameters at a remote location (or locations).

- The owner or operator would have to demonstrate that the remote readings, when corrected, are truly representative of the actual temperature and/or total pressure at the flow meter location, under all expected ambient conditions. Pressure and temperature surveys could be performed to determine the difference between the readings obtained with the remote transmitters

and the actual conditions at the flow meter location.

- All temperature and/or total pressure measurements in the demonstration must be made with calibrated gauges, sensors, transmitters, or other appropriate measurement devices.
- The methods used for the demonstration, along with the data from the demonstration, supporting engineering calculations (if any), and the mathematical relationship(s) between the remote readings and the actual flow meter conditions derived from the demonstration data would have to be documented in the monitoring plan for the unit and maintained in a format suitable for auditing and inspection.
- The temperature and/or total pressure at the flow meter must be calculated on a daily basis from the remotely measured values, and the measured flow rates must then be corrected to standard conditions.
- The mathematical correlation(s) between the remote readings and actual flow meter conditions must be checked at least once a year, and any necessary adjustments must be made to the correlation(s) going forward.

(h) We are proposing to amend 40 CFR 98.3(i)(4) to include an additional exemption from the calibration requirements of 40 CFR 98.3(i) for flow meters that are used exclusively to measure the flow rates of fuels used for unit startup or ignition. For instance, a meter that is used only to measure the flow rate of startup fuel (*e.g.,* natural gas) to a coal-fired unit would be exempted. This proposed revision is modeled after a similar calibration exemption in section 2.1.4.1 of Appendix D to 40 CFR Part 75, for fuel flow meters that measure startup and ignition fuels. The amount of fuel used for ignition and startup generally provides a very small percentage of the annual unit heat input (less than 1 percent in most cases). Therefore, rigorous calibration of meters used exclusively for startup and ignition fuels is unnecessary. Paragraph 98.3(i)(4) would be further amended to clarify that gas billing meters are exempted from the monitoring plan and record keeping provisions of 40 CFR 98.3(g)(5)(i)(c) and (g)(7), which require, respectively, that a description of the methods used to quality-assure data from instruments used to provide data for the GHG emissions calculations be included in the written monitoring plan, and that maintenance records be kept for those instruments. We are proposing these changes because operation, maintenance, and quality assurance of gas billing meters is the responsibility of the fuel supplier, not the consumer.

(i) We are proposing to amend 40 CFR 98.3(i)(5) to clarify that flow meters that were already calibrated according to 40 CFR 98.3(i)(1) following a manufacturer's recommended calibration schedule or an industry consensus calibration schedule do not need to be recalibrated by the date specified in 40 CFR 98.3(i)(1) as long as the flow meter is still within the recommended calibration interval. This paragraph would also be amended to clarify that the deadline for successive calibrations would be according to the a manufacturer's recommended calibration schedule or an industry consensus calibration schedule.

(j) We are proposing to amend 40 CFR 98.3(i)(6) to account for units and processes that operate continuously with infrequent outages and cannot meet the flow meter calibration deadline without disrupting normal process operation. Part 98 currently allows the owner or operator to postpone the initial calibration until the next scheduled maintenance outage. The rule did not require shutdown for calibration of equipment because it was determined to be an unnecessary burden to require shutdown for calibration given that all measurement equipment required for GHG emissions would be required to be calibrated if they did not have an active calibration, necessitating a potentially large number of shutdowns.

Although the rule allows postponement of calibration, it does not specify how to report fuel consumption for the entire time period extending from January 1, 2010 until the next maintenance outage. Section 98.3(d) of subpart A allows sources to use the "best available monitoring methods" (BAMM) until April 1, 2010, and to petition the Administrator to continue using the BAMM through December 31, 2010, but not beyond that date.

In view of this, we are proposing to amend 40 CFR 98.3(i)(6) to permit sources to use the best available data from company records to quantify fuel usage until the next scheduled maintenance outage. This proposed revision would address situations where the next scheduled outage is in 2011, or later.

C. Subpart A (General Provisions): Reporting of Biogenic Emissions

Reporters have noted that in the final Part 98 a new requirement was introduced that requires separate reporting of biogenic emissions from facilities (40 CFR 98.3(c)). They have noted that had EPA sought comment on this requirement in the proposal, they may have commented that units subject to subpart D (Electricity Generation) should not be required to report biogenic emissions separately, as this is not currently required under Part 75, which generally established the procedures for measuring data under subpart D. Or, they may have recommended specific methods for calculating biogenic emissions from Part 75 units. Owners and operators have stated that it is not clear in Part 98 which method is required for estimating these emissions from units subject to subpart D.

EPA has subsequently provided guidance that separate reporting of biogenic emissions for units subject to subpart D is optional; however, in order to provide clarity and remove any potential inconsistencies, we are proposing revisions to subpart A and soliciting comment.

We intended that units subject to subpart D would continue to monitor and report CO_2 mass emissions as required under 40 CFR 75.13 or section 2.3 of apppendix G to 40 CFR part 75, and 40 CFR 75.64. These provisions do not require separate accounting of biogenic emissions, and we did not intend to require additional accounting methods for these units under Part 98. We intended for the reporting of biogenic CO_2 emissions to be optional for units subject to subpart D. However, the current rule does not consistently affirm this. Section 98.3(c)(4) of subpart A requires sources to report facility-wide GHG emissions, excluding biogenic CO_2, and to report CO_2 emissions for each source category excluding biogenic CO_2. To meet these reporting requirements, facilities with subpart D and/or other Part 75 units on-site would have to separately account for the biogenic CO_2 emissions (if any) from those units.

To address these concerns, we are proposing to amend the data elements in subparts A and C that currently require separate accounting and reporting of biogenic CO_2 emissions so that it would be optional for Part 75 units. All units, except Part 75 units, would still be required to calculate and report biogenic CO_2 emissions separately under subpart C. We are proposing to amend the following sections of subparts A and C to reflect these changes:

- 40 CFR 98.3(c)(4)(i) would be revised to no longer require facilities to report annual emissions, *excluding* biogenic CO_2; instead, it would require all owners or operators to report annual facility-wide emissions, *including* biogenic CO_2.

• 40 CFR 98.3(c)(4)(ii) and (c)(4)(iii)(A) would be amended to state that separate reporting of biogenic CO_2 emissions is not required for units using part 75 methodologies to calculate CO_2 mass emissions.

• 40 CFR 98.3(c)(4)(ii)(B) would be revised to no longer require reporting of the annual CO_2 emissions from subparts C through JJ, *excluding* biogenic CO_2; instead, it would require reporting of the total annual CO_2 emissions for each subpart, *including* biogenic CO_2.

• 40 CFR 98.33(a)(5)(iii)(D) would be redesignated as 40 CFR 98.33(a)(5)(iv) and amended to state that separate reporting of biogenic CO_2 emissions is optional for part 75 units that qualify for and elect to use the alternative CO_2 mass emissions reporting options in 40 CFR 98.33(a)(5).

• A statement would be added to 40 CFR 98.33(e) to indicate that separate reporting of biogenic CO_2 emissions is not required for units subject to subpart D of part 98, and for part 75 units using the alternative CO_2 mass emissions reporting options in 40 CFR 98.33(a)(5). However, if the owner or operator elects to report biogenic CO_2 emissions, the methods in § 98.33(e) would be used.

• Three paragraphs of the data reporting section of subpart C, specifically 40 CFR 98.36(d)(1)(ii), (d)(2)(ii)(I), and (d)(2)(iii)(I), would be amended to reinforce that separate reporting of biogenic CO_2 emissions is optional for part 75 units.

The proposed amendments would not affect the burden for existing facilities, as existing non-Part 75 facilities were always required to calculate and report biogenic emissions separately. The amendments would simply require them to include those biogenic emissions in facility-wide and source category (subpart) totals, as opposed to subtracting them out. The proposed amendments would also address the inconsistency that appeared in Part 98 regarding separate reporting of biogenic emissions for electric generating units subject to subpart D or other units subject to Part 75, as these facilities would no longer be required to report facility emissions excluding biogenic CO_2, although they retain the option to report biogenic CO_2 separately.

D. Subpart A (General Provisions): Requirements for Correction and Resubmission of Annual Reports

Subpart A requires that an "owner or operator shall submit a revised report within 45 days of discovering or being notified by EPA of errors in an annual GHG report. The revised report must correct all identified errors. The owner or operator shall retain documentation for 3 years to support any revisions made to an annual GHG report."

Some owners and operators have asserted that the requirements for resubmission of annual reports within 45 days of discovering an error or being notified by EPA of an error, and the requirement to correct all errors, is overly broad and could trigger a resubmission for virtually any error. They were also concerned that these requirements are made more burdensome by the fact that the data system is not yet developed, and some identified "errors" may not in fact be errors, but rather software bugs that are most likely to happen in the first year of operation of the data system. They have also observed that the regulatory requirement is more burdensome than the Acid Rain Program (ARP), which has operated for more than 15 years without such a requirement in the regulation.

We included this correction requirement in Part 98 because we determined that it is important to ensure that the most accurate data are available, in a timely fashion, for developing future GHG policies and programs. Generally, adding a requirement to resubmit data is also consistent with other EPA reporting programs, such as the ARP and the Toxic Release Inventory, as well as State and other GHG programs. While it is true that the ARP does not have a specific time requirement for resubmission in the regulation, in practice revised data have been submitted in less than 45 days after notification or identification of an error. While we maintain that it is important to retain a deadline for resubmission of the report after an error is identified in order to ensure EPA receives timely submission of data, we also recognize that certain circumstances may exist in which owners or operators cannot correct the identified errors within the 45 days. Therefore, we are proposing to amend 40 CFR 98.3(h) to clarify how a resubmission is triggered and the process for resubmitting annual GHG reports.

First, reports would only have to be resubmitted when the owner or operator or the Administrator determines that a substantive error exists. A substantive error would be defined as one that impacts the quantity of GHG emissions reported or otherwise prevents the reported data from being validated or verified. This clarification is important because some errors are not significant (*e.g.,* an error in the zip code) and do not impact emissions. Such "errors" would not obligate the owner or operator to resubmit the annual report.

The owner or operator would be required to resubmit the report within 45 days of identifying the substantive error, or the Administrator notifying them of a substantive error, unless the owner or operator provides information demonstrating that the previously submitted report does not contain the identified substantive error or that the identified error is not a substantive error. This proposed change would provide owners or operators the opportunity to demonstrate that what the Administrator has deemed to be substantive errors are not, in fact, substantive errors.

Finally, we are also proposing to introduce the opportunity for owners or operators to request an extension on the 45-day resubmission deadline to address facility-specific circumstances that arise in either correcting an error or determining whether or not an identified error is, in fact, a substantive error. Owners or operators would be required to notify EPA by e-mail at least two business days prior to the end of the 45-day resubmission deadline if they seek an extension. An automatic 30-day extension would be granted if EPA does not respond to the extension request by the end of the 45-day period.

We are proposing the opportunity to extend the period for resubmission in recognition that the data system is still under development and we do not yet fully know the full range of errors that will be identified, and therefore the time required to address such errors. Verification and quality assurance and quality control checks are currently under development in the data system. Some flags that the data system might generate will not necessarily reflect substantive errors, but rather would be flags to alert the owner or operator to review the submission carefully to make sure the information provided is correct. On the other hand, some flags could identify substantive errors that affect the overall GHG emissions reported to EPA. Although we have concluded that it is important to provide facilities the opportunity to extend this deadline, we believe that the 45-day time period is a sufficient time period for the vast majority of facilities.

E. Subpart A (General Provisions): Information To Record for Missing Data Events

Certain reporters have suggested that the recordkeeping requirements related to missing data events are overly burdensome. Specifically, 40 CFR 98.3(g)(4) of Part 98 specifies that the owner or operator must keep records of the cause and duration of each event, the actions taken to restore

malfunctioning monitoring equipment, and actions taken to prevent or minimize future occurrences. They have asserted that compared to Part 98, Part 75 requires only reporting of the cause of the missing data event and the corrective actions taken, but does not require separate accounting of the duration of the event or the actions taken to minimize occurrence in the future. They have further claimed that most missing data events associated with the use of continuous emissions monitors are due to routine activities or calibration failures for which there are no clear measures to avoid similar occurrences in the future. Therefore, according to the owners and operators, the final recordkeeping requirements are overly burdensome and add little value.

After reviewing these requirements, we agree with the claims and we are proposing to amend 40 CFR 98.3(g)(4) by requiring that records be kept of only the cause of each missing data event and the corrective actions taken. We have concluded that this information is sufficient for operating the program and that making this change will reduce the reporting burden for all reporters. This proposed revision would make the Part 98 recordkeeping provisions for missing data events consistent with those in 40 CFR Part 75 (specifically 40 CFR 75.57(h)). We further propose to clarify that the records retained pursuant to 40 CFR 75.57(h) may be used to meet the recordkeeping requirements under Part 98 for the same missing data events.

F. Subpart A (General Provisions): Other Technical Corrections and Amendments

We are proposing several amendments to subpart A, as follows. We are proposing to amend 40 CFR 98.3(c)(1) by adding a requirement to report a facility or supplier ID number. We expect to receive GHG emissions data in electronic format from thousands of facilities and suppliers. Therefore, a unique ID number must be assigned to each facility or supplier, for administrative purposes, to facilitate program implementation. This approach has worked well in other EPA programs that require electronic data reporting from large numbers of facilities (*e.g.,* the Acid Rain and NO_X Budget Programs). The exact mechanism for assigning the ID numbers has not yet been determined. EPA will provide the necessary guidance later this year.

We are proposing to amend the elements required with a certificate of representation under 40 CFR 98.4(i)(2) to include organization name (company affiliation-employer). We are also proposing to add the same element to the delegation by designated representative and alternate designated representative under 40 CFR 98.4(m)(2). This information will help EPA and reporting system users to correctly identify persons during the designated representative appointment or agent delegation process. Part 98 and the proposed amendments would not require the designated representative, alternate designated representative or agent to be an employee of the reporting entity. When a designated representative further delegates their authority to an agent, the agent would gain access to all data for that facility or supplier. To underline the importance of granting access to the correct person, EPA would require the designated representative (or alternate) to confirm each agent delegation. Adding organization name to the certificate of representation and notice of delegation will add a level of assurance to the confirmation process.

We are proposing to amend 40 CFR 98.3(c)(5)(i) to clarify that for the purposes of meeting the requirements of this paragraph, suppliers of industrial flourinated GHGs only need to calculate and report GHG emissions in $mtCO_2e$ for those flourinated GHGs that are listed in Table A–1. This amendment is proposed because in order to incorporate additional fluorinated GHGs not listed in Table A–1 into the supplier's total GHG emissions in $mtCO_2e$, the reporter would be required to propose a GWP for the gas or use an established factor developed by the Intergovernmental Panel on Climate Change or another entity. EPA does not believe it is necessary to require reporters to develop a GWP for these gases at this time. Further, it is important to note that these gases would still be required to be reported under 40 CFR 98.3(c)(5)(ii) (in metric tons of GHG). Therefore, EPA could calculate $mtCO_2e$ emissions from these gases in the future as GWP's become available or are updated.

Finally, we are proposing to amend 40 CFR Part 98.6 (Definitions) and 40 CFR Part 98.7 (What Standardized Methods are Incorporated by Reference into this Part?). We are proposing to add or change several definitions to Subpart A, which are needed to clarify terms used in other subparts of Part 98. Similarly, we are proposing to amend 40 CFR 98.7 (incorporation by reference) to accommodate changes in the standard methods that are allowed by other subparts of the rule.

We are proposing to amend 40 CFR 98.3(d)(3) to correct the year in which reporters that submit an abbreviated report for 2010 must submit a full, report from 2011 to 2012. The full report submitted in 2012 will be for the 2011 reporting year.

We are proposing to amend 40 CFR 98.3(f) to correct the cross-reference from "§ 98.3(c)(8)" to "§ 98.3(c)(9)."

We are proposing to amend the definitions of several terms in 40 CFR 98.6:

- Bulk Natural Gas Liquid,
- Distillate fuel oil,
- Fossil fuel,
- Mscf,
- Municipal solid waste or MSW, and
- Natural gas.

Bulk Natural Gas Liquid. Owners and operators have objected to the definition of "bulk natural gas liquid or NGL." Section 98.6 in subpart A defines "bulk natural gas liquid or NGL" as a product which "refers to mixtures of hydrocarbons that have been separated from natural gas as liquids through the process of absorption, condensation, adsorption, or other methods at lease separators and field facilities." The owners and operators have requested we remove the phrase "or other methods at lease separators and field facilities" from the above definition. They assert that these processes are not simple separation processes, but rather, NGL extraction processes that are typically performed at "gas plants" and not at "lease separators and field facilities."

We agree that the separation processes listed in the definition of "bulk natural gas liquid or NGL" are associated with gas plants, and not lease separators and field facilities. It was not EPA's intent to require the reporting of emissions associated with these processes at lease separators and field facilities. In fact, in 40 CFR 98.400, we specifically state that the supplier category consists only of natural gas liquids fractionators and local natural gas distribution companies. Under 40 CFR 98.400(c), we specify that field gathering and boosting stations, as well as natural gas processing plants that "separate NGLs from natural gas * * * but do not fractionate these NGLs into their constituent products" do not meet the source category's definition.

Therefore, we are proposing to strike "lease separators and field facilities" from the definition of "bulk natural gas liquid or NGL," as well as from the definition of "natural gas liquids (NGL)" for enhanced clarity. However, we have determined that the words "or other methods" should remain in the above definition because the list of separation processes listed in the definition (absorption, condensation, adsorption) is not exhaustive, and other separation/extraction processes may be employed at some facilities. We do not wish to exclude the reporting of emissions

associated with products separated/extracted by means not explicitly stated in the rule.

Distillate Fuel Oil. We are proposing to expand the definition of "Distillate fuel oil" to include kerosene-type jet fuel.

Fossil Fuel. Some reporters have noted that the proposed rule set forth the same definition of "fossil fuel" that applies in the New Source Performance Standards program: "Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such materials for the purpose of creating useful heat" (74 FR 16621).

However, the final Part 98 includes the following definition, which, according to certain Parties, has no precedent in Clean Air Act (CAA) regulations: "Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material, including for example, consumer products that are derived from such materials and are combusted."

These owners and operators have asserted that the public did not have sufficient opportunity to comment on these changes, which together, they claimed, re-classify municipal solid waste (MSW) and tires as fossil fuel and could set an unintended precedent for other CAA programs. Further, they claimed that EPA changed the designation of MSW and tires from being classified as "alternative fuels" in the proposal to being classified as "fossil fuel-derived fuels (solid)" in the final Part 98.

We did not intend to "re-classify" MSW and tires between the proposal and final Part 98 in any meaningful way. Rather, any changes made were due to the overall restructuring of the General Stationary Fuel Combustion source category in response to comments and were intended to expand the use of Tier 1 and Tier 2, and to remove some requirements that would subject units to Tier 3. Based on the above concerns, however, it has become apparent that stakeholders believe the changes had unintended consequences. Therefore, we have reevaluated this issue and are proposing amendments to the classification of fuels in Table C–1, as well as the definition of fossil fuel. We note that overall we do not believe that the changes between the proposed and final Part 98, nor the amendments described below, have a substantive impact on the calculation requirements or the reporting of emissions for MSW or tires under this rule.

We made several changes from proposal in Part 98 in response to comments about use of the Tiers. In subpart C, in order for facilities to use Tier 1 or Tier 2, the fuel combusted had to be included in Table C–1. MSW and tires were not included in Table C–1; rather they were included in the proposed Table C–2, which was generically labeled "alternative fuels." The restructuring of the Tiers in subpart C necessitated moving all fuels for which Tier 1 and Tier 2 were allowed into Table C–1. Table C–1 labeled these fuels as "fossil fuel-derived" to reflect the methods used to calculate emissions, noting the related provisions for determining the biogenic portions of fuels in subpart C.

In order to address the above concerns raised with subpart C, we are now proposing to change the heading for these fuels from "fossil fuel-derived" to "Other fuels (solid)" in Table C–1.

Further, we are proposing to amend the definition of fossil fuel to return to the initial proposed definition. After proposal, we altered the definition in subpart A intending to provide clarity to facilities subject to Subpart C in the reporting of CO_2 emissions per the requirements of 40 CFR 98.36, specifically, intending to clarify what was meant in the proposed definition by " * * * solid, liquid, or gaseous fuel derived from such materials." We also changed the definition in subpart A to better align the definition of fossil fuel with the definition of the general stationary fuel combustion sources in 40 CFR 98.30 (*i.e.,* "devices that combust solid, liquid, or gaseous fuels, generally for the purposes of producing electricity, generating steam, or providing useful heat or energy for industrial, commercial, or institutional use, or reducing the volume of waste by removing combustible materials").

We believe that the definition included in subpart A may have not added the clarity expected and that the definition of general stationary fuel combustion sources provided in subpart C is sufficient. We are soliciting comment on the proposed changes in the definition of fossil fuel in subpart A in the context of the calculation methods provided for these fuels in subpart C, and ask commenters to provide additional information if they believe that emissions from combusting these fuels should be estimated differently.

Mscf. We are proposing to amend the definition of "Mscf" in 40 CFR 98.6 to indicate that "Mscf" means thousand standard cubic feet, and not, as incorrectly noted in the final rule, a million standard cubic feet.

Municipal Solid Waste. We have received many questions regarding the definition of "Municipal solid waste or MSW" in Part 98. Specifically, the brevity of the definition makes it difficult to determine whether certain types of waste constitute MSW. We are proposing to amend the definition to closely match the definition of "municipal solid waste" in Subpart Ea of the NSPS regulations (40 CFR 60.51a). The amended definition would explain what is meant by "household waste," "commercial/retail waste," and "institutional waste." It would also provide a comprehensive list of materials that are excluded from these categories (*e.g.,* industrial process or manufacturing wastes and medical waste).

Natural Gas. We have also received many questions indicating that the definition of "Natural gas" is too inclusive and in some respects counterintuitive. The current definition begins with a statement that natural gas is a naturally occurring mixture of hydrocarbon and non-hydrocarbon gases found beneath the earth's surface. However, it ends by equating "process gas" and "fuel gas" (neither of which is a naturally occurring gas mixture) with natural gas. We are proposing to amend the definition of "Natural gas" in 40 CFR 98.6 to be consistent with definitions found in 40 CFR Parts 60 and 75. The amended definition would remove the references to process gas and fuel gas, and would specify that natural gas must be at least 70 percent methane or have a high heat value between 910 and 1150 Btu/scf.

We are proposing to add definitions of the following terms to 40 CFR 98.6 due to the large number of questions received requesting clarification of the definition of these terms:

- Agricultural byproducts,
- Primary fuel,
- Solid byproducts,
- Waste oil, and
- Wood residuals.

The terms "Agricultural byproducts," "Solid byproducts," and "Wood residuals" are used to describe three types of solid biomass fuels listed in Table C–1 of Subpart C, but they are not defined in 40 CFR 98.6. The proposed definitions are based on the results of an Internet search and IPCC inventory guidelines (*see* EPA–HQ–OAR–2008–0508). For the purposes of Part 98, "Agricultural byproducts" would include the parts of crops that are not ordinarily used for food (*e.g.,* corn straw, peanut shells, pomace, etc.). "Solid byproducts" would include plant matter such as vegetable waste, animal materials/wastes, and other solid biomass, except for wood, wood waste and sulphite lyes (black liquor). "Wood residuals" would include waste wood

recovered primarily from MSW streams, construction and demolition debris, and primary timber processing. Wastewater process sludge generated at pulp and paper mills would also be included; however, we are soliciting comment on whether the default emission factors for wood and wood residuals are appropriate for paper mill wastewater sludge, and, if not, what those emission factors should be.

"Primary fuel" would be defined as the fuel that contributes the greatest percentage of the annual heat input to a combustion unit. "Waste oil," which we are proposing to add to Table C–1 as a new fuel type, would be defined as oil whose physical properties have changed, either through storage, handling, or use, so that the oil can no longer be used for its original purpose. Waste oil would include both automotive and industrial oils of various types.

G. Subpart C (General Stationary Fuel Combustion)

Numerous issues have been raised by owners and operators in relation to the requirements in subpart C for general stationary fuel combustion. The issues being addressed by the proposed amendments include the following:

- Definition of the source category.
- GHGs to report.
- Calculating GHG emissions.
- Natural gas consumption expressed in therms.
- Use of Equation C–2b to calculate weighted annual average HHV.
- Categories of gaseous fuels.
- Use of mass-based gas flow meters.
- Site-specific stack gas moisture content values.
- Determining emissions from an exhaust stream diverted from a CEMS monitored stack.
- Biomass combustion in units with CEMS.
- Use of Tier 3.
- Tier 4 requirements for units that combust greater than 250 tons of MSW per day.
- Applicability of Tier 4 to common stack configurations.
- Starting dates for the use of Tier 4.
- CH_4 and N_2O calculations.
- CO_2 emissions from sorbent.
- Biogenic CO_2 emissions from biomass combustion.
- Fuel sampling for coal and fuel oil.
- Tier 3 sampling frequency for gaseous fuels.
- CO_2 emissions from blended fuel combustion.
- Use of consensus standard methods.
- CO_2 monitor span values.
- CEMS data validation.
- Use of ASTM Methods D7459–08 and D6866–08.
- Electronic data reporting and recordkeeping.
- Common stack reporting option.
- Common fuel supply pipe reporting option.
- Table C–1 default HHV and CO_2 emission factors.
- Table C–2 default CH_4 and N_2O emission factors.

Definition of the source category. We are proposing to add a new paragraph 40 CFR 98.30(d), clarifying that the GHG emissions from a pilot light need not be included in the emissions totals for the facility. Section 98.30(a) of subpart C defines a stationary fuel combustion source as a device that combusts " * * * solid, liquid, or gaseous fuel, generally for the purposes of producing electricity, generating steam, or providing useful heat or energy for industrial, commercial, or institutional use, or reducing the volume of waste by removing combustible matter * * * ". A pilot light is a small permanent auxiliary flame that simply ignites the burner of a combustion process in a boiler, turbine, or other fuel combustion device, and is not used to produce electricity or steam, or to provide useful energy to an industrial process, or to reduce waste by removing combustible matter. Therefore, we are clarifying that, for the purposes of Part 98, a pilot light is not considered to be a stationary fuel combustion source and pilot gas consumption would not be required to be included in the GHG emissions calculations.

GHGs to Report. We are proposing to amend 40 CFR 98.32 to clarify that CO_2, CH_4, and N_2O mass emissions from a stationary fuel combustion unit do not need to be reported under subpart C if such an exclusion is indicated elsewhere in subpart C.

Calculating GHG emissions. We are proposing to amend 40 CFR 98.33(a) to provide additional detail and clarify who may (or must) use the calculation methods in the subsequent paragraphs to calculate and report GHG emissions. Specifically, we are proposing to amend this paragraph to point out that certain sources may use the methods in 40 CFR part 75 to calculate CO_2 emissions, if they are already using Part 75 to report heat input data year-round under another Clean Air Act program. Paragraph 98.33(a) would also be amended to clarify the reporting of CO_2 emissions from biomass combustion when a unit combusts both biomass and fossil fuels.

Natural gas consumption expressed in therms. Subpart C of Part 98 allows the use of fuel billing records to quantify natural gas consumption, for the purposes of calculating CO_2 mass emissions. On the billing records provided by natural gas suppliers, fuel usage is often expressed in units of "therms," rather than standard cubic feet (scf). A therm is equal to 100,000 Btu, or 0.1 mmBtu. Therefore, the equations for calculating CO_2 mass emissions in Subpart C (*e.g.,* Equation C–1), which require fuel usage to be in units of scf, are not suitable when fuel consumption is expressed in therms.

In view of this, we are proposing to amend 40 CFR 98.33(a)(1) by adding a new equation, C–1a, to Tier 1. When natural gas consumption is expressed in therms, equation C–1a would enable sources to calculate CO_2 mass emissions directly from the information on the billing records, without having to request or obtain additional data from the fuel suppliers.

We are proposing to allow Equation C–1a to be used for units of any size when the fuel usage information on natural gas billing records is expressed in units of therms. A new paragraph, (b)(1)(v), would be added to 40 CFR 98.33 to reflect this. Section 98.36(e)(2)(i) would also be amended to allow gaseous fuel consumption to be reported in units of therms.

Use of Equation C–2b. Whenever HHV data are received on a monthly or more frequent basis, the Tier 2 CO_2 emissions calculation methodology requires the owner or operator to use Equation C–2b to calculate the annual average HHV, weighted according to monthly fuel usage. The fuel-weighted annual average HHV is then substituted into Equation C–2a. If HHV data are received less frequently than monthly, an arithmetic average HHV is used in the emissions calculations (*see* 40 CFR 98.33(a)(2)(ii)).

However, we have learned that in cases where a facility includes part 75 units (*i.e.,* boilers and/or combustion turbines) and small combustion sources such as space heaters that share a common natural gas or oil supply, the use of Tier 2 may be triggered for the small combustion sources when the part 75 units use the appendix D methodology to quantify heat input. This is because appendix D of Part 75 requires periodic sampling of the heating value of fuel oil and natural gas. Tier 2 will be triggered for the small combustion units if the Part 75 fuel sampling frequency is equal to or greater than the minimum frequency specified in § 98.34(a). Further, if the part 75 fuel sampling frequency is monthly or greater, Equation C–2b would have to be used to calculate fuel-weighted annual average HHVs for the small combustion sources.

Requiring small, low-emitting combustion sources to calculate CO_2

mass emissions using fuel-weighted annual average HHVs instead of arithmetic average values will not significantly enhance data quality. In view of this, we are proposing to amend 40 CFR 98.33(a)(2)(ii), to require calculation of a weighted HHV only for individual Tier 2 units with a maximum rated heat input capacity greater than or equal to 100 mmBtu/hr, and for groups of units that contain at least one unit of that size. For Tier 2 units smaller than 100 mmBtu/hr and for aggregated groups of Tier 2 units under § 98.36(c)(1) in which all units in the group are smaller than 100 mmBtu/hr, the annual arithmetic average HHV, rather than the annual fuel-weighted average HHV, would be used in Equation C–2a.

Categories of Gaseous Fuels. Section 98.34(a)(2)(iii) of subpart C requires quarterly HHV sampling for liquid fuels other than fuel oil, for fossil fuel-derived gaseous fuels, and for biogas, when the Tier 2 methodology is used to calculate CO_2 mass emissions. The term "fossil fuel-derived gaseous fuels" has caused considerable confusion among regulated sources. The nomenclature and organization of Table C–1 of Subpart C makes it hard to determine which fuels are included in this category. Currently, only two fuels are listed in Table C–1 under the heading of fossil fuel-derived gaseous fuels: blast furnace gas and coke oven gas. However, a number of other gaseous fuels that are derived from petroleum, such as butane, are not listed there, but are listed under a different heading for "petroleum products."

We are proposing to revise 40 CFR 98.33(a)(2)(iii) by replacing the term "fossil fuel-derived gaseous fuels" with a more inclusive term, *i.e.,* "gaseous fuels other than natural gas." Corresponding changes would also be made to Table C–1 for consistency, placing blast furnace gas, coke oven gas, fuel gas, and propane in a new category, "Other fuels (gaseous)."

Use of Mass-Based Gas Flow Meters. The Tier 3 CO_2 emissions calculation methodology in 40 CFR 98.33(a)(3) currently allows flow meters that measure mass flow rates of liquid fuels to be used to quantify fuel consumption, provided that the density of the fuel is determined and the measured mass of fuel is converted to units of volume (*i.e.,* gallons), for use in Equation C–4. In response to a number of requests, we are proposing to amend 40 CFR 98.33(a)(3)(iv), to conditionally allow flow meters that measure mass flow rates of gaseous fuels to be used for Tier 3 applications. To use mass flow meters, the density of the gaseous fuel would have to be measured, either with a calibrated density meter or by using a consensus standard method or standard industry practice, in order to convert the measured mass of fuel to units of standard cubic feet, for use in Equation C–5.

Site-Specific Stack Gas Moisture Content Values. The Tier 4 calculation methodology in 40 CFR 98.33(a)(4) requires a CO_2 CEMS to be used together with a stack gas flow rate monitor to measure CO_2 mass emissions. If the CO_2 monitor measures on a dry basis, corrections for the stack gas moisture content are needed, because the flow monitor measures on a wet basis.

Part 98 currently requires that the moisture corrections be made either by installing a continuous moisture monitoring system or by using a default moisture value from 40 CFR Part 75 (specifically 40 CFR 75.11(b)(1)) in the calculations. However, the default moisture constants from Part 75 only apply to various grades of coal, and to wood and natural gas.

Recently, we have received inquiries from a number of sources that currently have dry-basis CO_2 monitors in place and are required to use Tier 4. These sources have requested that EPA allow the use of site-specific default moisture values, in cases where no applicable default value is specified in Part 75 for the type(s) of fuel(s) combusted, or where the Part 75 moisture values are believed to be unrepresentative.

EPA has approved many petitions for site-specific moisture content default values under the ARP. Therefore, we believe it is reasonable to allow Part 98 sources to develop such default values, using an approach similar to the one that has been approved under the ARP.

In view of this, we are proposing to amend 40 CFR 98.33(a)(4)(iii) to allow the use of site-specific moisture constants under the Tier 4 methodology. The site-specific moisture default value(s) would have to represent the fuel(s) or fuel blends that are combusted in the unit during normal, stable operation, and would have to account for any distinct difference(s) in stack gas moisture content associated with different process operating conditions.

For each site-specific default moisture percentage, at least nine runs would be required using EPA Method 4—Determination Of Moisture Content In Stack Gases (40 CFR Part 60, Appendix A–3). Moisture data from the relative accuracy test audit (RATA) of a CEMS could be used for this purpose. Each site-specific default moisture value would be calculated by taking the arithmetic average of the Method 4 runs.

Each site-specific moisture default value would be updated at least annually, and whenever the current value is believed to be non-representative, due to changes in unit or process operation. The updated moisture value would be used in the subsequent CO_2 emissions calculations.

Determining Emissions from an Exhaust Stream Diverted from a CEMS Monitored Stack. We are proposing to amend 40 CFR 98.33(a)(4) by adding a new paragraph, (a)(4)(viii), to address the determination of CO_2 mass emissions from a unit subject to the Tier 4 calculation methodology when a portion of the flue gases generated by the unit exhaust through a stack that is not equipped with a CEMS to measure CO_2 emissions (herein referred to as an "unmonitored stack") The paragraph is intended to address situations where a portion of the stack gas generated by the Tier 4 unit is diverted for the purpose of drying fuels, recovering heat, or some other process-related activity. The provisions of the new paragraph would not apply when CO_2 is removed or chemically altered in a way that significantly changes the CO_2 concentration at the outlet of the unmonitored stack, compared to the outlet CO_2 concentration at the stack equipped with a CEMS. The owner or operator would be required to use the best available information to estimate the hourly stack gas volumetric flow rates exhausting through the unmonitored stack. Best available information would include, but would not be limited to, correlation of operating parameters with flow rate, periodic flow rate measurements made with EPA Method 2, engineering analysis, etc. The estimated flow rates of the diverted gas stream would be made at the point where the diverted stream exits the main flue gas exhaust system. Each hourly volumetric flow rate value used in Equation C–6 of Subpart C would be the sum of the flow rate measured at the stack equipped with a CEMS and the estimated flow rate of the diverted gas stream. All procedures used to estimate the volumetric flow rate of the diverted gas stream would be documented in the monitoring plan required under 40 CFR 98.3(g)(5).

Biomass Combustion in Units With CEMS. We are proposing to amend 40 CFR 98.33(a)(5)(iii)(D) to redesignate it as 40 CFR 98.33(a)(5)(iv). This is to correct a paragraph numbering error in subpart C, because this paragraph applies to all of 40 CFR 98.33(a)(5) and not just to 40 CFR 98.33(a)(5)(iii). As discussed above in section II.C of the preamble, we are also proposing to amend 40 CFR 98.3(c) in subpart A and

40 CFR 98.33(a)(5) to clarify that the separate reporting of biogenic CO_2 is optional for units that are not subject to the Acid Rain Program, but are using Part 75 methodologies to calculate CO_2 mass emissions, as described in 40 CFR 98.33(a)(5)(i) through (a)(5)(iii). As discussed above, separate reporting of biogenic CO_2 emissions is also optional for units subject to subpart D.

Use of Tier 3. Section 98.33(b)(3)(iii) of subpart C currently requires the use of Tier 3 when a fuel that is not listed in Table C–1 of Subpart C is combusted in a unit with a maximum rated heat input capacity greater than 250 mmBtu/hr, if two conditions are met: (a) The use of Tier 4 is not required; and (b) the fuel provides at least 10 percent of the annual heat input to the unit.

However, 40 CFR 98.33(b)(3)(iii)(B) refers to the annual heat input to a group of units served by a common supply pipe, in addition to the heat input to an individual unit. The text of 40 CFR 98.33(b)(3)(iii) is not consistent with 40 CFR 98.33(b)(3)(iii)(B) because it does not mention common pipe configurations.

We are proposing to amend 40 CFR 98.33(b)(3)(iii) to clarify that the paragraph applies also to common pipe configurations where at least one unit served by the common pipe has a heat input capacity greater than 250 mmBtu/hr.

The Agency also proposes to add a new paragraph, (b)(3)(iv), to 40 CFR 98.33, requiring Tier 3 to be used when specified in another subpart of Part 98, regardless of fuel type or unit size. For example, Subpart Y requires certain units that combust refinery fuel gas (RFG) to use Equation C–5 in Subpart C (which is the Tier 3 equation for gaseous fuel combustion) to calculate CO_2 mass emissions, without regard to unit size.

Tier 4 Requirements for Units That Combust Greater Than 250 Tons of MSW per Day. Owners and operators of units that combust municipal solid waste have contended that, because Part 98 requires that units that combust MSW must follow Tier 4 if they meet the requirements in 40 CFR 98.33(b)(4)(ii) or 40 CFR 98.33(b)(4)(iii), it entails a disproportionate burden for municipal waste combustors (MWCs). One element of their argument was that a threshold of greater than 250 tons per day of MSW was a more stringent threshold than the 250 mmbtu/hr heat input threshold for other stationary combustion units and, therefore, a disproportionate burden for MWCs. Further, they stated that the industry did not have the necessary emission monitoring equipment in place and would, therefore, be required to install new equipment in order to meet the requirements of the rule.

Part 98 included a threshold of 250 tons of MSW per day because it was consistent with the threshold applied in the EPA New Source Performance Standards (NSPS). Under that program, units combusting greater than 250 tons per day of MSW are considered "large" units. We did not believe that subpart C applied a disproportionate burden to municipal waste combustors because all "large" units (whether 250 tons of MSW per day or with a heat input capacity greater than 250 mmBtu/hr) would only be subject to Tier 4 if they met the other conditions outlined in 40 CFR 98.33(b)(4). We have reevaluated this issue based on the fact that while a threshold of 250 tons of MSW may be appropriate for the purposes of NSPS, it is not necessarily appropriate for a GHG emissions reporting program. We also recognize that a large majority of the units may have to install either a flow meter or a concentration monitor, and in some cases both, to comply with subpart C.

Based on these concerns, we are proposing to amend 40 CFR 98.33(b)(4)(ii)(A) to change the 250 tons MSW per day threshold to 600 tons MSW per day, based on further analysis that this value is approximately equivalent to the 250 mmBtu/hr heat input requirements for other large stationary combustion units. For more information, please refer to the Background Technical Support Document (EPA–HQ–OAR–2008–0508). Units less than 600 tons MSW per day, that do not meet the requirements in 40 CFR 98.33(b)(4)(iii) could use Tier 2. We believe that this proposal still meets the desired goal to obtain high quality data from larger units, while not applying unnecessary burden. With this proposed amendment, MWCs would be subject to comparable monitoring thresholds and conditions as other general stationary combustion units.

Applicability of Tier 4 to Common Stack Configurations. Section 98.36(c)(2) of Subpart C allows the owner or operator of stationary combustion units that share a common stack (or duct) and use the Tier 4 methodology to calculate CO_2 mass emissions to continuously monitor and report the combined CO_2 mass emissions at the common stack (or duct), in lieu of separately monitoring and reporting the CO_2 emissions from the individual units.

Several other Subparts of Part 98 either: (1) Allow a particular process or manufacturing unit to use Tier 4 to quantify CO_2 mass emissions, as an alternative to using a mass balance approach (for instance, Subpart G allows this option for an ammonia manufacturing unit—*see* 40 CFR 98.73(a) and (b)); or (2) require Tier 4 to be used in certain instances when a process unit and a stationary combustion unit share a common stack (*e.g., see* 40 CFR 98.63(g) and 98.73(c)).

Subpart C sets forth the applicability of Tier 4 in 40 CFR 98.33(b)(4)(ii) and (b)(4)(iii). However, note that 40 CFR 98.33(b)(4) focuses exclusively on individual stationary fuel combustion units; no mention is made of common stack configurations.

In view of this, we are proposing to amend 40 CFR 98.33(b)(4) by adding provisions to clarify how the Tier 4 criteria apply to common stack configurations. Paragraph (b)(4)(i) would be expanded to include monitored common stack configurations that consist of stationary combustion units, process units, or both types of units. A new paragraph, (b)(4)(iv) would also be added, describing the following three distinct common stack configurations to which Tier 4 might apply.

The first, most basic configuration is one in which the combined effluent gas streams from two or more stationary fuel combustion units are vented through a monitored common stack (or duct). In this case, Tier 4 would apply if:

- There is at least one large unit in the configuration that has a maximum rated heat input capacity greater than 250 mmBtu/hr or an input capacity greater than 600 tons/day of MSW (as applicable);
- At least one large combustion unit in the configuration meets the conditions of 40 CFR 98.33(b)(4)(ii)(A) through (b)(4)(ii)(C); and
- The CEMS installed at the common stack (or duct) meets all of the requirements of 40 CFR 98.33 (b)(4)(ii)(D) through (b)(4)(ii)(F).

Tier 4 would also apply when all of the combustion units in the configuration are small (≤ 250 mmBtu/hr or ≤ 600 tons/day of MSW), if at least one of the units meets the conditions of 40 CFR 98.33(b)(4)(iii).

The second configuration is one in which the combined effluent gas streams from a stationary combustion unit and a process or manufacturing unit are vented through a common stack or duct. Many subparts of part 98 describe this situation (*see* subparts F, G, K, Q, Z, BB, EE, and GG). In this case, the use of Tier 4 would be required if the stationary combustion unit and the monitors installed at the common stack or duct meet the applicability criteria of 40 CFR 98.33(b)(4)(ii) or 98.33(b)(4)(iii). If multiple stationary combustion units

and a process unit (or units) are vented through a common stack or duct, Tier 4 would be required if at least one of the combustion units and the monitors installed at the common stack or duct meet the conditions of 40 CFR 98.33(b)(4)(ii) or 98.33(b)(4)(iii).

The third configuration is one in which the combined effluent streams from two or more process or manufacturing units are vented through a common stack or duct. In this case, if any of these units is required to use Tier 4 under an applicable subpart of Part 98, the owner or operator could either monitor the CO_2 mass emissions at the Tier 4 unit(s) before the effluent streams are combined together, or monitor the combined CO_2 mass emissions from all units at the common stack or duct. However, if it is not feasible to monitor the individual units, the combined CO_2 mass emissions would have to be monitored at the common stack or duct, using Tier 4.

Starting Dates for the Use of Tier 4. Section 98.33(b)(5) of subpart C currently states that units that are required to use the Tier 4 methodology must begin using it on January 1, 2010 if all required CEMS are in place. Otherwise, use of Tier 4 begins on January 1, 2011, and Tier 2 or Tier 3 may be used to report CO_2 mass emissions in 2010. Recently, a number of sources have asked EPA whether Tier 4 may be used prior to January 1, 2011 if the required CEMS are certified some time in 2010, or whether Tier 2 or Tier 3 must be used for the entire year.

We believe that it is reasonable for sources to begin reporting CO_2 emissions data prior to 2011 from CEMS that successfully complete certification testing in 2010. Therefore, we are proposing to amend 40 CFR 98.33(b)(5) accordingly. Note that changes in methodology during a reporting year are allowed by Part 98, and must be documented in the annual GHG emissions report (*see* 40 CFR 98.3(c)(6)).

The proposed revisions would allow sources to discontinue using Tier 2 or 3 and begin reporting their 2010 emissions under Tier 4 as of the date on which all required certification tests are passed. CEMS data recorded during the certification test period could also be used for Part 98 reporting, provided that: (a) All required certification tests are passed in sequence, with no test failures; and (b) no unscheduled maintenance or repair of the CEMS is required during the test period.

We are also proposing to amend 40 CFR 98.33(b)(5) by adding a new paragraph, (b)(5)(iii), to address situations where the owner or operator of an affected unit that has been using Tier 1, 2, or 3 to calculate CO_2 mass emissions makes a change that triggers Tier 4 applicability by changing: (1) The primary fuel, (2) the manner of unit operation, or (3) the installed continuous monitoring equipment. In such cases, the owner or operator would be required to begin using Tier 4 no later than 180 days from the date on which the change is implemented. This would allow adequate time for the owner or operator to obtain and/or certify any of the required Tier 4 continuous monitors.

Methane and Nitrous Oxide Calculations. The equations for calculating CH_4 and N_2O emissions from stationary combustion sources are found in 40 CFR 98.33(c). Calculation of these emissions is required only for fuels listed in Table C–2 of Subpart C. When either the Tier 1 or the Tier 3 methodology is used to determine CO_2 mass emissions, Equation C–8 is used to calculate CH_4 and N_2O emissions. Equation C–8 includes the term "HHV," which is defined as the applicable default high heat value (HHV) from Table C–1 for a particular type of fuel. Owners and operators have asserted that they should be able to use actual HHV data for Tier 3 units, in lieu of using the Table C–1 default values, and noted that site-specific values would be more accurate.

We agree that this would result in more accurate estimates of emissions and are proposing to revise the definition of the term "HHV" in the Equation C–8 nomenclature. The proposed amendment would allow Tier 3 units to use actual HHV data to calculate CH_4 and N_2O emissions. If multiple HHV values are obtained during the year, the arithmetic average would be used in Equation C–8.

Units that monitor heat input year-round according to 40 CFR Part 75 or that use the Tier 4 CO_2 calculation methodology are required to use Equation C–10 in Subpart C to calculate CH_4 and N_2O emissions. When more than one type of fuel listed in Table C–2 is combusted in these units during normal operation, 40 CFR 98.33(c)(4)(ii) requires Equation C–10 to be used separately for each fuel.

Owners and operators have asked EPA to clarify what is meant by "normal operation," and whether any fuel(s) should be excluded from the emissions calculations. Today's proposed amendments would clarify the Agency's intent by removing the term "normal operation" from 40 CFR 98.33(c)(4)(i) and (c)(4)(ii). Therefore, calculation of CH_4 and N_2O emissions would simply be required for each Table C–2 fuel combusted in the unit during the reporting year.

We are also proposing to further amend 40 CFR 98.33(c)(4)(ii), to allow additional reporting flexibility for certain units that combust more than one type of fuel; specifically, for units that report heat input data to EPA year-round using part 75 CEMS. For all multi-fuel units that use CEMS to comply with Part 98, subpart C requires the "best available information" to be used to determine the percentage of the annual unit heat input contributed by each type of fuel, for the purposes of calculating CH_4 and N_2O mass emissions.

For part 75 units that use CEMS to quantify unit heat input, the fuel-specific annual heat input values needed for the CH_4 and N_2O emissions calculations can, in most cases, be determined from information in the part 75 electronic data reports—specifically, from the "F-factors" reported for each unit operating hour. These F-factors, which are fuel-specific, are used in the hourly heat input calculations. Therefore, it is possible to use the reported F-factors to group the annual unit operating hours according to fuel type, and to sum the reported hourly heat input values for each group. However, if the owner or operator elects to use the reporting option in section 3.3.6.5 of part 75, appendix F, the fuel-specific heat input values cannot be determined from the emissions reports. This is because section 3.3.6.5 of appendix F allows the owner or operator to calculate all hourly heat input values using the "worst-case" (highest) F-factor for any fuel combusted in the unit. A situation where this reporting option is likely to be implemented is for a coal-fired utility boiler that uses small amounts of natural gas for unit startup. A second example where the worst-case F-factor option is sometimes used is for a unit that combusts a blend of bituminous coal and sub-bituminous coal, in varying proportions. The F-factors for these two grades of coal are nearly the same. For the examples cited, the impact on the reported annual unit heat input is generally very small (1 to 2 percent at most). In view of this, we are proposing to allow part 75 units that use the worst-case F-factor reporting option to attribute 100 percent of the unit's annual heat input to the fuel with the highest F-factor, as though it were the only fuel combusted during the report year.

For Tier 4 units, the requirement to use the best available information to determine the annual heat input from each type of fuel is being retained in 40

CFR 98.33(c)(4)(i), and we are proposing to allow it under 40 CFR 98.33(c)(4)(ii)(D) as an alternative for part 75 units, in cases where fuel-specific heat input values cannot be determined directly from the part 75 electronic data reports.

Carbon Dioxide Emissions from Sorbent. Section 98.33(d) of subpart C currently requires the following sources to use Equation C–11 to calculate and report CO_2 mass emissions from sorbent, except where the total CO_2 emissions are measured using CEMS: (a) Fluidized bed combustion units; (b) units with wet flue gas desulfurization (FGD) systems; and (c) units equipped with "other acid gas emission controls with sorbent injection." Equation C–11 includes the term "R," which is defined as "1.00, the calcium to sulfur stoichiometric ratio."

Industry members have noted that some sorbents that reduce acid gas emissions do not produce CO_2 (for instance, $Ca(OH)_2$ does not). Further, the 1.00 value of R in Equation C–11 applies only to SO_2 removal, indicating that one mole of CO_2 is produced for every mole of SO_2 removed. We have also been informed that CO_2–producing sorbents such as sodium bicarbonate are sometimes injected to remove other acid gas species (*e.g.,* HCl).

In view of these considerations, we are proposing to amend 40 CFR 98.33(d) by making it more generally applicable to different types of CO_2-producing sorbents. The term "R" would be redefined as the number of moles of CO_2 released upon capture of one mole of acid gas. When the sorbent is $CaCO_3$, the value of R would be 1.00. For other CO_2-producing sorbents, a specific value of R would be determined by the reporting facility from the chemical formula of the sorbent and the chemical reaction with the acid gas species that is being removed.

Biogenic CO_2 Emissions From Biomass Combustion. In response to questions about the methodologies in 40 CFR 98.33(e) for calculating biogenic CO_2 mass emissions from biomass combustion, we are proposing a number of technical corrections and clarifications to that section of the rule.

The title and introductory text of 40 CFR 98.33(e) would be amended to more precisely define the requirements for reporting biogenic CO_2 emissions. In general, biogenic CO_2 emissions reporting would be required only for the combustion of the biomass fuels listed in Table C–1 and for municipal solid waste (which consists partly of biomass and partly of fossil fuel derivatives).

We are also proposing to amend 40 CFR 98.33(e) to describe three cases in which units that combust biomass would not need to report biogenic CO_2 emissions separate from total CO_2 emissions:

1. If a biomass fuel is not listed in Table C–1, the biogenic CO_2 emissions would need to be reported separately from total CO_2 emissions only if:

— The fuel is combusted in a large unit (greater than 250 mmBtu/hr heat input capacity);
—The biomass fuel accounts for 10 percent or more of the annual heat input to the unit; and
—The unit does not use CEMS to quantify its annual CO_2 mass emissions.

In that case, according to 40 CFR 98.33(b)(3)(iii), Tier 3 would have to be used to determine the carbon content of the biomass fuel and to calculate the biogenic CO_2 emissions.

2. If a unit is subject to Subpart C or D and uses the CO_2 mass emissions calculation methodologies in 40 CFR Part 75 to satisfy the Part 98 reporting requirements, the reporting of biogenic CO_2 emissions would be optional.

3. For the combustion of tires, which are also partly biogenic (typically 10–20 percent biomass, for car and truck tires), separate reporting of the biogenic CO_2 emissions would be optional, but could be done following provisions in 40 CFR 98.33(e).

We are proposing to amend 40 CFR 98.33(e)(1) by removing the restriction against using Tier 1 to calculate biogenic CO_2 emissions on units that use CEMS to measure the total CO_2 mass emissions. There is no technical basis for this restriction, provided that biomass consumption can be accurately quantified. However, the use of Tier 1 would not be allowed for combustion of MSW, as originally specified in 40 CFR 98.33(e)(1) of subpart C, and would also not be allowed for the combustion of tires, if biogenic CO_2 emissions are calculated for tires.

We are proposing to amend the methodology in 40 CFR 98.33(e)(2), which is specifically for units using a CEMS to measure CO_2 mass emissions, by:

1. Limiting it to cases where the CO_2 emissions measured by the CEMS are solely from combustion, *i.e.,* the stack gas contains no additional process CO_2 or CO_2 from sorbent; and

2. Prohibiting its use if the unit combusts MSW or tires.

Section 98.33(e)(2) of subpart C currently requires the total volume of CO_2 produced from fossil fuel combustion (which is based on estimated fuel usage, measured HHVs and F-factors) to be subtracted from the total volume of CO_2 from the combustion of all fuels (as determined from the CEMS data). The difference is assumed to be the volume of biogenic CO_2. However, this approach is only viable if all of the CO_2 emissions are from the combustion of fossil fuels and biomass, and if no fuels (such as MSW and tires) that are a mixture of biomass and fossil fuel derivatives are combusted in the unit.

If there are any process CO_2 emissions or CO_2 emissions from sorbent in the stack effluent, the volumes of those CO_2 emissions would have to be subtracted from the total volume of CO_2 derived from the CEMS data in order to determine the biogenic CO_2 volume. Further, if any partly biogenic fuels (such as MSW and tires) are combusted in the unit, the fossil component of each of these fuels would have to be characterized. We are not aware of any method that is economically feasible for reporting sources to determine the mass percentage of the fossil fuel component of fuels such as MSW and tires. In addition, we are not aware of any practical method for quantifying CO_2 volumes from sorbent or from non-combustion industrial processes. For these reasons, we are proposing restrictions "1" and "2" above on the use of the methodology in 40 CFR 98.33(e)(2).

For sources that are combusting MSW, we are proposing to amend 40 CFR 98.33(e)(3) to require the use of ASTM methods D7459–08 and D6866–08 quarterly, as described in 40 CFR 98.34(d), when any MSW is combusted, either as the primary fuel or as the only fuel with a biogenic component. We are proposing to further amend 40 CFR 98.33(e)(3) to allow the ASTM methods to be used, as described in 40 CFR 98.34(e), for any unit in which biogenic (or partly biogenic) fuels, and non-biogenic fuels are combusted, in any proportions.

We are also proposing to delete and reserve 40 CFR 98.33(e)(4) and the related subparagraphs. Although 40 CFR 98.33(e)(4) allows the ASTM methods to be used to determine biogenic CO_2 emissions for various combinations of biogenic and fossil fuels, we are proposing to delete and reserve it because the paragraph also includes an unnecessary restriction, *i.e.,* it only applies to units that use CEMS to measure total CO_2 mass emissions. The proposed amendments to 40 CFR 98.33(e)(3) described above would achieve the same intended purpose as 40 CFR 98.33(e)(4), without imposing this restriction, so 40 CFR 98.33(e)(4) is no longer needed.

Finally, we are proposing to amend 40 CFR 98.33(e)(5) so that it would also

apply to units that are using Tier 2 (Equation C–2a), as well as Tier 1 (Equation C–1), for calculating biogenic CO_2 mass emissions. The approach in 40 CFR 98.33(e)(5) for estimating solid biomass fuel consumption is equally applicable to units using those two equations to calculate biogenic CO_2 emissions. Equation C–2a would apply when HHV data for a biomass fuel are available at the minimum frequency specified in 40 CFR 98.34(a)(2).

Fuel Sampling for Coal and Fuel Oil. We are proposing to amend 40 CFR 98.34(a)(2), to clarify the frequency at which the HHV needs to be determined for different types of fuels.

In subpart C, the Tier 2 calculation methodology in 40 CFR 98.33(a)(2) requires periodic fuel sampling and analysis to determine HHVs. Section 98.34(a)(2) specifies the minimum required sampling frequency for various fuel types. For coal and fuel oil, at least one representative sample must be obtained and analyzed for each fuel lot. A "fuel lot" is defined as a shipment or delivery of a particular type of fuel, and may consist of a ship load, a barge load, a group of trucks, or a group of railroad cars.

Several reporters have noted that some facilities receive fuel deliveries by truck, rail or pipeline quite frequently—even daily in some cases. The reporters have expressed the concern that, under subpart C, daily fuel deliveries appear to trigger a requirement for daily sampling and analysis, according to the definition of a fuel lot. Reporters have also noted that coal and petroleum derivatives such as coke and petroleum coke are often delivered in lots. Further, the Agency has received inquiries asking why a commonly-used fuel oil sampling strategy is not included in subpart C, *i.e.,* taking a sample whenever oil is added to the storage tank.

It is not our intent to require an excessive amount of HHV sampling for coal and fuel oil (or for any other solid or liquid fuel that is delivered in lots), or to prohibit the use of viable sampling options. Therefore, we are proposing, first, to amend 40 CFR 98.34(a)(2)(ii) to expand the list of fuels for which sampling of each fuel lot is sufficient to include other solid or liquid fuels that are delivered in lots.

Second, we are proposing to more precisely define the term "fuel lot" in 40 CFR 98.34(a)(2)(ii), as it pertains to facilities that receive multiple deliveries of a particular fuel from the same supply source each month, either by truck, rail, or pipeline. The proposed amendment would clarify that a fuel lot consists of all of the deliveries for a given calendar month. Thus, for these facilities, the required HHV sampling frequency would be no greater than once per month. We are proposing to add parallel language to 40 CFR 98.34(b)(3)(ii), the Tier 3 fuel sampling provisions for coal and fuel oil, for consistency with the proposed revisions to 40 CFR 98.34(a)(2)(ii).

Third, we are proposing to further revise 40 CFR 98.34(a)(2)(ii) and 98.34(b)(3)(ii) to allow manual oil samples to be taken after each addition of oil to the storage tank. Daily manual sampling, flow-proportional sampling, and continuous drip sampling would also be allowed.

Tier 3 Sampling Frequency for Gaseous Fuels. Section 98.34(b)(3)(ii) of subpart C specifies the minimum required frequency for determining the carbon content and molecular weight of various types of fuel, when using the Tier 3 methodology to calculate CO_2 mass emissions. For gaseous fuels, daily sampling is required if "the necessary equipment is in place to make these measurements." Otherwise, weekly sampling is required.

EPA has received a number of questions from owners and operators about the meaning of "necessary equipment." In particular, sources have asked whether this refers only to continuous, on-line equipment such as gas chromatographs, or whether daily, manual sampling is required where such capability exists.

We are proposing to amend 40 CFR 98.34(b)(3)(ii)(E) to clarify that daily sampling of gaseous fuels for carbon content and molecular weight is only required where continuous, on-line equipment is in place; weekly sampling would be required in all other cases. This has always been the Agency's intent.

CO_2 Emissions From Blended Fuel Combustion. One of the most frequently asked questions by the regulated community since the October 30, 2009 publication of Part 98 is, "How does one calculate CO_2 mass emissions from the combustion of blended fuels?" Subpart C provided only limited guidance on this issue. First, 40 CFR 98.34(a)(3) stated that when different types of fuel are blended (*e.g.,* different ranks of coal or different grades of fuel oil), two options could be used for determining the HHV for Tier 2 applications: (a) Use a weighted HHV in the emissions calculations; or (b) take a representative sample of the blend and analyze it for HHV. Second, 40 CFR 98.34(b)(3)(v) stated that these same two options apply to carbon content and molecular weight determinations under Tier 3. Third, for Tier 3 common pipe applications, 40 CFR 98.34(b)(1)(vi) required that fuels either be metered individually before blending, or that the blended fuel and a subset of the individual fuels be metered so that the volume of each fuel in the blend can be determined.

Based on the number of questions received, we have concluded that these rule provisions do not adequately address the complexities associated with blended fuels. Therefore, we are proposing substantive amendments to 40 CFR 98.34(a)(3), (b)(1)(vi), and (b)(3)(v). The proposed amendments would make a clear distinction between cases where the mass or volume of each fuel in the blend is accurately measured prior to mixing (*e.g.,* using individual flow meters for each component) and cases where the exact composition of the blend is not known. In the former case, the fact that the fuels are blended is of no consequence; because the exact quantity of each fuel in the blend is known, the CO_2 emissions from combustion of each component would be calculated separately. In the latter case, we are proposing that the blend be considered to be a distinct "fuel type," and that its mass or volume and essential properties (*e.g.,* HHV, carbon content, etc.) be measured at a prescribed frequency.

When the mass or volume of each individual component of a blend is not precisely known prior to mixing, the appropriate method used to calculate the CO_2 mass emissions from combustion of the blend would be as follows. For smaller combustion units (heat input capacity not more than 250 mmBtu/hr), we are proposing that Tier 2 (or possibly Tier 1) be used when all components of the blend are listed in Table C–1 of Subpart C. In order to perform these CO_2 emissions calculations for the blend, a reasonable estimate of the percentage composition of the blend would be required, using the best available information (*e.g.,* from the typical or expected range of values of each component). A heat-weighted CO_2 emission factor would be calculated, using proposed Equation C–16. For Tier 1 applications, a heat-weighted default HHV would also have to be determined, using proposed Equation C–17.

In cases where a fuel blend consists of a mixture of fuel(s) listed in Table C–1 and fuel(s) not listed in Table C–1, calculation of CO_2 and other GHG emissions from combustion of the blend would be required only for the Table C–1 fuel(s), using the best available estimate of the mass or volume percentage(s) of the Table C–1 fuel(s) in the blend. In these cases, the use of Tier 1 would be required, with modifications to certain terms in Equations C–17 and

C–1, to account for the fact that the blend is not composed entirely of Table C–1 fuels. An example calculation is provided in proposed 40 CFR 98.34(a)(3)(iv).

For larger combustion units (heat input capacity greater than 250 mmBtu/hr) that do not qualify to use Tier 1 or 2, we are proposing that the owner or operator would use Tier 3 to calculate the CO_2 mass emissions from combustion of a blended fuel. The mathematics for Tier 3 would be much simpler than for Tiers 1 and 2, since no default values are used in the calculations, and an estimate of the percentage composition of the blend is not required. To apply Tier 3, the only requirements would be to accurately measure the annual consumption of the blended fuel and to determine its carbon content and (if necessary) molecular weight, at a prescribed frequency. By considering the blended fuel to be a distinct "fuel type," in cases where that fuel is not listed in Table C–1, GHG emissions reporting would be required in accordance with 40 CFR 98.33(b)(3)(iii), if the blended fuel (as opposed to each individual component of the blend) provides at least 10 percent of the annual heat input to a unit or group of units, and if the use of Tier 4 is not required.

To address the calculation of CH_4 and N_2O mass emissions from the combustion of blended fuels, we are proposing to add a new paragraph, (c)(6), to 40 CFR 98.33. Calculation of CH_4 and N_2O emissions would be required only for components of a blend that are listed in Table C–2 of Subpart C.

If the mass or volume of each component of a blend is measured before the fuels are mixed and combusted, the existing CH_4 and N_2O mass emissions calculation procedures in 40 CFR 98.33(c)(1) through (5) would be followed for each component separately. The fact that the fuels are mixed prior to combustion is of no consequence in this case.

If the mass or volume of each individual component is not measured prior to mixing, a reasonable estimate of the percentage composition of the blend would be required, based on the best available information, and the procedures in 40 CFR 98.33(c)(6)(ii) would be followed. First, the annual consumption of each component fuel in the blend would be calculated by multiplying the total quantity of the blend combusted during the reporting year by the estimated mass or volume percentage of that component. Next, the annual heat input from the combustion of each component would be calculated by multiplying its annual consumption by the appropriate HHV (either the default HHV from Table C–1 or, if available, the measured annual average value). The annual CH_4 and N_2O mass emissions for each component would then be calculated using the applicable equation in 40 CFR 98.33(c), *i.e.,* Equation C–8, C–9a, or C–10. Finally, the calculated CH_4 and N_2O emissions would be summed across all components, and these sums would be reported as the annual CH_4 and N_2O mass emissions for the blend.

Use of Consensus Standard Methods. Sections 98.34(a)(6), (b)(4), and (b)(5) of subpart C specify acceptable methods for determining fuel HHV, carbon content, and molecular weight, and methods for calibrating fuel flow meters. The methods listed in those sections are from consensus standards organizations such as ASTM, ASME, AGA, and GPA. Although we attempted to assemble a comprehensive list of methods and provide appropriate alternatives, it is possible that other valid methods from these organizations and practices have been overlooked, or that in some cases, industry consensus standard methods may be more appropriate than the methods listed. In view of this, we are proposing to remove the specific method lists from 40 CFR 98.34 and to amend 40 CFR 98.34(a)(6) and (b)(1)(i)(A), delete paragraph (b)(4), redesignate paragraph (b)(5) as (b)(4), and amend newly designated paragraph (b)(4). These proposed amendments would allow the owner or operator to either: (1) Use appropriate methods published by consensus standards organizations such as ASTM, ASME, API, AGA, ISO, etc.; or (2) use industry standard practice. The methods used would be documented in the monitoring plan under 40 CFR 98.3(g)(5).

CO_2 Monitor Span Values. The Tier 4 calculation method in 40 CFR 98.33(a)(4) requires a CO_2 concentration monitor and a stack gas flow rate monitor to measure CO_2 mass emissions. The CO_2 monitor must be certified and quality-assured according to one of the following: 40 CFR Part 60, 40 CFR Part 75, or an applicable State CEM program. When the Part 60 option is selected, one of the required quality assurance (QA) tests of the CO_2 monitor is a cylinder gas audit (CGA). The CGA checks the response of the CO_2 analyzer at two calibration gas concentrations, *i.e.,* one between 5 and 8 percent CO_2 and one between 10 and 14 percent CO_2. These CO_2 concentration levels are appropriate for most stationary combustion applications. For example, a typical span value for a CO_2 monitor installed on a coal-fired boiler is 20 percent CO_2; therefore, the CGA concentrations represent 25 to 40 percent of span and 50 to 70 percent of span. However, when CO_2 emissions from an industrial process (*e.g.,* cement manufacturing) are combined with combustion CO_2 emissions, the resultant CO_2 concentration in the stack gas can be substantially higher than for the combustion emissions alone. In such cases, a span value of 30 percent CO_2 (or higher) may be required.

When the CO_2 span exceeds 20 percent CO_2, the CGA concentrations specified in Part 60 only evaluate the lower portion of the measurement scale and are no longer representative. Therefore, we are proposing to amend 40 CFR 98.34(c) by adding a new paragraph (c)(6), which would allow the CGAs of a CO_2 monitor to be performed using calibration gas concentrations of 40 to 60 percent of span and 80 to 100 percent of span, when the CO_2 span value is set higher than 20 percent CO_2.

CEMS Data Validation. The Tier 4 methodology in 40 CFR 98.33(a)(4) requires the use of CEMS to measure CO_2 mass emissions. For each unit operating hour, the CO_2 mass emissions are determined using either valid CEMS data or appropriate substitute data values when monitors malfunction. For a Tier 4 unit, the owner or operator has the option to follow the CEMS certification and QA provisions of 40 CFR Part 60, 40 CFR Part 75, or an applicable State CEM program. This includes the criteria in those regulations pertaining to validation of the hourly CEMS data.

The provisions for hourly CEMS data validation in Part 60 are found in 40 CFR 60.13(h)(2)(i) through (h)(2)(vi). For Part 75, hourly data validation is addressed in 40 CFR 75.10(d)(1). The CEMS data validation criteria in these sections of Parts 60 and 75 are virtually identical. The basic requirement to validate an hour is that at least one data point must be obtained in each 15-minute quadrant of the hour in which the unit operates. There is one notable exception to this. For operating hours in which required maintenance or QA testing is performed, obtaining a valid data point in two of the four quadrants is sufficient.

In subpart C, 40 CFR 98.34(c) provides the monitoring and QA requirements for Tier 4. However, no criteria for hourly CEMS data validation are specified. In view of this, we are proposing to add a new paragraph, (c)(7), to 40 CFR 98.34(c), which would require hourly CEMS data validation to be consistent with the sections of Part 60 or Part 75 cited in the preceding paragraph. Alternatively, the hourly

data validation procedures in an applicable State CEM program could be followed.

Use of ASTM Methods D7459–08 and D6866–08. Sections 98.34(d) and (e) of subpart C, respectively, outline procedures for quantifying biogenic CO_2 emissions for units that combust municipal solid waste (MSW) and other units that combust combinations of fossil fuels and biomass. As specified in Part 98, flue gas samples are taken quarterly using ASTM Method D7459–08 and analyzed using ASTM Method D6866–08. We are proposing to amend 40 CFR 98.34(d) and (e), as discussed in the following paragraphs.

The proposed amendments to 40 CFR 98.34(d) would require the ASTM methods to be used when MSW is combusted in a unit, either as the primary fuel, or as the only fuel with a biogenic component. Quarterly sampling with ASTM Method D7459–08 would still be required, for a minimum of 24 consecutive operating hours. However, we are proposing to add an alternative to allow the owner or operator to collect an integrated sample by extracting a small amount of flue gas (1 to 5 cubic centimeters (cc)) during every unit operating hour in the quarter, in order to obtain a more representative sample for analysis. This sampling approach is recommended by experts on the use of ASTM Methods D7459–08 and D6866–08 when the types of fuel and their composition are variable over time, as is the case with MSW combustion. For more information please refer to the Background Technical Support Document (EPA–HQ–OAR–2008–0508).

We are proposing to amend 40 CFR 98.34(e) to remove the restriction limiting the use of ASTM Methods D7459–08 and D6866–08 to units with CEMS. Rather, any unit that combusts combinations of fossil and biogenic fuels (or partly biogenic fuels, such as tires), in any proportions, would be allowed to determine biogenic CO_2 emissions using the ASTM methods on a quarterly basis. At least 24 consecutive hours of sampling is currently specified in 40 CFR 98.34(e). This is appropriate if the types of fuels and their relative proportions are consistent throughout the quarter. If the relative proportions are not consistent throughout the quarter, it may be more appropriate to consider collecting more frequent samples, however this is not required. Therefore, we are also amending 40 CFR 98.34(e) to recommend that a small (1 to 5 cc) flue gas sample be taken during each unit operating hour in the quarter.

Electronic Data Reporting and Recordkeeping. EPA will rely on Agency verification of the electronic data provided in the annual GHG emission reports, in lieu of implementing third party verification. In order for Agency verification to be effective, sufficient information must be included in the electronic reports, at the facility, source category, and unit levels, to enable EPA to recalculate the reported GHG emissions and to quality-assure the data.

Section 98.36 of subpart C provides several lists of data elements that must be reported for stationary combustion units. These lists are specific to the CO_2 emissions calculation method employed (*e.g.,* one of the four Tiers in 40 CFR 98.33(a) or a method in 40 CFR Part 75), and to the type(s) of electronic data report(s) that are submitted (*e.g.,* individual unit reports, aggregated group reports, common pipe reports, etc).

EPA has begun developing software to check and verify the electronic data in the GHG emissions reports. As this effort has progressed, it has come to light that a number of important data elements are missing from the lists in 40 CFR 98.36, and that some of the data elements on the lists are either not needed or require an excessive amount of non-essential data to be reported.

To address these issues, we are proposing to amend the data element lists in 40 CFR 98.36 by adding a number of essential data elements and eliminating or modifying others. The most significant revisions to the data element lists are discussed in paragraphs (a) through (g), below. We are also proposing to add an additional alternative reporting option to 40 CFR 98.36(c) to reduce the reporting burden for certain facilities. This option is described in paragraph (h), below.

(a) We are proposing to add the reporting of methodology start and end dates in several places throughout 40 CFR 98.36(b), (c), and (d). These data elements are needed to accommodate changes in the methods used to calculate GHG emissions, when such changes occur during a reporting year or from one year to the next.

(b) We are proposing to amend the data element lists in 40 CFR 98.36 to be consistent with respect to reporting of emissions by fuel type and reporting of biogenic CO_2 emissions.

(c) We are proposing to amend 40 CFR 98.36(b)(10) to remove the requirement to report the customer meter number for units that combust natural gas.

(d) We are proposing to amend a number of data elements to reduce the reporting burden. For example, when small combustion units are aggregated into a group, 40 CFR 98.36(c)(1)(ii) currently requires the ID number of each unit in the group to be reported. This requirement is unreasonable for facilities that have large numbers of very small combustion sources, many of which do not have unique ID numbers. We are, therefore, proposing to amend this data element to require that only the total number of units in the group be reported, instead of the ID number of each unit in the group. As a second example, for the common pipe option described in 40 CFR 98.36(c)(3), only the total number of units served by the common pipe would be reported, instead of reporting an ID number for each unit, and only the highest maximum rated heat input capacity of any unit served by the common pipe would be reported, rather than reporting the rated heat input capacity of each individual unit.

(e) We are proposing to amend 40 CFR 98.36 to remove the requirement to report the combined annual GHG emissions from fossil fuel combustion in metric tons of CO_2e (*i.e.,* the sum of the CO_2, CH_4, and N_2O emissions) from 40 CFR 98.36(b)(9), (c)(1)(ix), (c)(2)(viii), and (c)(3)(viii). These data elements are duplicative of requirements in subpart A.

(f) We are proposing to amend 40 CFR 98.36(b), (c), and (d) to require reporting the fuel-specific annual heat input estimates, for the purpose of verifying the reported CH_4 and N_2O emissions. Also, we are proposing to amend 40 CFR 98.36(e)(2)(iv) to require reporting of the annual average HHV when measured HHV data are used to calculate CH_4 and N_2O emissions for a Tier 3 unit, in lieu of using a default HHV from Table C–1.

(g) We are proposing to amend 40 CFR 98.36(b) and (d) to make the data elements reported under Tiers 1 through 4 consistent for the reporting of biogenic CO_2 emissions and CO_2 from fossil fuel combustion. Also, as previously noted in section III.C of this preamble, the proposed amendments to 40 CFR 98.36(d) would state that reporting of biogenic CO_2 emissions is optional for units using the CO_2 mass emissions calculation methods in 40 CFR Part 75.

(h) For units that use the Tier 4 methodology to calculate CO_2 mass emissions, we are proposing to amend 40 CFR 98.36(b)(7)(i) and (b)(7)(ii) (redesignated as 40 CFR 98.36(b)(9)(i) and (b)(9)(ii), respectively) and 40 CFR 98.36 (c)(2)(vi) (redesignated as 40 CFR 98.36 (c)(2)(viii)). The proposed amendments to these sections will require the annual "non-biogenic" CO_2 mass emissions to be reported instead of reporting the annual CO_2 mass emissions from fossil fuel combustion.

These revisions are being proposed because the total annual CO_2 mass emissions measured by CEMS sometimes includes CO_2 from sorbent or process CO_2 emissions in addition to CO_2 from fossil fuel combustion. The effect of the proposed amendments would be to simplify reporting for Tier 4 units that have sorbent or process CO_2 emissions in the flue gas stream. These units would be required only to report the combined annual non-biogenic CO_2 mass emissions, rather than having to separately account for the fossil CO_2 emissions. Tier 4 units that do not have any sorbent or process CO_2 emissions in the flue gas would be unaffected by these proposed revisions, because their non-biogenic CO_2 emissions are entirely from fossil fuel.

(i) We are proposing to add a new alternative reporting option, under 40 CFR 98.36(c)(4). This new option would apply to specific situations where a common liquid or gaseous fuel supply is shared between large combustion units such as boilers or combustion turbines (including Acid Rain Program units and other combustion units that use the methods in 40 CFR Part 75 to calculate CO_2 mass emissions), and small combustion sources such as space heaters, hot water heaters, etc. In such cases, you could simplify reporting by attributing all of the GHG emissions from combustion of the shared fuel to the large combustion unit(s), provided that:

- The total quantity of the shared fuel supply that is combusted during the report year is measured, either at the "gate" to the facility or at a point inside the facility, using a fuel flow meter, a billing meter or tank drop measurements; and
- On an annual basis, at least 95 percent of the shared fuel supply (by mass or volume) is burned in the large combustion unit(s) and the remainder of the fuel is fed to the small combustion sources.

Use of company records would be allowed to determine the percentage distribution of the shared fuel to the large and small units. Facilities using this reporting option would be required to document in their monitoring plan which units share the common fuel supply and the method used to determine that the reporting option applies. For the small combustion sources, a description of the type(s) and approximate number of units involved would suffice.

(j) Finally, we are proposing to simplify the record keeping requirements in 40 CFR 98.36(e)(2)(iii), in cases where the results of fuel analyses for HHV are provided by the fuel supplier. Parallel language would be added in a new paragraph, (e)(2)(v)(E), for the results of carbon content and molecular weight analyses received from the fuel supplier. In both cases, the owner or operator would be required to keep records of only the dates on which the fuel sampling results are received, rather than keeping records of the dates on which the supplier's fuel samples were taken (which dates may not be readily available).

We believe that these proposed amendments to the recordkeeping and reporting requirements of 40 CFR 98.36 are needed for data verification purposes. The proposed amendments are not likely to increase the reporting burden on industry. In some cases, as previously noted, the proposed amendments would actually reduce the amount of information that must be collected or reported and the associated burden.

Common Stack Reporting Option. Section 98.36(c)(2) of subpart C currently allows Subpart C stationary fuel combustion units that share a common stack or duct to use the Tier 4 Calculation Methodology to monitor and report the combined CO_2 mass emissions at the common stack or duct, in lieu of monitoring each unit individually. However, 40 CFR 98.36(c)(2) does not address circumstances where at least one of the units sharing the common stack is not a Subpart C stationary fuel combustion unit, but is subject to another subpart of Part 98. For example, if a Subpart G ammonia manufacturing unit shares a common stack with a Subpart C stationary combustion unit, the use of Tier 4 may be required (*see* 40 CFR 98.73(c)).

In view of this, we are proposing to amend 40 CFR 98.36(c)(2) by extending the applicability of the common stack monitoring and reporting option to situations where off-gases from multiple process units or mixtures of combustion products and process off-gases are combined together and vented through a common stack or duct.

The proposed amendments to 40 CFR 98.36(c)(2) would not only apply to ordinary common stack or duct situations where the gas streams from multiple units are combined together, but would also apply when process and combustion gas streams from a single unit (*e.g.,* from a kiln, furnace, or smelter) are combined. To accommodate this variation on the traditional concept of a common stack, 40 CFR 98.36(c)(2)(ii) would be amended to require sources to report "1" as the "Number of units sharing the common stack or duct" when process and combustion emissions from a single unit are combined and vented through the same stack or duct.

Finally, since the concept of maximum rated heat input capacity may not be applicable to certain types of process or manufacturing units, we are proposing to amend 40 CFR 98.36(c)(2)(iii), to require that the "Combined maximum rated heat input capacity of the units sharing the common stack or duct" only be reported when all of the units sharing the common stack or duct are stationary fuel combustion units.

Common Fuel Supply Pipe Reporting Option. Section 98.36(c)(3) of subpart C currently allows units that are served by a common fuel supply pipe to report the combined CO_2 emissions from all of the units in lieu of reporting CO_2 emissions separately from each unit. To use this reporting option, the total amount of fuel combusted in the units must be accurately measured with a flow meter calibrated according to the requirements in 40 CFR 98.34. Section 98.36(c)(3) also states that the applicable Tier to use for this reporting option is based on the maximum rated heat input of the largest unit in the group.

We are proposing to amend 40 CFR 98.36(c)(3) as follows. First, the erroneous citation of "§ 98.34(a)" would be corrected to read "§ 98.34(b)." Second, we are proposing to amend the requirement in 40 CFR 98.36(c)(3) to calibrate the fuel flow meter to the accuracy required by 40 CFR 98.34(b) (which cross-references the accuracy specifications in 40 CFR 98.3(i)), so that this calibration requirement would apply only when Tier 3 is the required tier for calculating CO_2 mass emissions. The Agency believes that this clarification is needed, since the common pipe option can apply to Tier 1, 2, or 3, depending on the rated heat input capacities of the units served by the common pipe. Tiers 1 and 2 rely on company records to quantify fuel usage. Therefore, as noted in today's proposed amendments to 40 CFR 98.3(i), the equipment used to generate company records under Tier 1 and 2 is not required to meet the calibration accuracy specifications of 40 CFR 98.3(i).

As previously noted, the applicable measurement Tier for the common pipe option, according to subpart C, is based on the rated heat input capacity of the largest unit in the group. On the surface, this appears to mean that the use of Tiers 1 and 2 is restricted to common pipe configurations where the highest rated heat input capacity of any unit is

250 mmBtu/hr or less, and that Tier 3 is required if any unit has a maximum rated heat input capacity greater than 250 mmBtu/hr. In general, this is true. However, there is one exception in the current rule and we are proposing to add a second one. First, 40 CFR 98.33(b)(2)(ii) allows the use of Tier 2 instead of Tier 3 for the combustion of natural gas and/or distillate oil in a unit with a rated heat input capacity greater than 250 mmBtu/hr. Second, proposed 40 CFR 98.33(b)(1)(v) would allow Tier 1 to be used when natural gas consumption is determined from billing records, and fuel usage on those records is expressed in units of therms. Therefore, we are also proposing to amend 40 CFR 98.36(c)(3) to reflect these two exceptions for common pipe configurations that include a unit with a maximum rated heat input capacity greater than 250 mmBtu/hr.

Finally, we are proposing to amend the provision in 40 CFR 98.36(c)(3) regarding the partial diversion of a fuel stream such as natural gas that is measured "at the gate" to a facility, (*e.g.,* using a calibrated flow meter or a gas billing meter). Subpart C specifies that when part of a fuel stream is diverted to a chemical or industrial process where it is used but not combusted, and the remainder of the fuel is sent to a group of combustion units, you may subtract the diverted portion of the fuel stream from the total quantity of the fuel measured at the gate before applying the common pipe methodology to the combustion units. We are proposing to expand this provision to include cases where the diverted portion of the fuel stream is sent either to a flare or to another stationary combustion unit (or units) on-site, including units that use Part 75 methodologies to calculate annual CO_2 mass emissions (*e.g.,* Acid Rain Program units). Provided that the GHG emissions from the flare and/or other combustion unit(s) are properly accounted for according to the applicable subpart(s) of Part 98, you would be allowed to subtract the diverted portion of the fuel stream from the total quantity of the fuel measured at the gate, and then apply the common pipe reporting option to the group of combustion units served by the common pipe, using the Tier 1, Tier 2, or Tier 3 calculation methodology (as applicable).

Table C–1. Table C–1 of Subpart C provides default HHV values and default CO_2 emission factors for various types of fuel. These default values are needed to calculate CO_2 mass emissions when the Tier 1 and Tier 2 methodologies in 40 CFR 98.33(a) are used. The fuels listed in Table C–1 are grouped into general categories (*e.g.,* coal and coke, petroleum products, biomass fuels). Some distinctions are made within these categories, based on the state of matter (*e.g.,* biomass fuels—liquid, fossil fuel-derived fuels (solid), etc.).

Since publication of the final Part 98, EPA has received many questions about the content and structure of Table C–1. Owners and operators in various industries have raised a number of issues concerning the way that fuels are categorized, the description of certain fuels, the units of measure of some of the default HHV values, and the absence of some fuels that were listed in Table C–2 of the April 10, 2009 proposed rule. In particular:

(a) The categories "fossil fuel-derived fuels (solid)" and "fossil fuel-derived fuels (gaseous)" did not appear in the April 10, 2009 proposed rule and have been the source of some confusion. For instance, only two fuels, MSW and tires, are listed under "fossil fuel-derived fuels (solid)," and neither of these is derived entirely from fossil fuels. Both of these fuels have a biogenic component. There are also only two fuels, blast furnace gas and coke oven gas, listed in the "fossil fuel-derived fuels (gaseous)" category. Several other fuels that are derived from petroleum and qualify as fossil fuel-derived gaseous fuels (*e.g.,* still gas) are listed in a different category, "petroleum products."

(b) Questions have arisen about the revised description of "natural gas" in Table C–1. The word "pipeline," which was not in the April 10, 2009 proposed rule, was added in the final subpart C.

(c) The Agency has received questions about the meaning of the terms "wood residuals," "solid byproducts," and "agricultural byproducts," none of which appeared in the April 10, 2009 proposed rule.

(d) Questions have been asked why certain fuels that were listed in Table C–2 of the April 10, 2009 proposed rule do not appear in Table C–1. These include waste oil and plastics.

(e) Owners and operators have questioned the appropriateness of the units of measure for still gas listed under "petroleum products." The HHV for still gas, which is in the gaseous state at ambient temperatures, is given in mmBtu per gallon, as though it were in the liquid state.

(f) Some industry questions indicate that reporters believe that the footnote beneath Table C–1 appears to prohibit MWC units that produce steam from using the default CO_2 emission factor in the Table. This emission factor is needed to apply the Tier 2 CO_2 emissions calculation methodology (specifically, Equation C–2c) to those units.

(g) EPA has received questions regarding the significance of indicating one hundred percent for ethanol and biodiesel, as well as questions regarding which emission factors to use for petroleum-derived ethanol.

In view of these considerations, we are proposing the following revisions to Table C–1:

- The categories "fossil fuel-derived fuels (solid)" and "fossil fuel-derived fuels (gaseous)" would be replaced with more inclusive terms, i.e., "other fuels (solid)" and "other fuels (gaseous)." The "other fuels (solid)" category would include four fuels: Plastics, municipal solid waste, tires, and petroleum coke. The "other fuels (gaseous)" category would include blast furnace gas, coke oven gas, propane gas, and fuel gas.
- The word "pipeline" would be removed from the description of natural gas.
- The following fuels: "wood residuals," "agricultural byproducts," and "solid byproducts" would be retained, but definitions of these terms would be added to 40 CFR 98.6.
- "Waste oil" would be added to the list of petroleum products, and a definition would be added to 40 CFR 98.6.
- Still gas would be removed from the list of petroleum products.
- The footnote regarding MWC units would be revised to make it clear that MWC units that produce steam are only prohibited from using the default HHV for MSW in Table C–1; MWC units that produce steam can still use the default CO_2 emission factor for MSW.
- The qualifier of one hundred percent for ethanol and biodiesel would be removed since these fuel types should be treated in the same way as other fuel types included in Table C–1. Removing this qualifier would clarify this without affecting any other provisions the rule.
- A default CO_2 emission factor and a default high heat value would be added to the Table for petroleum-derived ethanol. These would be the same as the default values for biomass-derived ethanol.

We are soliciting comment on these proposed amendments to Table C–1. Specifically, we request comment on: (1) The new and revised fuel categories; (2) the appropriateness of the HHVs and CO_2 emission factors for the fuels listed in these categories; and (3) whether additional fuels should be included in Table C–1, and if so, what the HHVs and CO_2 emission factors for those fuels should be.

Table C–2. In the October 30, 2009 publication of Part 98, two essentially identical iterations of Table C–2 of Subpart C were printed. The first iteration of Table C–2 was a printing error. We are proposing to remove the first iteration of the Table and to make minor corrections to the second one. The proposed amendments consist of correcting the exponents of the emission factors. The powers of ten in the right-hand column of the Table currently have an "underscore" character where there should be a minus sign, and one of the exponents is missing a zero.

Miscellaneous Proposed Revisions. In addition to the more substantive proposed amendments to Subpart C, we are proposing to correct a number of typographical errors, and to re-word the rule text in a few places for added clarity. We are also proposing to amend 40 CFR 98.34(c) by adding the citations from 40 CFR Part 75 that pertain to the initial certification of Tier 4 moisture monitoring systems. Although these rule citations were inadvertently omitted from the October 30, 2009 publication of Part 98, we believe that Tier 4 sources understand that *all* required CEMS, including moisture monitoring systems, must be initially certified.

How Would These Amendments to Subpart C Apply to the 2011 GHG Emissions Reports? EPA plans to address the comments on the proposed amendments to Subpart C and to publish the final amendments before the end of 2010. Therefore, reporters would be expected to use provisions of Part 98, as amended, to collect the relevant data and to calculate GHG emissions for the reports that are submitted in 2011. We believe it is feasible for the sources to use the proposed changes to Subpart C for the 2010 reporting year, because the proposed revisions, to a great extent, simply clarify existing regulatory requirements. Further, the proposed amendments do not substantially affect the type of information that must be collected or how emissions are calculated.

The following are examples of how the proposed amendments to Subpart C would clarify existing regulatory requirements. The amendments would clarify:

- That reporting of biogenic CO_2 emissions is optional for units using the CO_2 mass emissions calculation methodologies in 40 CFR Part 75.
- How CH_4 and N_2O emissions are calculated for multi-fuel units that use the Tier 4 CO_2 mass emissions calculation methodology.
- How to determine whether Tier 4 applies to various common stack configurations.
- How to determine which Tier (*i.e.,* 1, 2, or 3) applies to common pipe configurations.
- How to calculate biogenic emissions for various types of units and fuels. Unnecessary restrictions on the use of certain calculation methods would be removed.
- How to apply the definition of a "fuel lot" at facilities that receive frequent deliveries of coal or fuel oil.
- How to calculate CO_2, CH_4, and N_2O emissions for blended fuels.

The proposed amendments to 40 CFR 98.36, the data reporting section of Subpart C, would achieve two main purposes: (1) To ensure that enough data are provided to enable the Agency to recalculate and verify the emissions data; and (2) to reduce burden, by removing the requirement to report certain non-essential data elements and by modifying other data elements.

For example, the proposed amendments would:

- Require methodology start and end dates to be reported. This will enable us to track changes in emissions calculation methodologies (e.g., switching from a lower Tier to a higher Tier).
- Generally require reporting of fuel-specific CH_4 and N_2O emissions. This requirement was inconsistently applied in Part 98.
- Eliminate the need to report individual unit ID numbers and unit heat input capacities for groups of aggregated units, common pipe configurations, and common stack configurations.
- Remove the unnecessary requirement to report unit-level combined CO_2, CH_4, and N_2O emissions from fossil fuel combustion.
- Remove the requirement for natural gas users to report their customer meter ID numbers.
- Emphasize that biogenic CO_2 emissions reporting is optional for Part 75 units.

EPA believes that amendments such as these can be implemented for the reports submitted to EPA in 2011 because the proposed changes are either consistent with or have no significant effect upon the calculation methodologies in Part 98. Since owners or operators are not required to report until March 2011, which is several months after we expect this proposal to be finalized, sources should have sufficient time to adjust to the revisions.

Several other proposed amendments to Subpart C address issues identified as a result of working with the affected sources during rule implementation. These proposed amendments would add flexibility to the rule. Owners or operators would be free to implement these new rule provisions once they are finalized. The following are examples of how today's proposed Subpart C amendments would make the rule more flexible. The proposed amendments would:

- Allow fuel flow meters that measure on a mass basis to be used for gaseous fuels as well as liquid fuels, provided that the flow rate measurements are corrected for density.
- Allow the span of CO_2 monitors to be set higher than 20 percent CO_2 if necessary, when process CO_2 and combustion CO_2 emissions exit to the atmosphere through a common stack.
- Allow the use of site-specific default moisture values for Tier 4 units that measure CO_2 concentration on a dry basis.
- Provide a new Tier 1 equation for calculating CO_2 mass emissions when fuel usage data obtained from gas billing records is expressed in units of therms.
- Allow smaller Tier 2 units (less than 100 mmBtu/hr) that receive monthly (or more frequent) HHV data to use an arithmetic average annual HHV in the emissions calculations instead of a fuel-weighted average HHV.
- Allow Tier 4 units to use an alternative (non-CEMS) method to account for the volumetric flow rate of a slip stream, when a portion of the flue gas is diverted and exhausts through a separate stack.
- Allow fuel oil sampling to be performed upon each addition of oil to the storage tank, as an alternative to sampling each fuel lot.
- Remove the lists of specific methods for determining HHV and carbon content and for fuel flow meter calibration, and specify instead that sources must either use appropriate methods from consensus standards organizations if such methods exist, or standard industry practice.
- Add a new reporting option for configurations in which a common supply of gaseous or liquid fuel is shared between large combustion units and a group of smaller units such as space heaters, hot water heaters, etc. If at least 95 percent of the shared fuel is used by the large units, 100 percent of the GHG emissions from combustion of that fuel may be attributed to the large units.

In some cases, facilities may have been following their current data collection practices during 2010, as well as using the methods required by Part 98. If a facility's current practice provides the necessary data to implement the new options described immediately above, or if such data could be obtained and processed prior

to the March 31, 2011 reporting deadline, the new options could be used for the reports submitted to EPA in 2011.

Finally, the proposed amendments would make minor corrections to terms and definitions in certain Subpart C equations, and other technical corrections that would have no impact on facility's data collection efforts in 2010.

In summary, EPA believes that, in general, the proposed amendments to Subpart C would not require monitoring or information collection above what is already required by Part 98. Therefore, we expect that sources will be able to use the same information that they have been collecting under Part 98 to calculate and report GHG emissions for 2010.

EPA seeks comment on its conclusion that the amendments to Subpart C can be implemented and incorporated into the initial GHG emissions reports by the due date of March 31, 2011. Specifically, we seek comment on whether this timeline is feasible or appropriate, considering the nature of the proposed changes and the way in which data have been collected thus far in 2010. We request that commenters provide specific reasons why they believe that the proposed implementation schedule would or would not be feasible.

H. Subpart D (Electricity Generation)

We are proposing to amend 40 CFR 98.40(a) by adding the word "mass" between the words "CO_2" and "emissions" to make it clear that Subpart D applies only to units in two categories: (a) ARP units; and (b) non-ARP electricity generating units (EGUs) that are required to report CO_2 mass emissions data to EPA year-round. At present, category "(b)" includes only non-ARP units that are subject to the Regional Greenhouse Gas Initiative (RGGI) in the northeastern United States.

Many non-ARP EGUs that are not in the RGGI are subject to the Clean Air Interstate Rule (CAIR). Some of these CAIR units report *CO_2 concentration* data to EPA year-round, for the purposes of calculating NO_X emission rates in lb/mmBtu and/or heat input rates in mmBtu/hr. However, they do not report *CO_2 mass* emissions data to the Agency. Therefore, they are subject to Subpart C of Part 98, not Subpart D.

Data Reporting Requirements. Section 98.46 of subpart D currently specifies that the owner or operator of a Subpart D unit must comply with the data reporting requirements of 40 CFR 98.36(b) and, if applicable, 40 CFR 98.36(c)(2) or (c)(3). These section citations are incorrect. Subpart D units all use the CO_2 mass emissions calculation methodologies in 40 CFR Part 75. Therefore, the applicable data reporting section for these units is 40 CFR 98.36(d), not 40 CFR 98.36(b), 40 CFR 98.36(c)(2), or 40 CFR 98.36(c)(3). We are proposing to amend 40 CFR 98.46 to correct this error.

Recordkeeping. We are proposing to amend 40 CFR 98.47 to state that the records kept under 40 CFR 75.57(h) for missing data events satisfy the recordkeeping requirements of 40 CFR 98.3(g)(4) for those same events. We believe that, as a practical matter, the missing data records required to be kept under 40 CFR 75.57(h) are substantially equivalent to the records required under 40 CFR 98.3(g)(4).

I. Subpart F (Aluminum Production)

Throughout Subpart F we are proposing corrections as needed for typographical errors and alphanumeric sequencing. We are proposing to amend 40 CFR 98.63, Calculating GHG Emissions, to clarify that each perfluorocarbon (PFC) compound (CF_4, C_2F_6) must be quantified and reported and to clarify in 40 CFR 98.63(c) that reporters must use CEMS if the process CO_2 emissions from anode consumption during electrolysis or anode baking of prebake cells are vented through the same stack as a combustion unit required to use CEMS. This requirement existed in the final rule, however, the cross-reference was omitted from the introductory language of 40 CFR 98.63(c).

We are proposing to amend 40 CFR 98.64, Monitoring and QA/QC, to clarify the type of parameters that must be measured in accordance with the recommendations of the EPA/IAI Protocol for Measurement of Tetrafluoromethane (CF_4) and Hexafluoroethane (C_2F_6) Emissions from Primary Aluminum Production (2008), and the frequency of monitoring for those parameters which are not measured annually, but are instead measured on a more or less frequent basis. We are proposing a modification to Table F–2 to clarify that default CO_2 emissions from pitch volatiles combustion are relevant only for center work pre-bake (CWPB) and side work pre-bake (SWPB) technologies.

We are also proposing to amend Table F–1 to spell out the acronyms for the technologies covered by that table; *i.e.,* CWPB, side worked prebake (SWPB), vertical stud Søderberg (VSS), and horizontal stud Søderberg (HSS).

J. Subpart G (Ammonia Manufacturing)

We are proposing to amend subpart G to remove reporting of the waste recycle stream or purge, and to make subpart G conform to the proposed amendments to the calibration requirements in Subpart A. With respect to the waste recycle stream, we are proposing to eliminate the calculation, monitoring and reporting of the emissions associated with the waste recycle stream or purge currently required by Equation G–6 from 40 CFR 98.73, 98.74, 98.75, and 98.76. Carbon dioxide emissions from waste recycle stream or purge gas used as fuel will still be accounted for accurately using Equation G–5 in Subpart G. Because total process emissions, calculated using Equation G–5, will also account for emissions associated with use of the purge gas as a fuel, we are proposing to amend 40 CFR 98.72(b) so that subpart C does not apply to CO_2 emissions resulting from the use of purge gas as a fuel.

With respect to calibration requirements, we are proposing to clarify the calibration requirements for gas and oil flow meters used in the ammonia manufacturing process. Section 98.74(d) of subpart G currently states that all oil and gas flow meters except for gas billing meters must be calibrated according to the requirements for the Tier 3 methodology in 40 CFR 98.34(b). The Agency believes that the words "all oil and gas flow meters" in this subpart G provision are too inclusive and subject to misinterpretation. Therefore, we are proposing to amend 40 CFR 98.74(d) to limit the flow meter calibration accuracy requirements of 40 CFR 98.3(i)(2) and (i)(3) to only meters that are used to measure liquid and gaseous feedstock volumes. In accordance with 40 CFR 98.3(i)(1), each measurement device that is not used to measure liquid and gaseous feedstock volumes, but is used to provide data for the GHG emissions calculations would have to be calibrated to an accuracy within the appropriate error range for the specific measurement technology, based on an applicable operating standard, such as the manufacturer's specifications.

We are proposing to note through parentheticals in a number of places that the CO_2 emissions estimates may include CO_2 that is later consumed on-site for urea production and therefore not released to the atmosphere from the ammonia manufacturing process unit. This proposed change does not impact the total CO_2 emissions that are quantified and reported to EPA under the calculation equations in 40 CFR 98.73. The clarification is proposed so

that it is transparent for stakeholders who ultimately use these data that some CO_2 process emissions reported by the ammonia manufacturing process unit under this subpart may not be released from ammonia manufacturing, but at the point of urea application. To further enhance this transparency, EPA is also proposing to require reporting under 40 CFR 98.76 of the CO_2 from the ammonia manufacturing process unit that is then used to produce urea and the method used to determine that quantity of CO_2 consumed.

In addition, we are proposing to amend Subpart G to correct several typographical errors and an incorrect cross-reference to another subpart in Part 98. We are proposing to correct the terms and definitions for annual CO_2 emissions arising from gaseous, liquid, and solid fuel feedstock consumption in Equations G–1, G–2, and G–3, respectively, in 40 CFR 98.73. We are proposing to correct 40 CFR 98.76(a) by changing the cross-reference from "§ 98.37(e)(2)(vi)" to "§ 98.37."

We are proposing to amend the data reporting requirements in 40 CFR 98.76(b)(6) and (15) for consistency with the calculation procedures in 40 CFR 98.73(b)(6). We are proposing to amend 40 CFR 98.76(b)(6) to change "petroleum coke" to "feedstock" because petroleum coke is the incorrect term, and to amend 40 CFR 98.76(b)(15) to specify that the carbon content analysis method being reported is for each month.

We are proposing to remove 40 CFR 98.76(b)(17) for the reporting of urea produced, if known. EPA finalized reporting of this information to help improve methodologies for calculating emissions from ammonia manufacturing, urea production and urea consumption. Reporters stated that these data are already reported periodically to EPA under the Toxic Substances Control Act (TSCA) Inventory Update Rule (IUR). Although the TSCA IUR does not provide the full range of information that may ultimately be useful for informing future policy, EPA believes that the TSCA IUR provides adequate information at this time and, therefore, we are proposing to delete that requirement.

Finally, 40 CFR part 98, subpart G (Ammonia Manufacturing) and subpart V (Nitric Acid Production) require that facilities report total pounds of synthetic fertilizer and total nitrogen contained in that fertilizer. After considering additional information provided by stakeholders, as well as other available information, we are proposing to remove the requirement from both subparts. EPA's rationale for removing the requirement is as follows

(i) The data that would be reported under these subparts do not provide directly applicable information with which to determine N_2O emissions from application of fertilizer because the data are incomplete. Domestic producers of synthetic nitrogen-based fertilizer make up less than one-half of the total amount of synthetic nitrogen-based fertilizer used in the United States. The remaining share is made up by synthetic nitrogen-based fertilizer imports, as well as fertilizer produced domestically outside of the Nitric Acid and Ammonia production industries using imported ammonia and nitric acid.

(ii) EPA has information on the total supply and use of synthetic nitrogen-based fertilizer from other data sources that addresses near-term analytical needs, particularly for calculating national emissions of N_2O. We obtain current sales data from Association of American Plant Food Control Officials (AAPFCO). The sales data is equivalent to fertilizer application since the sales are from the last licensed dealer.

EPA remains very interested in obtaining better data on N_2O emissions. Nitrous oxide emissions from agricultural soils are an important source of greenhouse gas emissions in the United States (approximately 3 percent in 2008), and the application to soils of synthetic nitrogen-based fertilizer represents 26 percent of total N_2O emissions from this source.

EPA will continue to assess the need for a fertilizer reporting requirement from domestic producers in the future in light of new information or identification of policy or program needs. Further, EPA recognizes that States play an important role in collecting the data EPA currently uses, and the AAPFCO has indicated in a published article that recent stresses on state budgets potentially threaten the continued availability of these data.[3] If data collection is compromised further due to reduced state funding or other circumstances, EPA will need to initiate a fertilizer reporting requirement.

EPA will also assess the need for information on the total supply of synthetic nitrogen-based fertilizer, including imports, production of fertilizer using imported feedstock, domestically-produced fertilizer that is not in the agriculture sector, and fertilizer exports.

Additionally, EPA will also assess the need for other types of information (*i.e.,* not related to fertilizer supply) relevant to determining emissions and assessing mitigation opportunities for N_2O emissions from agricultural soils, consistent with the Clean Air Act. Examples of other types of information that is relevant to N_2O oxide emissions from agricultural soils can be found in the "Technical Support Document for Biologic Process Sources Excluded from this Rule," and include elements such as fertilizer application rates, timing of application, and the use of slow-release fertilizers and nitrification/urease inhibitors (Docket ID No. EPA–HQ–OAR–2008–0508).

If EPA were to decide in the future to add a requirement to report fertilizer production under the Mandatory GHG Reporting Rule, or any other new requirement related to N_2O emissions from agricultural soils, it would initiate a new rulemaking process.

K. Subpart P (Hydrogen Production)

We are proposing several conforming amendments to be consistent with the proposed amendments to the calibration requirements of 40 CFR 98.3(i). Section 98.164(b)(1) of subpart P currently specifies that all oil and gas flow meters (except for gas billing meters), solids weighing equipment, and oil tank drop measurements must be calibrated according to 40 CFR 98.3(i). We are proposing to amend 40 CFR 98.164(b)(1) to make it consistent with today's proposed amendments to 40 CFR 98.3(i). First, we would limit the flow meter calibration accuracy requirements of 40 CFR 98.3(i)(2) and (i)(3) to meters that are used to measure liquid and gaseous feedstock volumes. In accordance with 40 CFR 98.3(i)(1), all other measurement device that are used to provide data for the GHG emissions calculations would have to be calibrated to an accuracy within the appropriate error range for the specific measurement technology, based on an applicable operating standard, such as the manufacturer's specifications. Second, we would remove the requirements for solids weighing equipment and oil tank drop measurements to be calibrated according to 40 CFR 98.3(i), because the provisions of 40 CFR 98.3(i) would apply only to gas and liquid flow meters. For oil tank drop measurements, the QA requirements of 40 CFR 98.34(b)(2) would apply.

L. Subpart V (Nitric Acid Production)

We are proposing to amend 40 CFR 98.226 to remove the synthetic fertilizer and total nitrogen reporting requirement in 40 CFR 98.226(o). The detailed rationale for this proposed amendment is provided in section II.K of this preamble.

[3] D. Terry, 2006. "Fertilizer Tonnage Reporting in the U.S.—Basis and Current Need." *Better Crops.* 90(4). pp 14–17.

M. Subpart X (Petrochemical Production)

Numerous issues have been raised by owners and operators in relation to the requirements in subpart X for petrochemical production facilities. The issues being addressed by the proposed amendments include the following:

- Distillation and recycling of waste solvent.
- Process vent emissions monitored by CEMS.
- Process off-gas combustion in flares.
- CH_4 and N_2O emissions from combustion of process off-gas.
- Molar volume conversion (MVC) factors.
- Methodology for small ethylene off-gas streams.
- Monitoring and QA/QC requirements.
- Reporting requirements under the CEMS compliance option.
- Reporting requirements for the ethylene-specific option.
- Reporting measurement device calibrations.

Distillation and Recycling of Waste Solvent. We are proposing to add a new paragraph 40 CFR 98.240(g) to specify that a process that distills or recycles waste solvent that contains a petrochemical is not part of the petrochemical production source category. Some processes that distill or recycle waste solvents may produce products that contain methanol or another petrochemical. Under the current subpart X, such processes might be considered part of the petrochemical source category because 40 CFR 98.240(a) specifies that all processes that produce a petrochemical are part of the source category unless specifically excluded. Although not specifically excluded in subpart X, we did not intend to include waste solvent purification processes in the petrochemical source category for the following reasons. First, in processes subject to subpart X, the petrochemical is formed from other chemicals, whereas in waste solvent purification processes the petrochemical is not formed because it is present in the feedstock. Second, processes that are in the source category generate significant amounts of process-based GHG emissions as byproducts of reaction and/or from the combustion of process off-gas for energy recovery. In contrast, the only process-based GHG emissions, if any, from waste solvent purification processes are from combustion of organic compounds in process vent emissions that are routed to a combustion-based air pollution control device.

Process vent emissions monitored by CEMS. We are proposing to add a sentence to 40 CFR 98.242(a)(1) that specifies CO_2 emissions from process vents routed to stacks that are not associated with stationary combustion units must be reported under subpart X when you comply with the CEMS option in 40 CFR 98.243(b). Section 98.242(a)(1) in the current subpart X specified that GHG emissions from stationary combustion sources and flares that burn any amount of petrochemical off-gas are to be reported under subpart X. However, we neglected to specify reporting requirements under the CEMS option for process emissions that are not associated with combustion units. The proposed amendment would correct this oversight.

Process off-gas combustion in flares. We are proposing to amend 40 CFR 98.242(b) by removing the reference to flares. Section 98.242(b) in subpart X specifies that CO_2, CH_4, and N_2O combustion emissions from stationary combustion units and flares must be reported. However, the intent of 40 CFR 98.242(b) is to identify only the GHGs from the combustion of supplemental fuels that are to be reported under subpart C. Emissions from the combustion of petrochemical process off-gas in a flare are process-based emissions that are to be reported under subpart X as specified in 40 CFR 98.242(a). Therefore, the reference to flares in 40 CFR 98.242(b) is incorrect and should be removed.

CH_4 and N_2O Emissions From Combustion Of Process Off-Gas. We are proposing to amend 40 CFR 98.243(b) to clarify procedures for calculating CH_4 and N_2O emissions from combustion units that burn petrochemical process off-gas and are monitored with a CO_2 CEMS. Section 98.243(b) in subpart X specifies that CH_4 and N_2O emissions from the non-flare combustion of petrochemical process off-gas are to be calculated using the Tier 3 procedures in subpart C, with the default emission factors for "Petroleum" in Table C–2 of subpart C. This procedure requires the use of equation C–8 to calculate the emissions. One of the inputs for this equation is the default HHV of the fuel, and default values for various fuels are listed in Table C–1 of subpart C. As discussed in section II.H of this preamble, we have added a default HHV for fuel gas in Table C–1, and we have revised the definition of HHV for equation C–8 to allow the use of a site-specific calculated HHV as an alternative to using a default value from Table C–1. Using either a default HHV or a site-specific calculated value is also acceptable when calculating CH_4 and N_2O emissions from the combustion of fuel gas that contains petrochemical process off-gas. Therefore, to clarify this point, we are proposing to add language to 40 CFR 98.243(b) specifying that either the default HHV for fuel gas in Table C–1 or a site-specific calculated HHV is to be used in equation C–8 when calculating CH_4 and N_2O emissions.

For the ethylene-specific option, 40 CFR 98.243(d) in subpart X specifies the same procedures for calculating CH_4 and N_2O emissions from non-flare combustion of process off-gas as in 40 CFR 98.243(b). Therefore, we are proposing the same change to 40 CFR 98.243(d) as noted above for 40 CFR 98.243(b) to clarify that either the default HHV for fuel gas or a site-specific calculated HHV should be used for Tier 3 calculations.

Molar volume conversion (MVC) factors. Owners and operators have requested that allowance be made for alternative standard conditions within the molar volume conversion factor (MVC) used in Equation X–1 in 40 CFR 98.243(c). Equation X–1 of subpart X specified using an MVC of 849.5 scf/kgmole, which converts the volumetric flow from standard cubic feet to kgmoles assuming the standard volume was determined at 68 °F. Exhaust stack volumes are generally corrected using 68 °F as the standard temperature, and some petrochemical producers may also use 68 °F when expressing process volumes at standard conditions. However, we recognize that the oil and gas industry and other hydrocarbon processing facilities commonly express gaseous volumes using 60 °F as the standard temperature. Thus, many existing flow monitors for gaseous feedstocks and products at petrochemical facilities may be programmed to output volumes at standard conditions of 60 °F. It is impractical and unnecessary to either reprogram these monitors to provide volumes corrected to standard conditions at 68 °F or to require reporters to convert the output volumes from one set of standard conditions to another before using Equation X–1 because an alternative MVC can be provided to yield the identical mass emissions from the calculation.

Consequently, we are proposing to amend Equation X–1 to provide two alternative values of MVC that correspond to the two most common standard conditions output by the flow monitors. Additionally, the reporting requirements related to this equation would be amended to include reporting of the standard temperature at which the gaseous feedstock and product volumes were determined (either 60 °F or 68 °F) and to afford verification of the reported emissions.

Methodology for small ethylene off-gas streams. Owners and operators have suggested that EPA should allow the use of alternative calculation methods for small emission sources. Specifically, they have asserted that units subject to only subpart C are allowed to use Tier 1 or Tier 2 for units less than or equal to 250 mmbtu/hr heat input. However, if those same units are at a petrochemical production facility and combusting ethylene process off-gas, they are required to use Tier 3 or Tier 4.

We still believe that it is important to use Tier 3 or Tier 4 for most units that burn ethylene process off-gas because combustion of process off-gas is the primary source of GHG process emissions for ethylene processes, the carbon content may vary among facilities depending on the type of feedstock to the ethylene process units, and the ratio of ethylene process off-gas to other fuels may vary in each fuel gas system.

However, we recognize that some ethylene process off gas that is burned in process heaters or boilers may not enter the fuel gas system and that the lines conveying these off-gas streams may not have flow monitors. For example, 40 CFR part 63, subpart YY, requires control of process vent emissions from ethylene production process units; these streams may be controlled by venting to a process heater or boiler, but subpart YY does not require monitoring of the vent stream flow rate. It was not our intent to require the installation of flow meters on these ancillary gas streams that do not significantly contribute to the overall heat input of the stationary combustion unit. In addition, we recognize that facilities may only meter the primary fuel flow at relatively large combustion units that are subject to emission limitations that are related to the heat input rate. About one-third of the ethylene production capacity is at petroleum refineries, and much of the rest is at large integrated chemical manufacturing facilities. Based on an analysis of process heaters at petroleum refineries (*see* section II.O of this preamble), it appears that process heaters less than 30 mmBtu/hr are often not subject to emission limitations and, therefore, may not have metered flow. Furthermore, such combustion units appear to represent only a small percentage of the total fuel use at refineries. Given the large size of most other chemical manufacturing facilities that make ethylene, it is likely that such combustion units represent only a small percentage of total fuel use at these facilities as well. Thus, easing the Tier 3 monitoring requirements for these small combustion units would reduce the compliance burden without significantly impacting the accuracy of the nationwide GHG emission inventories for ethylene production.

Notwithstanding the above discussion, if a flow meter is installed in the fuel gas line, including any common pipe, then we consider that the Tier 3 monitoring requirements are reasonable and justified. In such cases there will not be a significant burden to use the Tier 3 method, and the reported GHG emissions will be more accurate.

Therefore, we are proposing to amend 40 CFR 98.243(d) to allow the use of Tier 1 or Tier 2 methods for small flows (in cases where a flow meter is not already installed). Specifically, we are proposing that Tier 1 or Tier 2 methods may be used for ethylene process off-gas streams that meet either of the following conditions:

(1) The annual average flow rate of fuel gas (that contains ethylene process off-gas) in the fuel gas line to the combustion unit, prior to any split to individual burners or ports, does not exceed 345 scfm at 60 °F and 14.7 pounds per square inch absolute, psia, and a flow meter is not installed at any point in the line supplying fuel gas or an upstream common pipe; or

(2) The combustion unit has a maximum rated heat input capacity of less than 30 mmBtu/hr, and a flow meter is not installed at any point in the line supplying fuel gas (that contains ethylene process off-gas) or an upstream common pipe.

This amendment would also specify how to calculate the annual average flow rate under the first condition. Specifically, the total flow obtained from company records is to be evenly distributed over 525,600 minutes per year. We are also proposing a number of editorial changes to 40 CFR 98.243(d) to clearly integrate the proposed option with the existing requirements. Finally, we are proposing to amend 40 CFR 98.246(c)(2) and 98.247(c) to add reporting and recordkeeping requirements that are related to the proposed amendments in 40 CFR 98.243(d)(2).

Monitoring Methods for Determining Carbon Content and Composition. Owners and operators have suggested that EPA should not limit the use of gas chromatograph methods for determining the carbon content, composition, and the average molecular weight of feedstocks and products to those methods listed in 40 CFR 98.244(b)(4). We are proposing to add the method, "ASTM D2593–93 (Reapproved 2009) Standard Test Method for Butadiene Purity and Hydrocarbon Impurities by Gas Chromatography," to 40 CFR 98.244(b)(4). Butadiene is a by-product of the ethylene production process, and after reviewing the method, we have determined that it is an acceptable method for determining the carbon content of that stream. We will consider including additional methods in the final amendments after reviewing comments on this issue. In order to evaluate this issue, we seek comments providing copies of calibration procedures that gas chromatograph manufacturers supply with their equipment, calibration procedures in any published or unpublished industry consensus (or site-specific) methods not currently listed in 40 CFR 98.244(b)(4), and an assessment of how such procedures compare to the currently specified methods and why they are applicable for instruments used to measure petrochemical feedstocks and products.

We are proposing to further amend 40 CFR 98.244(b)(4) by adding a new paragraph that would allow the use of industry consensus standard methods to determine the carbon content or composition of carbon black feedstock oils and carbon black products. Carbon black manufacturers have reported that none of the listed methods are specific to carbon black materials, and they have stated that such methods will provide less accurate results than modified versions of some of the methods. For example, the industry has reported that when they need to determine the carbon content of their feedstocks or products they often use modified versions of ASTM D5291–02. One difference is that the modified methods use carbon or carbon/sulfur analyzers instead of the carbon, hydrogen, and nitrogen analyzer that is specified in ASTM D5291–02. These modified methods have been submitted to ASTM for review. If ASTM publishes methods before the proposed amendments are finalized, we will consider including them in the final amendments. The industry has also reported that they often use other published methods to determine the sulfur, ash, and water content of the material and then calculate the carbon content as the difference between the mass of these compounds and the total mass of the sample. This approach would also be allowed under the proposed change to 40 CFR 98.244(b)(4). We seek comment on the need for the proposed option. In particular, we are interested in data that compare specified methods such as ASTM D5291–02 with industry consensus methods. We are also interested in

obtaining copies of industry consensus standard methods.

We are also proposing to amend 40 CFR 98.244(b)(4) to provide facilities the option of, under certain circumstances, the use of alternative analytical methods in addition to the methods listed in 40 CFR 98.244(b)(4)(i) through (b)(4)(xi) for determining the carbon content or composition of feedstocks or products. We recognize that the applicability of the methods listed in 40 CFR 98.244(b)(4)(i) through (b)(4)(xi) may be restricted for certain process streams due to the analytical limitations of those methods and/or the instrumentation. As a result, we are proposing to allow a facility to use an alternative analytical method in cases where the methods listed in 40 CFR 98.244(b)(4)(i) through (b)(4)(xi) are not appropriate because the relevant compounds cannot be detected, the quality control requirements are not technically feasible, or use of the method would be unsafe.

We are proposing to amend the reporting requirements in 40 CFR 98.246(a)(11) so that if an alternative method is used, facilities would include in the annual report the name or title of the method used, and the first time it is used, a copy of the method and an explanation of why the use of the alternative method is necessary.

We solicit comment on whether the flexibility provided by this option is needed. If commenters believe that to be the case, please provide information on the specific need for flexibility, why the existing listed analytical methods are not sufficient, and whether the proposed flexibility meets the needs identified.

We are proposing to make the amendments to 40 CFR 98.244(b)(4) as described above retroactive to January 1, 2010. We have received feedback that some reporters are using a method currently allowed in Part 98 while concurrently also using a method that would be allowed by today's action. Should these amendments be finalized, making these amendments effective January 1, 2010 would allow reporters to use the results from the methods included in today's amendments for the entire year of 2010.

QA/QC Requirements. As mentioned in Section II.B of this preamble, owners and operators have raised several issues regarding the calibration requirements in Part 98, and we are proposing a number of changes to 40 CFR 98.3(i) of subpart A to address those issues. To maintain consistency with the proposed amendments to 40 CFR 98.3(i), we are also proposing amendments to the QA/QC provisions for weighing devices, flow meters, and tank level measurement devices in paragraphs (b)(1), (b)(2), and (b)(3) of 40 CFR 98.244. Other proposed amendments to these paragraphs are editorial in nature and intended to clarify the requirements. Specific changes are as follows:

In 40 CFR 98.244(b), each of the three subparagraphs incorrectly required compliance with calibration requirements in 40 CFR 98.3(i), or with any of the following: procedures specified by equipment manufacturers, industry consensus standard procedures, or procedures in listed methods. We are proposing to amend these subparagraphs such that the procedures in 40 CFR 98.3(i) would apply in addition to the other required procedures.

We are proposing to amend 40 CFR 98.244(b)(1) to allow recalibration at the interval specified by the industry consensus standard practice used in addition to either biennially or at the minimum frequency specified by the manufacturer. Note that the requirements of 40 CFR 98.3(i) for other measurement devices would apply as well.

Section 98.244(b)(2) in subpart X specifies that flow meters are to be operated and maintained using the procedures in 40 CFR 98.3(i) and either any one of several listed methods, a method published by a consensus-based standards organization, or procedures specified by the flow meter manufacturer. Although 40 CFR 98.244(b)(2) references 40 CFR 98.3(i), it does not explicitly specify calibration requirements, and this reference incorrectly implies that 40 CFR 98.3(i) specifies procedures other than calibration requirements. In addition, the option to follow procedures in any of the listed methods is redundant because it overlaps with the option to use a method published by a consensus standards-based organization. To clarify these requirements we are proposing several amendments to 40 CFR 98.244(b)(2). One would specify that flow meters are to be operated and maintained according to manufacturer's recommended procedures. A second would specify that flow meters are to be calibrated following either an industry consensus standard practice or procedures specified by the flow meter manufacturer, and must meet the accuracy specification in 40 CFR 98.3(i). Finally, the list of specified methods would be deleted.

Section 98.244(b)(2) in subpart X specifies that flow meters are to be recalibrated either biennially or at the minimum frequency specified by the flow meter manufacturer. Since 40 CFR 98.244(b)(2) specifies that flow meters may be calibrated following procedures in industry consensus standard practices, we are proposing to also allow recalibration at the frequency specified in such methods. This would also make the recalibration requirements in 40 CFR 98.244(b)(2) consistent with the proposed amendment in 40 CFR 98.3(i)(1)(iii)(B).

Section 98.244(b)(3) in subpart X specifies that tank level measurement devices are to be calibrated prior to the effective date of the rule. We are proposing to delete this statement because 40 CFR 98.3(i) specifies the date by which initial calibration must be completed. Note that the requirements for other measurement devices in 40 CFR 98.3(i) apply as well.

Reporting Requirements Under The CEMS Compliance Option. We are proposing a number of changes in 40 CFR 98.246(b)(1) through (b)(5) to clarify the reporting requirements under the CEMS compliance option.

First, we are proposing to move the requirement for reporting of the petrochemical process ID from 40 CFR 98.246(b)(3) to 40 CFR 98.246(b)(1) to be consistent with the structure in other reporting sections, and we are renumbering the existing paragraphs (b)(1) and (b)(2).

Second, we are proposing to add a statement in the renumbered paragraph 40 CFR 98.246(b)(2) to specify that the reporting requirements in 40 CFR 98.36(b)(9)(iii) (as numbered in today's proposed action) for CH_4 and N_2O do not apply under subpart X. This reporting requirement in subpart C is not relevant in subpart X because 40 CFR 98.246(b)(5) specifies the reporting requirements for CH_4 and N_2O under subpart X.

Third, in the renumbered 40 CFR 98.246(b)(3), we are proposing to delete the requirement to report information required under 40 CFR 98.36(e)(2)(vii) because the referenced section specifies recordkeeping requirements, not reporting requirements; note that you still must keep the applicable records because 40 CFR 98.247(a) references 40 CFR 98.37, which in turn requires you to keep all of the applicable records in 40 CFR 98.36(e). We are also proposing to amend the reference to 40 CFR 98.36(e)(2)(vii) to a more general reference of 40 CFR 98.36. This makes the reporting requirements consistent with the methodology for calculating emissions in 40 CFR 98.243(b).

Fourth, we are proposing changes to 40 CFR 98.246(b)(4) to clarify our intent. The first sentence in 40 CFR 98.246(b)(4) requires reporting of the total CO_2 emissions from each stack that

is monitored with CO_2 CEMS; this requirement would be unchanged. We are proposing changes to the second sentence in 40 CFR 98.246(b)(4) to clarify that for each CEMS that monitors a combustion unit stack you must estimate the fraction of the total CO_2 emissions that is from combustion of the petrochemical process off-gas in the fuel gas. This estimate will give an indication of the total petrochemical process emissions, whereas the CEMS data alone would also include emissions from combustion of supplemental fuel (if any).

Finally, we are proposing several amendments to 40 CFR 98.246(b)(5). In general, as noted above, the requirements in this paragraph are consistent with the requirements in 40 CFR 98.36(b)(9)(iii) (as numbered in this proposed action). Most of the proposed amendments to 40 CFR 98.246(b)(5) restate requirements from 40 CFR 98.36(b)(9)(iii); for example, the proposed amendments clarify that emissions are to be reported in metric tons of each gas and in metric tons of CO_2e. However, because 40 CFR 98.36(b)(9)(iii) allows you to consider petrochemical process off-gas as a part of "fuel gas" rather than as a separate fuel, 40 CFR 98.246(b)(5) also would require you to estimate the fraction of total CH_4 and N_2O emissions in the exhaust from each stack that is from combustion of the petrochemical process off-gas. In addition, because 40 CFR 98.243(b) requires you to determine CH_4 and N_2O emissions using Equation C–8 in subpart C (rather than Equation C–10), the amendments to 40 CFR 98.246(b)(5) would require reporting of the HHV that you use in Equation C–8. This change also would delete the erroneous reference to Equation C–10 that was included in 40 CFR 98.246(b)(5).

Reporting Requirements for the Ethylene-Specific Option. We are proposing several changes to clarify the reporting requirements in 40 CFR 98.246(c) for the ethylene-specific option. First, we are proposing to add a requirement to report each ethylene process ID to allow identification of the applicable process units at facilities with more than one ethylene process unit. Second, we are proposing editorial changes to clarify that you must estimate the fraction of total combustion emissions that is due to combustion of ethylene process off-gas, consistent with the requirements described above for combustion units that are monitored with CEMS. Third, because ethylene is the only petrochemical product for process units that can comply with the ethylene-specific option, we are proposing to replace the requirement to report the "annual quantity of each type of petrochemical produced from each process unit" with a requirement to report the "annual quantity of ethylene produced from each process unit."

Reporting Measurement Device Calibrations. In 40 CFR 98.246(a)(7) we are proposing to delete the requirement for reporting of the dates and summarized results of calibrations of each measurement device under the mass balance option. We have determined that maintaining records of this information will be sufficient. Thus, we are also proposing to add 40 CFR 98.247(b)(4) to require retention of these records.

N. Subpart Y (Petroleum Refineries)

Numerous issues have been raised by owners and operators in relation to the requirements in subpart Y for petroleum refineries. The issues being addressed by the proposed amendments include the following:

- GHG emissions from flares.
- GHG emissions to report from combustion of fuel gas.
- GHG emissions to report from non-merchant hydrogen production process units.
- Calculating GHG emissions from fuel gas combustion.
- Calculating combustion GHG emissions from flares and thermal oxidizers.
- Molar volume conversion factors.
- Combined stacks monitored by CEMS.
- Nitrogen concentration monitoring to determine exhaust gas flow rate.
- Calculating CO_2 emissions from catalytic reforming units.
- Calculating GHG emissions from sulfur recovery plants.
- Calculating CO_2 emissions from coke calcining units.
- Calculating CO_2 emissions from process vents.
- Reactor vessels using methane as a blanket or purge gas.
- Monitoring and QA/QC requirements.
- Reporting requirements.

GHG Emissions From Flares. We are proposing several corrections to 40 CFR 98.252(a) (GHGs to report) to clarify the required emissions methods for flares. From the first sentence in 40 CFR 98.252(a), it is clear that CO_2, CH_4, and N_2O combustion emissions are to be calculated for stationary combustion units and for each flare. However, the second sentence suggests that petroleum refinery owners or operators are to "[c]alculate and report *these* emissions under subpart C * * *" (emphasis added). After the first sentence, the remainder of 40 CFR 98.252(a) specifically addresses how petroleum refinery owners or operators are to calculate and report stationary combustion unit emissions. Flare emissions are to be calculated using the methods provided in subpart Y, not the methods provided in subpart C. Consequently, we are proposing to amend the second sentence in 40 CFR 98.252(a) to correctly require reporters to "Calculate and report the emissions from stationary combustion units under subpart C * * *" and we are proposing to add an additional sentence at the end of this section to clarify that reports must "Calculate and report the emissions from flares under this subpart."

GHG Emissions to Report From Combustion of Fuel Gas. We are proposing to amend 40 CFR 98.252(a) to clarify that reporting of CH_4 and N_2O emissions is required for the stationary combustion units fired with fuel gas. It was always our intent that the emissions of these pollutants be reported for stationary combustion sources that used fuel gas. However, as no default factors for fuel gas were previously included in Table C–1 of subpart C, it could be interpreted that these emissions were not required to be reported, even though the first sentence clearly indicates that emissions of all three pollutants were to be reported for stationary combustion units and flares. While the proposed amendment to Table C–1 to include default factors for "fuel gas" is expected to correct this misinterpretation, we are also proposing to add the following sentence to 40 CFR 98.252(a) to clarify these reporting requirements: "For CH_4 and N_2O emissions from combustion of fuel gas, use the applicable procedures in 40 CFR 98.33(c) for the same tier methodology that was used for calculating CO_2 emissions (use the default CH_4 and N_2O emission factors for "Petroleum (All fuel types in Table C–1)" in table C–2 of subpart C of this part and for Tier 3, either the default high heat value for fuel gas in Table C–1 of subpart C of this part or a calculated HHV, as allowed in Equation C–8 of subpart C of this part.".

GHG Emissions To Report From Non-Merchant Hydrogen Production Process Units. We are also proposing to amend 40 CFR 98.252(i) to clarify that reporting of only CO_2 emissions from non-merchant hydrogen production process units is required. The inclusion of "and CH_4" emissions was an inadvertent error. We are also proposing to amend 40 CFR 98.252(i) to clarify that catalytic reforming units (although they produce hydrogen as an important by-product) are not considered hydrogen production

process units that are required to report under 40 CFR 98.252(i).

Calculating GHG Emissions From Fuel Gas Combustion. Owners and operators have suggested that EPA should allow the use of alternative calculation methods for small emission sources from the combustion of fuel gas. Specifically, they have asserted that units subject to only subpart C may use Tier 1 or Tier 2 if the units are less than or equal to 250 mmbtu/hr heat input. However, if those same units are at a petroleum refinery and combusting fuel gas, they are required to use Tier 3 or Tier 4. We still believe that it is important to use Tier 3 or Tier 4 for most units at a petroleum refinery because of the variability in carbon content in fuel gas (both between different refineries and at different times within the same refinery). However, we recognize that some flows of fuel gas to process heaters or boilers may not necessarily enter the refinery's fuel gas system and that these fuel gas lines may not have flow monitors. For example, 40 CFR part 63 subpart UUU requires the control of purging operations associated with the catalytic reforming unit. Among the control options for these emissions are provisions to vent these gases to a boiler or process heater. If the stationary combustion source has a design capacity of 44 MW or greater or if the gases are introduced into the flame zone of the unit, then direct monitoring of these gas streams is not required under subpart UUU. Similar provisions that may pertain to petroleum refineries are in other rules (*e.g.,* 40 CFR part 60, subparts III and NNN; 40 CFR part 63, subparts G and CC). It is not our intent to require direct flow monitoring of these ancillary gas streams, particularly if they do not significantly contribute to the overall heat input of the stationary combustion unit.

In addition, while we anticipate that most refineries can use a common-pipe monitoring approach for stationary combustion sources supplied by the refinery's fuel gas system(s), we recognize that some refineries may meter fuel usage at the stationary combustion sources and, in some cases, only meter fuel usage at the larger units. Based on a review of consent decrees and permits pertaining to process heaters, it appears that process heaters less than 30 mmBtu/hr are often not subject to emission limitations, and therefore may not have metered flow. We performed an analysis of fuel use requirements by process unit. From this analysis, we project that more than 95 percent of nationwide fuel gas consumption at petroleum refineries would occur in process heaters with a rated heat capacity of 30 mmBtu/hr or greater. For additional detail on the consent decree review as well as the analysis of fuel use requirements, please see the Background Technical Support Document (EPA–HQ–OAR–2008–0508). While these small process heaters represent only a small percentage of the fuel use on a national level, most process heaters at petroleum refineries with capacities under 25,000 barrels per day (which represents about 20 percent of the refineries, but only 2 percent of the refining capacity) are expected to have rated heat capacity of less than 30 mmBtu/hr. Thus, easing the Tier 3 monitoring requirements for these smaller process heaters would significantly ease the burden for small refineries without significantly impacting the accuracy of the nationwide GHG inventories for petroleum refineries.

If flow meters are in place at the process heater or at a common pipe location, we consider that the Tier 3 monitoring requirements are reasonable and justified. There will not be a significant burden to use the Tier 3 method and the reported GHG emissions will be more accurate given the fluctuations expected in fuel gas compositions.

Therefore, we are proposing to amend 40 CFR 98.252(a) so that petroleum refineries subject to subpart Y could use the Tier 1 or 2 methodologies for combustion of fuel gas when either of the following conditions exists:

(1) The annual average fuel gas flow rate in the fuel gas line to the combustion unit, prior to any split to individual burners or ports, does not exceed 345 scfm at 60°F and 14.7 psia and either of the following conditions exist:

- A flow meter is not installed at any point in the line supplying fuel gas or an upstream common pipe; or
- The fuel gas line contains only vapors from loading or unloading, waste or wastewater handling, and remediation activities that are combusted in a thermal oxidizer or thermal incinerator.

(2) The combustion unit has a maximum rated heat input capacity of less than 30 mmBtu/hr and either of the following conditions exist:

- A flow meter is not installed at any point in the line supplying fuel gas or an upstream common pipe; or
- The fuel gas line contains only vapors from loading or unloading, waste or wastewater handling, and remediation activities that are combusted in a thermal oxidizer or thermal incinerator.

These amendments, combined with the revisions to Table C–1 of subpart C, reflect our original intent to require Tier 3 or 4 monitoring and calculation methods for large fuel gas streams such as those anticipated in the refinery's fuel gas system(s), but to allow Tier 1 or 2 monitoring methods for smaller fuel gas streams that are segregated from the fuel gas system or for small combustion sources at refineries where flow monitors are installed at the majority of individual combustion sources, but not at the smaller combustion sources or the common pipe (*i.e.,* fuel gas system).

Calculating Combustion GHG Emissions From Flares And Thermal Oxidizers. It has been brought to our attention that it is inappropriate to apply the 98 percent combustion efficiency to the carbon as CO_2 that already exists in the gas stream in Equations Y–1 and Y–16 in 40 CFR 98.253. While the correction is expected to be minor in most cases, we agree that all of the CO_2 that already exists in the gas stream will be emitted as CO_2 from these sources. However, we are concerned that, depending on the method used to determine the carbon content, some facilities may not have collected the specific CO_2 data needed to implement the revised equations. Therefore, we are proposing to amend 40 CFR 98.253 by retaining the existing Equations Y–1 and Y–16, re-numbering them as Equations Y–1a and Y–16a, and to add the more detailed equations that specifically consider the CO_2 that already exists in the gas stream prior to the flare or thermal combustion device as Equations Y–1b and Y–16b. Facilities that were required to or elected to use Equation Y–1 to report flare emissions would be able to choose to report these emissions using either Equation Y–1a or Y–1b, as proposed in today's amendments. Similarly, we are proposing to allow facilities required to report CO_2 emissions from asphalt blowing operations controlled by a thermal oxidizer or flare to use either Equation Y–16a or Y–16b. We are proposing corresponding amendments in 40 CFR 98.256 to require reporting of which equation was used and, if the new equations are used, reporting of the additional equation parameters.

We request comment on the need to retain the previously promulgated equations. As gas composition data are expected to be determined using gas chromatographic methods, the required CO_2 data may already be collected. Thus, we are particularly interested to determine if there are facilities that cannot implement the new equations based on the measurement data already

collected for these sources during the 2010 reporting year.

Molar volume conversion factors. Owners and operators have suggested that allowance be made for alternative "standard conditions" within the MVC factor used in several of the equations in 40 CFR 98.253. We recognize that natural gas and fuel gas volumes are commonly determined using 60°F as the standard temperature whereas exhaust stack volumes are commonly determined using 68°F as the standard temperature. Both of these volume measurements are specified in subpart Y. It is impractical and unnecessary for existing fuel gas monitors, most of which have been installed to correct volumes to standard conditions at 60°F, to be reprogrammed to output these volumes corrected to standard conditions at 68°F when an alternative MVC can be provided to yield the identical mass emissions from the calculation. Consequently, we are proposing to amend equations Y–1, Y–3, Y–6, Y–12, Y–18, Y–19, Y–20, and Y–23 in subpart Y to provide two alternative values of MVC depending on the standard conditions output by the flow monitors. Additionally, the reporting requirements related to each of these equations would be amended to include reporting of the value of MVC used to support the calculations and to afford verification of the reported emissions.

Combined Stacks Monitored By CEMS. We received several questions regarding whether or not discharges through a combined stack are allowable when CEMS are used, particularly for the catalytic cracking unit. We never intended to limit the use of combined stacks and CEMS at the refinery. In fact, we specifically attempted to address this issue in subpart Y with respect to the combined catalytic cracking unit and CO boiler emissions in 40 CFR 98.253(c)(1)(ii). However, we have determined that the current language in 40 CFR 98.253(c)(1)(ii) may inadvertently be interpreted to exclude other CO_2 emission sources that may be mixed with the catalytic cracking unit process (e.g., coke burn-off) emissions.

Consequently, we are proposing to amend the language in 40 CFR 98.253(c)(1)(ii) and also the reporting requirements in 40 CFR 98.256(f)(6) to generalize the language to include other CO_2 emission sources, not just a CO boiler. The proposed amendments would clarify that when a CEMS is used to measure the CO_2 emissions from the catalytic cracking unit and these emissions are combined with "other CO_2 emissions," the owner or operator must calculate the "other CO_2 emissions" using the applicable methods for the applicable subpart (*e.g.,* subpart C of this part in the case of a CO boiler), and determine the process emissions from the catalytic cracking unit (or fluid coking unit) as the difference in the CO_2 CEMS measurements and the calculated emissions associated with the "other CO_2 emissions."

Nitrogen Concentration Monitoring To Determine Exhaust Gas Flow Rate. We also received questions regarding the use of nitrogen (N_2) concentration monitoring for Equation Y–7 in 40 CFR 98.253(c)(2)(ii). Equation Y–7 uses an inert balance to calculate the exhaust gas flow rate, and a similar calculation can be performed using a nitrogen balance. We agree that the nitrogen monitoring approach would provide an equivalent measure of the exhaust gas flow rate as Equation Y–7. We promulgated Equation Y–7 because we anticipated several facilities used this monitoring approach as this equation is provided in the 40 CFR part 63 subpart UUU (*see* Equation 2 of 40 CFR 63.1573). However, we note that 40 CFR 63.1573 also allows facilities to request alternative monitoring methods. There are no similar provisions in subpart A or subpart Y of part 98, so this monitoring alternative could not be used without amending the rule. As we find the N_2 concentration monitoring approach to be equivalent to Equation Y–7, we are proposing to amend 40 CFR 98.253(c)(2)(ii) to renumber Equation Y–7 as Equation Y–7a and adding an Equation Y–7b to provide this N_2 concentration monitoring approach. We are also proposing to add reporting requirements in 40 CFR 98.256(f) to report the input parameters for Equation Y–7b if it is used.

Calculating CO_2 Emissions from Catalytic Reforming Units. We are proposing to revise the definition of the coke burn-off quantity, CB_Q, the term "n" in Equation Y–11 in 40 CFR 98.253(e)(3) to clarify the application of Equation Y–11 to continuously regenerated catalytic reforming units. Continuously regenerated catalytic reforming units do not have specific cycles, so the reference to "regeneration cycle" in the definition of these terms was ambiguous or meaningless for continuously regenerated catalytic reforming units. We are proposing to replace the phrase "regeneration cycle" with "regeneration cycle or measurement period" in the definition of the coke burn-off quantity and to revise the definition of "n" to be the "Number of regeneration cycles or measurement periods in the calendar year." A measurement period may be a day, week, month, or other time interval over which process measurements are made on the unit by which the coke burn-off rate is determined. We are similarly proposing to clarify 40 CFR 98.256(f)(13) (formerly designated 40 CFR 98.256(f)(12)) to require reporting of "* * * the number of regeneration cycles or measurement periods during the reporting year, the average coke burn-off quantity per cycle or measurement period, and the average carbon content of the coke" when Equation Y–11 is used.

Calculating GHG Emissions From Sulfur Recovery Plants. With respect to requirements for sour gas sent off-site for sulfur recovery and for on-site sulfur recovery plants, we intended these requirements to be identical and that the petroleum refinery would report these emissions regardless of whether the sour gas feed is used at an on-site sulfur recovery plant within the refinery facility or the sour gas feed is sent to an off-site facility. However, we do note that the requirements were developed considering Claus sulfur recovery plants and that the methods in 40 CFR 98.253(f) may not be appropriate for all other types of sulfur recovery plants. To clarify the requirements for sulfur recovery plants, we are proposing to amend 40 CFR 98.253(f) to add "and for sour gas sent off-site for sulfur recovery" to clarify that this calculation methodology applies "For on-site sulfur recovery plants and for sour gas sent off-site for sulfur recovery, * * *" and to allow non-Claus sulfur recovery plants to alternatively follow the requirements in 40 CFR 98.253(j) for process vents. We also are proposing to amend the reporting requirements in 40 CFR 98.256(h) to include the type of sulfur recovery plant and an indication of the method used to calculate CO2 emissions as well as reporting requirements for non-Claus sulfur recovery plants that elect to follow the requirements in 40 CFR 98.253(j) for process vents. While we believe the calculation methodology needs no further regulatory text amendments, we do clarify in this preamble that the phrase "the sulfur recovery plant" in 40 CFR 98.253(f) refers to either the on-site or off-site sulfur recovery plant, as applicable. We further clarify in this preamble that the sour gas flow and carbon content measurements for sour gas sent off-site for sulfur recovery may be made at either the refinery or the off-site sulfur recovery plant provided these measurements are representative of the flow and carbon content of the sour gas sent off-site for sulfur recovery.

Calculating CO_2 Emissions From Coke Calcining Units. We are proposing to amend the definition of M_{dust} (the mass

of dust collected in the dust collection system) in Equation Y–13 in 40 CFR 98.253(g). It was brought to our attention that dust collected by the control systems may be recycled back to the coke calciner, raising the issue of how M_{dust} should be determined in this situation: Is it the mass of dust collected in the dust collection system or is it the mass of dust that is discarded from the system? The mass balance represented by Equation Y–13 should be applied external to this recycle loop, so that M_{dust} is the quantity of dust removed from the overall process, which would be the mass of the dust collected in the control system minus the mass of dust recycled. We are, therefore, proposing to amend the definition of M_{dust} in Equation Y–13 to clarify this interpretation of M_{dust} when all or a portion of the collected dust is recycled back to the coke calciner. We also are proposing to amend 40 CFR 98.256(i)(5) to require facilities that use Equation Y–13 to indicate whether or not the collected dust is recycled to the coke calciner.

Calculating CO_2 Emissions From Process Vents. We are proposing to amend the process vent requirements in 40 CFR 98.253(j) due to the additional sources that may elect to use Equation Y–19, specifically non-Claus sulfur recovery units (as previously described) and uncontrolled blowdown vents (inadvertently not referenced). This amendment clarifies that the emissions from the sources that elect to use the process vent method in 40 CFR 98.253(j), must use Equation Y–19 to calculate the emissions for the pollutants required to be reported under the cross-referencing section, regardless of whether the concentration thresholds in 40 CFR 98.253(j) are exceeded. We are also proposing to amend the definition of Equation Y–19's parameters of VR (the volumetric flow rate) and MF_x (the mole fraction of the GHG in the vent). For these parameters we are proposing to clarify that these values are to be determined "from measurement data, process knowledge, or engineering estimates." We are also proposing to amend the reporting requirements for process vents to clarify that the requirements apply to each process vent as well as to provide an indication of the measurement of estimation method.

Finally, we are proposing to amend 40 CFR 98.253(n) to delete the words "equilibrium" and "product-specific" to clarify that the true vapor phase of the loading operation system should be used when determining whether the vapor-phase concentration of methane is 0.5 volume percent or more. We affirm that process knowledge may be used to determine which loading operations have a vapor-phase concentration of methane of 0.5 volume percent, but this determination must be made considering both the material being loaded and the conditions of the loading operations. Equilibrium vapor-phase concentrations can be used as process knowledge to determine if the concentration of methane is 0.5 volume percent or more.

Monitoring and QA/QC Requirements. In subpart Y, 40 CFR 98.254 currently specifies QA/QC requirements for fuel flow meters, gas composition monitors, and heating value monitors that provide data for the GHG emissions calculations. A distinction is made in paragraphs (a) and (b) between measurement devices associated with stationary combustion sources, which are required to follow the QA/QC procedures in 40 CFR 98.34, and devices associated with other GHG emissions sources at the refinery, which are to be quality-assured according to 40 CFR 98.254(c) through (e). Paragraphs (f), (g), and (h) of 40 CFR 98.254 QA/QC requirements for:

- Stack gas flow rate monitors that are used to comply with the requirements of 40 CFR 98.253(c)(2)(ii);
- CO_2/CO/O_2 composition monitors used to comply with 40 CFR 98.253(c)(2); and
- Weighing devices that are used to measure the mass of petroleum coke when CO_2 emissions from a coke calcining unit are calculated using Equation Y–13.

In subpart Y, 40 CFR 98.254(l) provides QA/QC requirements for CO_2 CEMS and flow monitors used for direct measurement of CO_2 emissions following the Tier 4 methodology in subpart C.

We are proposing to amend 40 CFR 98.254(a) through (h), and (l) as follows, to make them consistent with today's proposed revisions to 40 CFR 98.3(i), and to make some necessary technical corrections and clarifications:

Paragraph (a) of 40 CFR 98.254 would be amended to also include the phrase "sources that use a CEMS to measure CO_2 emissions according to subpart C of this part * * *" to further separate these sources from those that are covered by 40 CFR 98.254(b). Although the CEMS monitoring requirements are specified in 40 CFR 98.254(l), these requirements are more clearly specified by the proposed amendments to 40 CFR 98.254(a) so that all sources required to meet the methods provided in subpart C are identified in a single paragraph. We also are proposing to re-word the phrase "follow the monitoring and QA/QC requirements in 40 CFR 98.34" with "meet the applicable monitoring and QA/QC requirements in 40 CFR 98.34" to clarify that the monitors must meet the requirements for the specific Tier for which monitoring was required (Tier 3 sources would comply with the Tier 3 requirements; Tier 4 sources would comply with the Tier 4 requirements; etc.).

Because the QA/QC requirements for CO_2 CEMS that were formerly included in 40 CFR 98.254(l) would be included in the amended paragraph 40 CFR 98.254(a), we are proposing to delete 40 CFR 98.254(l).

Paragraph (b) of 40 CFR 98.254 would be amended to clarify that these requirements apply to gas flow meters, gas composition monitors, and heating value monitors other than those subject to 40 CFR 98.254(a). We would correct the reference to "paragraphs (c) through (e)" to correctly reference "paragraphs (c) through (g)" as gas monitoring system requirements are specified in 40 CFR 98.254(c) through (g). We would also clarify that the calibration requirements in 40 CFR 98.3(i) only apply to gas flow meters and to allow recalibration of gas flow meters biennially (every two years), at the minimum frequency specified by the manufacturer, or at the interval specified by the industry consensus standard practice used. Paragraph (b) of 40 CFR 98.254 would also be amended to clarify that gas composition and heating value monitors must be recalibrated either annually, at the minimum frequency specified by the manufacturer, or at the interval specified by the industry consensus standard practice used.

Paragraph (c) of 40 CFR 98.254 would be amended to clarify that the flare or sour gas flow meters must be calibrated (in addition to operated and maintained) using either a method published by a consensus-based standards organization (*e.g.,* ASTM, API, etc.) or the procedures specified by the flow meter manufacturer. The ± 5 percent accuracy specification would be removed from 40 CFR 98.254(c), because the accuracy requirement for these flow meters is stated in the general provisions at 40 CFR 98.3(i) and is referenced in 40 CFR 98.254(b). We are also proposing to amend 40 CFR 98.254(c) by removing the list of methods as this is redundant with the existing phrase, "a method published by a consensus-based standards organization."

Paragraphs (d) and (e) of 40 CFR 98.254 would be amended to allow the use of any chromatographic analysis to determine flare gas composition and high heat value, as an alternative to the methods listed in 40 CFR 98.254(d) and

(e) provided that the gas chromatograph is operated, maintained, and calibrated according to the manufacturer's instructions; and the methods used for operation, maintenance, and calibration of the GC are documented in the written monitoring plan for the unit under 40 CFR 98.3(g)(5). Paragraph (d) in 40 CFR 98.254 would also be amended to apply to all gas composition monitors, other than those included in 40 CFR 98.254(g), and not just flare gas composition monitors. This is needed to address gas composition monitors that may already be in place on process vents subject to reporting under 40 CFR 98.253(j), so that these monitors can use alternatives to the methods in 40 CFR 98.254(d).

We are also proposing to amend 40 CFR 98.254(d) to specify that the methods in this paragraph are also to be used for determining average molecular weight of the gas, which is needed in Equations Y–1a and Y–3. We are also proposing to add an additional method (ASTM D2503–92) to this section for determining average molecular weight. Methods for determining average molecular weight were inadvertently omitted from this section.

We are proposing a number of amendments to 40 CFR 98.254(f). First, the applicability of this paragraph would be expanded to include all gas flow meters on process vents subject to reporting under 40 CFR 98.253(j). The term "exhaust gas flow meter" would be replaced with the term "gas flow meter," because not all process vents that would report under 40 CFR 98.253(j) are combustion ("exhaust") related gas streams.

Subpart Y currently allows an option to follow 40 CFR 63.1572(c) (in the NESHAP for Petroleum Refineries) for installation, operation, and calibration of the stack gas flow rate monitor or the requirements in 40 CFR 98.254(f)(1) through (f)(4). In our review of these requirements, we found that 40 CFR 98.254(f)(1) and (f)(3) were important requirements that were not delineated in 40 CFR 63.1572(c). However, 40 CFR 98.254(f)(2) is not appropriate (accuracy requirements for these flow meters are already provided in the general provisions in 40 CFR 98.3(i) and are referenced in 40 CFR 98.254(b)), and 40 CFR 98.254(f)(4) is duplicative of the requirements in 40 CFR 63.1572(c).

We are proposing to retain portions of 40 CFR 98.254(f)(1) and (3), but only as general, supplementary guidelines for flow monitor installation and operation. Thus, we are proposing that these stack flow monitors must:

- Install, operate, calibrate, and maintain each stack gas flow meter according to the requirements in 40 CFR 63.1572(c);
- Locate the flow monitor at a site that provides representative flow rates (avoiding locations where there is swirling flow or abnormal velocity distributions); and
- Use a monitoring system capable of correcting for the temperature, pressure, and moisture content to output flow in dry standard cubic feet (standard conditions as defined in 40 CFR 98.6).

We are proposing to make a technical correction to 40 CFR 98.254(g). Subpart Y currently requires the $CO_2/CO/O_2$ composition monitors that are used to comply with the requirements of 40 CFR 98.253(c)(2) be installed, operated, maintained, and calibrated according to either 40 CFR 60.105a(b)(2) (in the NSPS for Petroleum Refineries) or 40 CFR 63.1572(a), or according to the manufacturer's specifications and requirements. The reference to 40 CFR 63.1572(a) was in error and should be 40 CFR 63.1572(c). In the NESHAP for Petroleum Refineries (40 CFR part 63 subpart UUU), these monitors are used to calculate coke burn-off rates, which are monitored to ensure the control device is operated within specified limits. Thus, these monitors are subject to 40 CFR 63.1572(c) within the NESHAP for Petroleum Refineries, and this is the level of QA that these monitoring systems are expected to be currently following. We note that CO_2 monitors that are certified and calibrated as CEMS (with the appropriate flow monitoring system) would be subject to the requirements in 40 CFR 98.253(c)(1), not 40 CFR 98.253(c)(2). Consequently, we specifically refer to the monitors within this 40 CFR 98.254(g) as "$CO_2/CO/O_2$ composition monitors" rather than CEMS to avoid confusion that these monitors must be operated according to CEMS requirements. In developing Part 98, we required $CO_2/CO/O_2$ composition monitors for catalytic cracking units and fluid coking units with rated capacities greater than 10,000 barrels per stream day because these monitors were expected to be in-place to comply with the NESHAP for Petroleum Refineries. We did not include additional costs to upgrade the existing $CO_2/CO/O_2$ composition monitors in our impact analysis because we intended to use the same monitoring requirements as in the NESHAP for Petroleum Refineries. Therefore, we are proposing to amend 40 CFR 98.254(g) to refer to 40 CFR 63.1572(c), rather than 63.1572(a), for these $O_2/CO/O_2$ composition monitors.

Paragraph (h) of 40 CFR 98.254 specifies calibration procedures for weighing devices that are used to determine the mass of petroleum coke fed to the coke calcining unit, as required by Equation Y–13. Subpart Y currently provides three calibration options: (1) Follow the procedures in NIST Handbook 44; (2) follow the manufacturer's recommended procedures; or (3) follow the procedures in 40 CFR 98.3(i). We are proposing to amend 40 CFR 98.254(h) to require calibration according to the procedures specified by NIST Handbook 44 or the procedures specified by the manufacturer. Note that the requirements of 40 CFR 98.3(i) for other measurement devices would apply as well.

Reporting Requirements. This section covers reporting requirements that have not been described in previous sections of this preamble.

We are proposing to amend the reporting requirements for Equation Y–1 (renumbered to Y–1a) and Y–2 to require reporting of whether daily or weekly measurement periods are used, for verification purposes.

In 40 CFR 98.256(f)(6), 40 CFR 98.256(h)(6), and 40 CFR 98.256(i)(6), we are proposing to amend the references to 40 CFR 98.36(e)(2)(vi) to reference 40 CFR 98.36 more generally. This would make the references consistent with the associated requirements in 40 CFR 98.253.

In our review of the reporting requirements in 40 CFR 98.256(f), we noted an inadvertent error in 40 CFR 98.256(f)(10) and (11) [which would be redesignated 40 CFR 98.256(f)(11) and (12) due to the proposed reporting requirement associated with Equation Y–7b]. In subpart Y, facility owners and operators are required to report information about unit-specific emission factors for CH_4 and N_2O, but not necessarily report the unit-specific emission factor itself. We are proposing to correct this inadvertent error and require direct reporting of the unit-specific emission factor for CH_4 and N_2O, if used, in the newly designated 40 CFR 98.256(f)(11) and (12), respectively.

We are proposing to amend 40 CFR 98.256(i)(8) to make it consistent with the information collected in 40 CFR 98.245(i)(7).

We are also proposing to amend 40 CFR 98.256(j)(2) to clarify that the reporting requirements for asphalt blowing apply at the unit level.

We are also proposing to re-organize the reporting requirements in 40 CFR 98.256(o) to clarify, for example, that the reporting requirement in 40 CFR 98.256(o)(7) of Part 98 pertains specifically to tanks processing unstabilized crude oil.

O. Subpart AA (Pulp and Paper Manufacturing)

We are proposing to amend subpart AA in response to questions EPA received since Part 98 was published on October 30, 2009. These amendments are intended to provide clarification and ensure consistency with other parts of the rule.

EPA received questions regarding the methods specified in 40 CFR 98.273 to calculate fossil-fuel based CO_2 emissions from chemical recovery furnaces, chemical recovery combustion units, and pulp mill lime kilns. Specifically, clarification was requested as to whether an owner or operator can choose to use a tier other than Tier 1 from 40 CFR 98.33 to calculate fossil-fuel based CO_2 emissions. While it was our intent to provide this flexibility, the rule text indicated that only Tier 1 could be used. Therefore, we are proposing to amend 40 CFR 98.273(a)(1), (b)(1) and (c)(1) to clarify that owners and operators may use a higher tier. This flexibility in selecting tiers is consistent with 40 CFR 98.34. The option to use a higher tier to calculate fossil-fuel based emissions provides flexibility to reporters and it only affects the reporting requirements if an owner or operator chooses to use a higher tier. EPA also received questions regarding the prescribed emission factors to calculate fossil-fuel based CO_2 emissions from lime kilns. Specifically, 40 CFR 98.273(c)(1) directed owners and operators to use emission factors in Table AA–2 to calculate CO_2 emissions from lime kilns, but EPA has received requests to use the emission factors provided in Table C–1.

The emission factors in Table AA–2 were taken from "Calculation Tools for Estimating Greenhouse Gas Emissions from Pulp and Paper Mills", Version 1.1, July 8, 2005, which was prepared by the National Council for Air and Stream Improvement (NCASI) for the National Council of Forest and Paper Associations (ICFPA). Part 98 incorporated these factors in Table AA–2 because they were developed specifically for pulp and paper lime kilns, which operate at different conditions than other general stationary combustion units.

Upon further consideration, we have determined that the emission factors provided in Table AA–2 are uniquely suited for calculating CH_4 and N_2O emissions from lime kilns given these emissions are significantly influenced by the operating conditions. However, EPA has found that the same rationale does not support having unique emission factors to calculate CO_2 emissions from lime kilns. Therefore, EPA has removed the CO_2 emission factors from Table AA–2 and, in 40 CFR 98.273(c)(1), has directed owners and operators to use the CO_2 emission factors from Table C–1 of subpart C to calculate CO_2 emissions from lime kilns. Modifications to Table AA–2 would affect the emissions reported in 2010, but would not affect the data that are collected to report emissions in 2010.

Related to the calculation of CH_4 and N_2O emissions described above, and consistent with the proposal to allow use of higher Tiers than Tier 1 for units subject to subpart AA, EPA is proposing to allow reporters to also use site-specific high heating values, as opposed to default values, when claculating CH_4 and N_2O emissions.

EPA has also received questions from owners and operators about whether pulp and paper mills are required to calculate emissions from the combustion of their wastewater treatment sludge. Specifically, they asked for clarification of whether this type of sludge was included in Table C–1 and, if not, should they account for emissions from the combustion of this material. In our efforts to address this question, we have not been able to identify emission factors developed specifically for sludge from a pulp and paper mill wastewater facility. However, our research indicates that the content of this sludge falls within the definition of "Wood and Wood Residuals" included in Table C–1.

Therefore, per 40 CFR 98.33(b)(1)(iii), emissions from the combustion of this type of sludge may be determined using Tier 1 in subpart C. In order to further clarify this, we are proposing to add the definition of "Wood and Wood Residuals" to 40 CFR 98.6 and to include wastewater process sludge from paper mills in this definition. Clarifying that emissions from the combustion of sludge from pulp and paper mill wastewater treatment facilities may be calculated using Tier 1 would require that owners and operators estimate the volume of sludge combusted using company records. Given the broad definition of company records, owners and operators should be able to develop estimates to report these emissions in 2011. Presuming these changes are finalized as proposed, they would be incorporated into annual GHG reports due in March 2011.

Finally, EPA received questions regarding which emission factors to apply when a pulp and paper mill combusts solid petroleum coke given this fuel type was not included in Table C–1 and Table AA–2. In response, we are proposing to add this fuel type to both tables. However, it is noted that emission factors for petroleum coke specific to kraft calciners were not available. EPA does not believe that any kraft calciners are combusting petroleum coke, so we have concluded that it is not necessary to have emission factors for this fuel in Table AA–2. EPA seeks comment on this conclusion. Further, if information is provided that petroleum coke is combusted at kraft calciners, please also include any information on default CH_4 and N_2O emission factors.

P. Subpart NN (Suppliers of Natural Gas and Natural Gas Liquids)

Threshold for natural gas local distribution companies. The applicability provision in subpart A at 40 CFR 98.2(a)(4)(iii)(B) requires all natural gas local distribution companies (LDCs), regardless of size, to report the GHG emissions that would result from the complete combustion or oxidation of the annual volumes of natural gas provided to end users on their distribution systems. Owners and operators of LDCs potentially subject to subpart NN have asserted that this provision results in an unfair burden on many small LDCs.

They have stated that requiring all LDCs to report did not adequately balance rule coverage of GHGs reported, while excluding small entities. For example, they highlighted data from the Energy Information Administration that indicated that 82 percent of facilities are estimated to deliver less than 460,000 mscf per year of natural gas, which is equivalent to approximately 25,000 $mtCO_2e$. They further noted that EPA's own estimates suggest that these facilities would be responsible for less than 1 percent of the reported GHG emissions associated with LDC supply. The owners and operators concluded that this is a disproportionate burden for LDCs, particularly if one considers that across the rule, applying a 25,000 $mtCO_2e$ threshold would exclude approximately 10 to 15 percent of GHG emissions, a much larger percentage of emissions than would be excluded under LDCs by applying that same 25,000 $mtCO_2e$ threshold.

The owners and operators noted that inclusion of all LDCs in the rule would also impose numerous reporting and recordkeeping requirements, even though most of these facilities would actually be eligible to stop reporting in three or five years, after they could prove to EPA that emissions from their supply were less than 15,000 $mtCO_2e$ or 25,000 $mtCO_2e$ per year, respectively.

We note that the threshold requirements for LDCs did not change

between the initial proposal in April 2009 and Part 98 promulgated on October 30, 2009. Further, EPA did not receive any comments opposed to the "all in" designation for LDCs during the public comment period on the proposed Part 98 and, in fact, received two comments supporting the lack of a threshold of any kind. Therefore, EPA retained in Part 98 the provision to require all LDCs to report the CO_2 emissions associated with their supply. EPA retained the provision in order to maximize coverage of the GHG emissions from natural gas supplies, and also to be consistent with other suppliers of fossil fuels and industrial gases covered by Part 98. An "all in" threshold was applied to all of these supplier categories.

Although we believe that the public had ample opportunity to comment on the threshold for LDCs, we have reevaluated this issue in light of the information received. We are proposing to amend 40 CFR 98.2(a)(4)(iii)(B) in subpart A to require all LDCs that deliver 460,000 mscf or more of natural gas per year to report. We are proposing this capacity-based threshold because a capacity-based threshold would be more familiar to LDCs. Owners and operators of LDCs know how much natural gas they deliver to their customers and it would, therefore, be easier for facilities to determine if they are subject to the rule than if the threshold were emissions-based. The proposed annual threshold is approximately equivalent to 25,000 $mtCO_2e$.

After further consideration, we have concluded that although a threshold would result in a loss of emissions information to EPA, the emissions coverage lost is less than 1 percent. It is also true that most of these facilities 460,000 mscf would be able to stop reporting to EPA in three or five years, raising the question of whether the burden associated with instituting a reporting program that includes the smaller facilities is necessary. We have determined that EPA and other stakeholders would be able to use data from external sources (*e.g.,* the Energy Information Administration) to estimate the less than 1 percent of GHG emissions that would no longer be reported to EPA if a 460,000 mscf annual threshold were applied. This would minimize any concerns that the loss of emissions coverage would inhibit the use of the data for future policy making. Finally, we have concluded that LDCs are unique among suppliers in that a large majority of facilities would be under a 460,000 mscf threshold, and collectively these facilities are responsible for a relatively low percentage of emissions from the industry.

Q. Subpart OO (Suppliers of Industrial Greenhouse Gases)

We are proposing several changes to subpart OO to (1) respond to concerns raised by producers of fluorinated GHGs regarding the scope of the monitoring and reporting requirements, and (2) clarify the scope and due dates for certain reporting and recordkeeping requirements.

Producers of fluorinated GHGs requested that EPA clarify that subpart OO does not apply to fluorinated GHGs that (1) are either emitted or destroyed at the facility before the fluorinated GHG product is packaged for sale or for shipment to another facility for destruction, (2) are produced and transformed at the same facility, or (3) occur as low-concentration constituents (impurities) in fluorinated GHG products. The producers also requested that EPA amend the rule to account for the fact that some fluorinated GHGs do not have global warming potential values (GWPs) listed in Table A–1 of subpart A. For fluorinated GHGs without GWPs in Table A–1, facilities cannot calculate CO_2-equivalent production as required by subpart A, and importers and exporters cannot take advantage of the reporting exemptions for small shipments under 40 CFR 98.416(c) and (d), which are expressed in CO_2-equivalents.

Regarding fluorinated GHGs that are emitted or destroyed before the product is packaged for sale, the producers specifically requested that EPA amend subpart OO to remove the requirements of 40 CFR 98.414(j) and 98.416(a)(4) to monitor and report the destruction of fluorinated GHGs that are not included in the calculation of the mass produced in 40 CFR 98.413(a) because they are removed from the production process as byproducts or wastes.

They noted that measuring the flow of such fluorinated GHGs into the destruction device to the precision required (1 percent) posed significant technical challenges and that such measurement was outside the scope of subpart OO. They further stated that subpart OO was intended to address the quantities of fluorinated GHGs exiting production units and entering commerce, where commerce includes the packaging and marketing or import and export of fluorinated GHGs. They stated that the proposed subpart L was the more appropriate vehicle for the monitoring and reporting of emissions and destruction of fluorinated GHGs still within the production process.

However, the producers noted that it was practical and appropriate under subpart OO to measure the quantities of fluorinated GHGs that are returned to the production facility for destruction after entering into commerce (*e.g.,* because they have become irretrievably contaminated).

Regarding fluorinated GHGs that are produced and transformed at the same facility, the fluorinated GHG producers noted that these fluorinated GHGs never enter the U.S. supply of fluorinated GHGs because they never leave the facility where they are produced. Thus, it is not necessary to track them under subpart OO.

Regarding fluorinated GHGs that occur as low-concentration constituents of fluorinated GHG products, the producers observed that such low-concentration constituents generally consist of by-products that are packaged along with the main constituent of the product. They noted that exempting the production, import, and export of these low-concentration constituents from monitoring and reporting requirements would be consistent with the exemption of "trace" concentrations from other monitoring requirements in subpart OO, such as 40 CFR 98.414(f) and (h).

In response to the concern regarding fluorinated GHGs that are emitted or destroyed before the product is packaged for sale, we are proposing (1) to modify the definition of "produce a fluorinated GHG" at 40 CFR 98.410(b) to explicitly exclude the "creation of fluorinated GHGs that are released or destroyed at the production facility before the production measurement at § 98.414(a);" (2) to remove the requirements at 40 CFR 98.414(j) and 98.416(a)(4) to monitor and report the destruction of fluorinated GHGs "that are not included in the calculation of the mass produced in 40 CFR 98.413(a) because they are removed from the production process as byproducts or wastes;" and (3) to modify the requirements at 40 CFR 98.414(h) and 98.416(a)(3) to limit them to "the mass of each fluorinated GHGs that is fed into the destruction device and that was previously produced as defined at § 98.410(b)."

These proposed amendments would clarify that the scope of subpart OO is that which EPA has always intended, and they would modify the destruction monitoring and reporting requirements to be fully consistent with that scope. As noted in the preamble to the final Part 98 (74 FR 56259), and in the response to comments document, the intent of subpart OO is to track the quantities of fluorinated GHGs entering and leaving the U.S. supply of

fluorinated GHGs. Specifically, subpart OO is intended to address production of fluorinated GHGs, not emissions or destruction of fluorinated GHGs that occur during the production process. To clarify this in the regulatory text, we are proposing to amend the definition of "produce a fluorinated GHG" at 40 CFR 98.410(b) to exclude the "creation of fluorinated GHGS that are released or destroyed at the production facility before the production measurement at § 98.414(a)."

As noted in the proposed Part 98 (74 FR 16580), the production measurement at 40 CFR 98.414(a) could occur wherever it traditionally occurs, *e.g.,* at the inlet to the day tank or at the shipping dock, as long as the subpart OO monitoring requirements were met (*e.g.,* one-percent precision and accuracy for the mass produced and for container heels, if applicable). As noted above, emissions upstream of the production measurement would be subject to proposed subpart L and are not part of the subpart OO source category.

We are also proposing to amend 40 CFR 98.416(a)(3) to limit the monitoring and reporting of destroyed fluorinated GHGs to those destroyed fluorinated GHGs that were previously "produced" under today's revised definition.[4] Such fluorinated GHGs include but are not limited to quantities that are shipped to the facility by another facility for destruction, and quantities that are returned to the facility for reclamation but are found to be irretrievably contaminated. While monitoring of some destroyed streams appears to pose significant technical challenges,[5] monitoring of quantities of fluorinated GHGs that were previously produced does not. These quantities can be weighed and analyzed by the facility upon receipt or upon the facility's conclusion that they cannot be brought back to the specifications for new or reusable product.

In response to the concern regarding fluorinated GHGs that are produced and transformed at the same facility, we are proposing to (1) amend the definition of "produce a fluorinated GHG" to exclude "the creation of intermediates that are created and transformed in a single process with no storage of the intermediates;" (2) amend the definition of "produce a fluorinated GHG" to explicitly include "the manufacture of a fluorinated GHG *as an isolated intermediate* for use in a process that will result in its transformation either at or outside of the production facility;" (3) add a definition of "isolated intermediate;" and (4) add provisions to 40 CFR 98.414, 98.416, and 98.417 to clarify that isolated intermediates that are produced and transformed at the same facility are exempt from subpart OO monitoring, reporting, and recordkeeping requirements respectively.

As noted by the producers, fluorinated GHGs that are produced and transformed at the same facility never enter the U.S. supply of industrial greenhouse gases; thus, they do not need to be reported under subpart OO. This is true both of isolated intermediates and of intermediates that are created and transformed in a single process with no storage of the intermediate. However, while we are proposing to exclude the latter from the definition of "produce a fluorinated GHG," we are proposing to include the former in that definition. This is because the manufacture of isolated intermediates, which can lead to emissions of those intermediates, is of interest under subpart L, and we would like to use the same definition of "produce a fluorinated GHG" for subpart L as for subpart OO for consistency and clarity. Thus, instead of excluding the manufacture of isolated intermediates that are transformed at the same facility from the definition of "produce a fluorinated GHG," we are proposing to add provisions to exclude it from the subpart OO monitoring, reporting, and recordkeeping requirements. We are also proposing to add a definition of "isolated intermediate" that is the same as that proposed for subpart L (75 FR 18652, April 12, 2010).

In response to the concern regarding fluorinated GHGs that occur as low-concentration constituents of fluorinated GHG products, we are proposing to define and exclude low-concentration constituents from the monitoring, reporting, and recordkeeping requirements for fluorinated GHG production, exports, and imports. For purposes of production and export, we are proposing to define low-concentration constituent as a fluorinated GHG constituent of a fluorinated GHG product that occurs in the product in concentrations below 0.1 percent by mass. This concentration is the same as that used in the definition of "trace concentration" used elsewhere in subpart OO. It is also consistent with industry purity standards for HFC refrigerants (AHRI 700), for SF_6 used as an insulator in electrical equipment (IEC 60376), and for perfluorocarbons and other fluorinated GHGs used in electronics manufacturing (SEMI C3 series). To meet these standards, which set limits that range from less than 0.1 percent to 0.5 percent for all fluorinated GHG impurities combined, fluorinated GHG producers are likely to have identified and quantified the concentrations of impurities at concentrations at or above 0.1 percent for the products subject to the standards. Finally, below concentrations of 0.1 percent, fluorinated GHG impurities are not likely to have a significant impact on the GWP of the product. For example, if a low-concentration constituent occurs in concentrations of just under 0.1 percent and has a GWP that is ten times as large as the GWP of the main constituent of the product, it will increase the weighted GWP of the product by just under one percent.

To ensure that fluorinated GHG production facilities rely on data of known and acceptable quality when determining whether or not to report a minor fluorinated GHG constituent of a product, we are also proposing product sampling and analytical requirements at 40 CFR 98.414(n) and corresponding calibration requirements at 40 CFR 98.414(o).

For purposes of fluorinated GHG import, we are proposing to define low-concentration constituent as a fluorinated GHG constituent of a fluorinated GHG product that occurs in the product in concentrations below 0.5 percent by mass. We are proposing a higher concentration for fluorinated GHG imports than for fluorinated GHG production and exports because importers are less likely than producers to have detailed information on the identities and concentrations of minor fluorinated GHG constituents in their products.

[4] In Part 98, EPA required the monitoring of all streams being destroyed because it was our understanding, based on conversations with fluorinated GHG producers, that the mass flow of destroyed fluorinated GHG streams was routinely monitored. To arrive at the quantities being removed from the supply, EPA required facilities to estimate the share of the total quantity of fluorinated GHGs destroyed that consisted of fluorinated GHGs that were not included in the calculation of the mass produced. This share could then be subtracted from the total to arrive at the amounts destroyed that were removed from the supply. In other words, monitoring and reporting of the destruction of fluorinated GHGs that were not included in the mass produced was required in order to estimate the destruction of fluorinated GHGs that had been produced.

[5] These include (1) low-pressure conditions that make it challenging to achieve good accuracies and precisions and under which the installation of a flowmeter may lead to low- or no-flow conditions, interfering with operations upstream of the meter, (2) corrosive conditions that require the use of Tefzel-lined flow meters, which are currently available in a limited range of sizes and precisions, and (3) variations in stream flow rates and compositions that are associated with purging of vessels and columns and that make it difficult to select a meter that will measure the full range of flows to the required accuracy and precision.

In response to the concerns regarding fluorinated GHGs that do not have GWPs listed in Table A–1, we are proposing (1) to exempt such compounds from the general subpart A requirement to report supply flows in terms of CO_2 equivalents and (2) to recast the reporting exemptions for import and export of small shipments in terms of kilograms of fluorinated GHGs or N_2O rather than tons of CO_2-equivalents. The amendment to subpart A is discussed in more detail in section II.G of this preamble. The exemptions for import and export would be applied to shipments of less than 25 kilograms of fluorinated GHGs or N_2O rather than to shipments of less than 250 metric tons of CO_2e. This would enable small shipments of fluorinated GHGs to be exempt from reporting regardless of whether or not the fluorinated GHG had a GWP listed in Table A–1. Our analysis of import and export data indicates that this change would slightly increase both the number and total mass of the imports and exports reported under the rule, but this analysis does not account for fluorinated GHGs whose GWPs are not listed in Table A–1. If those fluorinated GHGs were accounted for, we believe that the level of reporting would increase even less and might even decrease slightly.

Other Corrections. We are also proposing to amend the reporting and recordkeeping provisions in subpart OO to correct internal inconsistencies in the subpart and to clarify those requirements.

We are proposing to amend the reporting requirements in 40 CFR 98.416(a)(15) and (c)(10) to remove N_2O from the list of GHGs that must be reported when they are transferred off site for destruction, because N_2O transferred off site for destruction is not required to be monitored.

We are proposing to amend 40 CFR 98.416(b) and (e) to clarify the due dates of the one-time reports required by those paragraphs. The proposed due date for the one-time reports is March 31, 2011, or within 60 days of commencing fluorinated GHG destruction or production (as applicable). The due date in 40 CFR 98.416(e) in subpart OO was April 1, 2011, and there was no provision for commencing fluorinated GHG destruction or production after that date. The proposed amendments will make the due dates in 40 CFR 98.416(b) and (e) consistent with each other, with the due date for a similar report required in subpart O, and with the due date for other reporting under the rule.

We are proposing to amend the recordkeeping requirements in 40 CFR 98.417(a)(2) to correct and update an internal reference. The correct reference is to "§ 98.414(m) and (o)," instead of "§ 98.417(j) and (k)." We are proposing to amend 40 CFR 98.417(b) to remove the reference to the "annual destruction device outlet reports" in 40 CFR 98.416(e) since no such reporting requirement exists.

Finally, we are proposing to amend 40 CFR 98.417(d)(2) to correct a typographical error; that paragraph should refer to "the invoice for the export," rather than for the "import."

R. Subpart PP (Suppliers of Carbon Dioxide)

In subpart PP, we are proposing to remove the words "each" from the list of GHGs to report in 40 CFR 98.422. This change would align this section with the requirements of the rest of subpart PP, which allow for monitoring of an aggregated flow of CO_2 if it is done at a gathering point downstream of individual production wells or production process units.

We are proposing to allow those suppliers that supply CO_2 in containers to calculate the annual mass of CO_2 supplied in containers by using weigh bills, scales, load cells, or loaded container volume readings as an alternative to flow meters. As a result of many questions received during outreach in support of alternative procedures for CO_2 supplied in containers, we have reevaluated the calculation procedures for CO_2 suppliers. We have concluded that measurements made with weigh bills, scales, load cells, or loaded container volume readings will continue to meet the level of data quality and accuracy needed by EPA with respect to subpart PP. We have reached this conclusion with consideration to minimizing the burden on and maximizing the flexibility provided to industry.

We are proposing multiple amendments to the regulatory text to accommodate this proposed provision. First, we are proposing that 40 CFR 98.423(b) be renumbered to 40 CFR 98.423(c) and that a new 40 CFR 98.423(b) be added with calculation procedures for CO_2 supplied in containers. Second, we are proposing to amend the first sentence of 40 CFR 98.423(a) to allow suppliers that supply CO_2 in containers to use the alternative procedures in 40 CFR 98.423(b). Third, we are proposing to add new QA/QC procedures for suppliers that supply CO_2 in containers to 40 CFR 98.424(a). Fourth, we are proposing to add missing data procedures for suppliers that supply CO_2 in containers to 40 CFR 98.425(d). Finally, we are proposing to make multiple amendments to regulatory text in 40 CFR 98.426 so that all data collected with weigh bills, scales, load cells, or loaded container volume readings must be reported just as for all data collected with flow meters.

We note that under the existing requirements, importers and exporters that import and export CO_2 in containers must measure the mass of CO_2 in containers using weigh bills, scales, or load cells. In this action, we are not proposing that the use of loaded container volume readings be allowed for such reporters as an alternative to weigh bills, scales, or load cells because we have received no questions from importers or exporters suggesting the need for such an allowance. We seek comment on whether such an allowance should be extended to importers and exporters of CO_2 in containers, and if so whether the calculation procedures, QA/QC procedures, missing data procedures, and reporting requirements for loaded container volume readings proposed in this action for suppliers should be offered to importers and exporters.

We are proposing to remove the requirement that CO_2 measurement must be made prior to subsequent purification, processing, or compression at 40 CFR 98.423(a)(1), (a)(2), and (b) (which we are proposing to redesignate as 40 CFR 98.423(c)). This provision created confusion and conflict over where to place a flow meter. For example, at least one reporter has indicated that only a portion of a CO_2 stream is transferred for commercial application while the rest is retained for onsite use and emission, and this portion of the stream is segregated only after processing. As a result of this and other concerns that the requirement to install flow meters prior to purification, processing, or compression could result in a requirement to install the flow meter at a technically infeasible point, we reevaluated the value of such a constraint on the CO_2 calculations. Since the purpose of subpart PP is to collect accurate data on CO_2 supplied to the economy, we have concluded that measurements made after purification, compression, or processing will continue to meet the level of data quality and accuracy needed with respect to subpart PP, while minimizing the burden on industry and providing greater flexibility in measuring CO_2 streams.

To ensure that all reporters account for the appropriate quantity of CO_2 in situations where a CO_2 stream is segregated such that only a portion is captured for commercial application or

for injection and where a flow meter is used, we are proposing to add language at 40 CFR 98.424(a) requiring the flow meter to be located after the point of segregation. We are also proposing to amend existing language in 40 CFR 98.424(a) to reference this new requirement.

Because the proposed amendments would allow flow meters to be located after purification, compression, or processing, we are proposing to add data reporting requirements in 40 CFR 98.426 to collect additional information on flow meter location. Specifically, we are proposing that facilities would report information on the placement of each flow meter used in relation to the points of CO_2 stream capture, deyhdration, compression, and other processing. Knowing where in the production process the flow meter is located will enable EPA to effectively compare data across and to learn about the efficacy of various CO_2 stream capture processes.

The current subpart PP regulatory text requires that a reporter using a volumetric flow meter to measure the flow of a CO_2 stream measure density of that CO_2 stream in order to calculate the mass of CO_2 supplied. As a result of new analysis, we have concluded that the mass of CO_2 in a stream can be adequately determined by converting the volumetric flow of CO_2 from operating conditions to standard conditions and then applying the density value for CO_2 at standard conditions and the measured concentration of CO_2 in the flow. This approach may also be less burdensome for reporters than directly measuring density with equipment. Therefore, we are proposing to amend 40 CFR 98.424(a)(5) by replacing the word "measure" with the word "determine."

We are also proposing to add a new paragraph 40 CFR 98.424(c) so that suppliers will be able to calculate the mass of CO_2 in a stream from the measured volumetric flow (converted to standard conditions) and CO_2 concentration, and the given density of CO_2 at standard conditions.

For the calculation in the proposed paragraph 40 CFR 98.424(c), standard conditions under subpart PP would be a temperature and an absolute pressure of 60°F and 1 atmosphere. Note that this would be different than the standard conditions defined in subpart A (40 CFR 98.6), which are 68°F and 14.7 psia. It is our understanding that 60°F and 1 atmosphere (which is equivalent to 14.7 psia) are more commonly used by the industries covered by subpart PP, and we seek comment on this conclusion. Given these conditions, we are proposing that reporters must use 0.0018704 metric tons per standard cubic meter as a density value for CO_2 at standard conditions if this is the industry standard practice used to determine density.

The current subpart PP regulatory text also requires that an appropriate method published by a consensus-based standards organization be used to measure density if such a method exists. Where no such method exists, an industry standard practice must be followed. We have been unable to identify any method published by a consensus-based standards organization that accounts for the approach for determining density described above and have concluded that it would be categorized as an industry standard practice. Therefore, we are proposing to amend language in 40 CFR 98.424(a)(5) and (a)(5)(ii) to allow reporters to choose equally from between a method published by a consensus-based standards organization that is appropriate or an industry standard practice to determine density.

We are proposing to amend the reference to the U.S. Food and Drug Administration food-grade specifications for CO_2 in 40 CFR 98.424(b)(2) to correct a typographical error. The correct reference is 21 CFR 184.1240, not 21 CFR 184.1250.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

B. Paperwork Reduction Act

This action does not impose any new information collection burden. These proposed amendments do not make any substantive changes to the reporting requirements in any of the subparts for which amendments are being proposed. In many cases, the proposed amendments to the reporting requirements could potentially reduce the reporting burden by making the reporting requirements conform more closely to current industry practices. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the regulations promulgated on October 30, 2009, under 40 CFR Part 98 under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0629. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. Further information on EPA's assessment on the impact on burden can be found in the Revisions Cost Memo (EPA–HQ–OAR–2008–0508).

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of these proposed rule amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The proposed rule amendments will not impose any new requirement on small entities that are not currently required by the rules promulgated on October 30, 2009 (*i.e.,* calculating and reporting annual GHG emissions).

EPA took several steps to reduce the impact of Part 98 on small entities. For example, EPA determined appropriate thresholds that reduced the number of small businesses reporting. In addition, EPA did not require facilities to install CEMS if they did not already have them. Facilities without CEMS can calculate emissions using readily available data or data that are less expensive to collect such as process data or material consumption data. For some source categories, EPA developed tiered methods that are simpler and less burdensome. Also, EPA required annual instead of more frequent reporting. Finally, EPA continues to conduct significant outreach on the mandatory GHG reporting rule and maintains an "open door" policy for stakeholders to help inform EPA's understanding of key issues for the industries.

We continue to be interested in the potential impacts of the proposed rule amendments on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act (UMRA)

This proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA has estimated that, overall, the proposed revisions do not significantly change the overall costs of compliance with Part 98. The proposed amendments include providing additional flexibility for reporters, clarifying existing reporting requirements, and requiring reporting of information already required to be collected under Part 98. EPA estimates that the cost for all reporters in reviewing the proposed rule and determining if, and if so how, it applies to their facility, is approximately $2.5 million in the first year. Considering the additional flexibilities proposed, in sum, EPA has estimated that the proposed rule, if finalized, would reduce the burden to reporters as compared to the 2009 final rule. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA. For more information on the cost analysis, please refer to the memorandum titled "Mandatory Greenhouse Gas Reporting: Changes in National Cost Estimates Associated with the Proposed Notice of Revisions" found in the docket at (EPA–HQ–OAR–2008–0508).

This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. EPA determined that the proposed rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments because the amendments will not impose any new requirements that are not currently required by the rules published on October 30, 2009 (*i.e.,* calculating and reporting annual GHG emissions). EPA concluded in the preamble to that final rule that the rule "* * * contains no regulatory requrements that might significantly or uniquely affect small governments" (40 CFR 56260). Because the final rule was not determined to significantly or uniquely affect small governments, and because this proposed rule generally reduces the burden associated with the 2009 final rule, these rule amendments would not unfairly apply to small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. However, for a more detailed discussion about how these proposed rule amendments would relate to existing State programs, *please see* Section II of the proposal preamble for Part 98 (74 FR 16457 to 16461, April 10, 2009).

These amendments apply directly to facilities that supply fuel or chemicals that when used emit greenhouse gases or facilities that directly emit greenhouses gases. They do not apply to governmental entities unless the government entity owns a facility that directly emits greenhouse gases above threshold levels (such as a landfill or large stationary combustion source), so relatively few government facilities would be affected. This regulation also does not limit the power of States or localities to collect GHG data and/or regulate GHG emissions. Thus, EO 13132 does not apply to this action.

Although section 6 of Executive Order 13132 does not apply to this action, EPA did consult with State and local officials or representatives of State and local governments in developing Part 98. A summary of EPA's consultations with State and local governments is provided in Section VIII.E of the preamble to the final Part 98 (74 FR 56260, October 30, 2009).

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The proposed rule amendments would not result in any changes to the requirements of the 2009 rule. Thus, Executive Order 13175 does not apply to this action.

Although Executive Order 13175 does not apply to this action, EPA sought opportunities to provide information to Tribal governments and representatives during the development of the rules promulgated on October 30, 2009. A summary of the EPA's consultations with Tribal officials is provided Sections VIII.E and VIII.F of the preamble to the final Part 98 (74 FR 56260, October 30, 2009).

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking involves technical standards. No new test methods were developed for this proposed rule; rather, EPA identified existing means of monitoring, reporting, and keeping records of greenhouse gas emissions. EPA proposes to use two additional voluntary consensus standards from ASTM International. Part 98 includes the use of over 40 voluntary consensus standards from various consensus standards bodies, for example, ASTM International, the American Society of Chemical Engineers, Gas Processors Association, the American Gas Association, and the American Petroleum Institute. The proposed addition of these two

voluntary consensus standards from ASTM International to Part 98 will help petroleum refineries and petrochemical facilities monitor, report, and keep records of greenhouse gas emissions. The test methods are incorporated by reference into the proposed rule and are available as specified in proposed amendments to 40 CFR 98.7.

By incorporating voluntary consensus standards into this proposed rule, EPA is both meeting the requirements of the NTTAA and presenting multiple options and flexibility for measuring greenhouse gas emissions.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

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

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

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment because it is a rule addressing information collection and reporting procedures.

List of Subjects in 40 CFR Part 98

Environmental protection, Administrative practice and procedure, Greenhouse gases, Incorporation by reference, Suppliers, Reporting and recordkeeping requirements.

Dated: July 20, 2010.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 98—[AMENDED]

1. The authority citation for part 98 continues to read as follows:

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

Subpart A—[Amended]

2. Section 98.2 is amended by revising paragraph (a)(4)(iii)(B) to read as follows:

§ 98.2 Who must report?

(a) * * *

(4) * * *

(iii) * * *

(B) Local natural gas distribution companies that deliver 460,000 thousand standard cubic feet or more of natural gas per year.

* * * * *

3. Section 98.3 is amended by:

a. Revising paragraphs (c)(1), (c)(4)(i), (c)(4)(ii), (c)(4)(iii) introductory text, (c)(4)(iii)(A), (c)(4)(iii)(B), and (c)(5)(i).

b. Revising the third sentence of paragraph (d)(3) introductory text.

c. Revising the first sentence of paragraph (f).

d. Revising paragraphs (g)(4), (g)(5)(iii).

e. Revising paragraph (h).

f. Revising paragraph (i).

g. Adding paragraph (j).

§ 98.3 What are the general monitoring, reporting, recordkeeping and verification requirements of this part?

* * * * *

(c) * * *

(1) Facility name or supplier name (as appropriate), facility or supplier ID number, and physical street address of the facility or supplier, including the city, state, and zip code.

* * * * *

(4) * * *

(i) Annual emissions (including biogenic CO_2) aggregated for all GHG from all applicable source categories in subparts C through JJ of this part and expressed in metric tons of CO_2e calculated using Equation A–1 of this subpart.

(ii) Annual emissions of biogenic CO_2 aggregated for all applicable source categories in subparts C through JJ of this part in metric tons. Units that use the methodologies in part 75 of this chapter to calculate CO_2 mass emissions are not required to separately report biogenic CO_2 emissions, but may do so as an option.

(iii) Annual emissions from each applicable source category in subparts C through JJ of this part, expressed in metric tons of each applicable GHG listed in this paragraph (4)(iii)(A) through (4)(iii)(E).

(A) Biogenic CO_2. Units that use the methodologies in part 75 of this chapter to calculate CO_2 mass emissions are not required to separately report biogenic CO_2 emissions, but may do so as an option.

(B) CO_2 (including biogenic CO_2).

* * * * *

(5) * * *

(i) Total quantity of GHG aggregated for all GHG from all applicable supply categories in subparts KK through PP of this part and expressed in metric tons of CO_2e calculated using Equation A–1 of this subpart. For fluorinated GHGs, calculate and report CO_2e for only those fluorinated GHGs listed in Table A–1 of this subpart.

* * * * *

(d) * * *

(3) * * * An owner or operator that submits an abbreviated report must submit a full GHG report according to the requirements of paragraph (c) of this section beginning in calendar year 2012.

* * *

* * * * *

(f) *Verification.* To verify the completeness and accuracy of reported GHG emissions, the Administrator may review the certification statements described in paragraphs (c)(9) and (d)(3)(vi) of this section and any other credible evidence, in conjunction with a comprehensive review of the GHG reports and periodic audits of selected reporting facilities. * * *

(g) * * *

(4) Missing data computations. For each missing data event, also retain a record of the cause of the event and the corrective actions taken to restore malfunctioning monitoring equipment.

(5) * * *

(iii) The owner or operator shall revise the GHG Monitoring Plan as needed to reflect changes in production processes, monitoring instrumentation, and quality assurance procedures; or to improve procedures for the maintenance and repair of monitoring systems to reduce the frequency of monitoring equipment downtime.

* * * * *

(h) *Annual GHG report revisions.*

(1) The owner or operator shall submit a revised annual GHG report within 45 days of discovering that an annual GHG report that the owner or operator previously submitted contains one or more substantive errors. The revised report must correct all substantive errors.

(2) The Administrator may notify the owner or operator in writing that an annual GHG report previously submitted by the owner or operator contains one or more substantive errors.

Such notification will identify each such substantive error. The owner or operator shall, within 45 days of receipt of the notification, either resubmit the report that, for each identified substantive error, corrects the identified substantive error (in accordance with the applicable requirements of this part) or provide information demonstrating that the previously submitted report does not contain the identified substantive error or that the identified error is not a substantive error.

(3) A substantive error is an error that impacts the quantity of GHG emissions reported or otherwise prevents the reported data from being validated or verified.

(4) Notwithstanding paragraphs (h)(1) and (h)(2) of this section, upon request by the owner or operator, the Administrator may provide reasonable extensions of the 45-day period for submission of the revised report or information under paragraphs (h)(1) and (h)(2) of this section. If the Administrator receives a request for extension of the 45-day period, by e-mail to an address prescribed by the Administrator, at least two business days prior to the expiration of the 45-day period, and the Administrator does not respond to the request by the end of such period, the extension request is deemed to be automatically granted for 30 more days. During the automatic 30-day extension, the Administrator will determine what extension, if any, beyond the automatic extension is reasonable and will provide any such additional extension.

(5) The owner or operator shall retain documentation for 3 years to support any revision made to an annual GHG report.

(i) *Calibration and accuracy requirements.* The owner or operator of a facility or supplier that is subject to the requirements of this part must meet the applicable flow meter calibration and accuracy requirements of this paragraph (i). The accuracy specifications in this paragraph (i) do not apply where either the use of company records (as defined in § 98.6) or the use of "best available information" is specified in an applicable subpart of this part to quantify fuel usage and/or other parameters. Further, the provisions of this paragraph (i) do not apply to stationary fuel combustion units that use the methodologies in part 75 of this chapter to calculate CO_2 mass emissions.

(1) Except as otherwise provided in paragraphs (i)(4) through (i)(6) of this section, flow meters that measure liquid and gaseous fuel feed rates, process stream flow rates, or feedstock flow rates and provide data for the GHG emissions calculations, shall be calibrated prior to April 1, 2010 using the procedures specified in this paragraph (i) when such calibration is specified in a relevant subpart of this part. Each of these flow meters shall meet the applicable accuracy specification in paragraph (i)(2) or (i)(3) of this section. All other measurement devices (*e.g.,* weighing devices) that are required by a relevant subpart of this part, and that are used to provide data for the GHG emissions calculations, shall also be calibrated prior to April 1, 2010; however, the accuracy specifications in paragraphs (i)(2) and (i)(3) of this section do not apply to these devices. Rather, each of these measurement devices shall be calibrated to meet the accuracy requirement specified for the device in the applicable subpart of this part, or, in the absence of such accuracy requirement, the device must be calibrated to an accuracy within the appropriate error range for the specific measurement technology, based on an applicable operating standard, including but not limited to industry standards and manufacturer's specifications. The procedures and methods used to quality-assure the data from each measurement device shall be documented in the written Monitoring Plan, pursuant to paragraph (g)(5)(i)(C) of this section.

(i) All flow meters and other measurement devices that are subject to the provisions of this paragraph (i) must be calibrated according to one of the following. You may use the manufacturer's recommended procedures; an appropriate industry consensus standard method; or a method specified in a relevant subpart of this part. The calibration method(s) used shall be documented in the Monitoring Plan required under paragraph (g) of this section.

(ii) For facilities and suppliers that become subject to this part after April 1, 2010, all flow meters and other measurement devices (if any) that are required by the relevant subpart(s) of this part to provide data for the GHG emissions calculations shall be installed no later than the date on which data collection is required to begin using the measurement device, and the initial calibration(s) required by this paragraph (i) (if any) shall be performed no later than that date.

(iii) Except as otherwise provided in paragraphs (i)(4) through (i)(6) of this section, subsequent recalibrations of the flow meters and other measurement devices subject to the requirements of this paragraph (i) shall be performed at one of the following frequencies:

(A) You may use the frequency specified in each applicable subpart of this part.

(B) You may use the frequency recommended by the manufacturer or by an industry consensus standard practice, if no recalibration frequency is specified in an applicable subpart.

(2) Perform all flow meter calibration at measurement points that are representative of the normal operating range of the meter. Except for the orifice, nozzle, and venturi flow meters described in paragraph (i)(3) of this section, calculate the calibration error at each measurement point using Equation A–2 of this section. The terms "R" and "A" in Equation A–2 must be expressed in consistent units of measure (*e.g.,* gallons/minute, ft^3/min). The calibration error at each measurement point shall not exceed 5.0 percent of the reference value.

$$CE = \frac{|R - A|}{R} \times 100 \qquad \text{(Eq. A-2)}$$

Where:

CE = Calibration error (%)
R = Reference value
A = Flow meter response to the reference value

(3) For orifice, nozzle, and venturi flow meters, the initial quality assurance consists of in-situ calibration of the differential pressure (delta-P), total pressure, and temperature transmitters.

(i) Calibrate each transmitter at a zero point and at least one upscale point. Fixed reference points, such as the freezing point of water, may be used for temperature transmitter calibrations. Calculate the calibration error of each transmitter at each measurement point, using Equation A–3 of this subpart. The terms "R", "A", and "FS" in Equation A–3 of this subpart must be in consistent units of measure (*e.g.,* milliamperes, inches of water, psi, degrees). For each transmitter, the CE value at each measurement point shall not exceed 2.0 percent of full-scale. Alternatively, the results are acceptable if the sum of the calculated CE values for the three transmitters at each calibration level (*i.e.,* at the zero level and at each upscale level) does not exceed: 6.0 percent.

$$CE = \frac{|R - A|}{FS} \times 100 \qquad \text{(Eq. A-3)}$$

Where:
CE = Calibration error (%)
R = Reference value
A = Transmitter response to the reference value
FS = Full-scale value of the transmitter

(ii) In cases where there are only two transmitters (*i.e.,* differential pressure and either temperature or total pressure) in the immediate vicinity of the flow meter's primary element (*e.g.,* the orifice plate), or when there is only a differential pressure transmitter in close proximity to the primary element, calibration of these existing transmitters to a CE of 2.0 percent or less at each measurement point is still required, in accordance with paragraph (i)(3)(i) of this section; alternatively, when two transmitters are calibrated, the results are acceptable if the sum of the CE values for the two transmitters at each calibration level does not exceed 4.0 percent. However, note that installation and calibration of an additional transmitter (or transmitters) at the flow monitor location to measure temperature or total pressure or both is not required in these cases. Instead, you may use assumed values for temperature and/or total pressure, based on measurements of these parameters at a remote location (or locations), provided that the following conditions are met:

(A) You must demonstrate that measurements at the remote location(s) can, when appropriate correction factors are applied, reliably and accurately represent the actual temperature or total pressure at the flow meter under all expected ambient conditions.

(B) You must make all temperature and/or total pressure measurements in the demonstration described in paragraph (i)(3)(ii)(A) of this section with calibrated gauges, sensors, transmitters, or other appropriate measurement devices. At a minimum, calibrate each of these devices to an accuracy within the appropriate error range for the specific measurement technology, according to one of the following. You may calibrate using an industry consensus standards or a manufacturer's specification.

(C) You must document the methods used for the demonstration described in paragraph (i)(3)(ii)(A) of this section in the written Monitoring Plan under paragraph (g)(5)(i)(C) of this section. You must also include the data from the demonstration, the mathematical correlation(s) between the remote readings and actual flow meter conditions derived from the data, and any supporting engineering calculations in the Monitoring Plan. You must maintain all of this information in a format suitable for auditing and inspection.

(D) You must use the mathematical correlation(s) derived from the demonstration described in paragraph (i)(3)(ii)(A) of this section to convert the remote temperature or the total pressure readings, or both, to the actual temperature or total pressure at the flow meter, or both, on a daily basis. You shall then use the actual temperature and total pressure values to correct the measured flow rates to standard conditions.

(E) You shall periodically check the correlation(s) between the remote and actual readings (at least once a year), and make any necessary adjustments to the mathematical relationship(s).

(4) Fuel billing meters are exempted from the calibration requirements of this section and from the Monitoring Plan and recordkeeping provisions of paragraphs (g)(5)(i)(C) and (g)(7) of this section, provided that the fuel supplier and any unit combusting the fuel do not have any common owners and are not owned by subsidiaries or affiliates of the same company. Meters used exclusively to measure the flow rates of fuels that are used for unit startup or ignition are also exempted from the calibration requirements of this section.

(5) For a flow meter that has been previously calibrated in accordance with paragraph (i)(1) of this section, an additional calibration is not required by the date specified in paragraph (i)(1) of this section if, as of that date, the previous calibration is still active (*i.e.,* the device is not yet due for recalibration because the time interval between successive calibrations has not elapsed). In this case, the deadline for the successive calibrations of the flow meter shall be set according to one of the following. You may use either the manufacturer's recommended calibration schedule or you may use the industry consensus calibration schedule.

(6) For units and processes that operate continuously with infrequent outages, it may not be possible to meet the April 1, 2010 deadline for the initial calibration of a flow meter or other measurement device without disrupting normal process operation. In such cases, the owner or operator may postpone the initial calibration until the next scheduled maintenance outage. The best available information from company records may be used in the interim. The subsequent required recalibrations of the flow meters may be similarly postponed. Such postponements shall be documented in the monitoring plan that is required under paragraph(g)(5) of this section.

(7) If the results of an initial calibration or a recalibration fail to meet the required accuracy specification, data from the flow meter shall be considered invalid, beginning with the hour of the failed calibration and continuing until a successful calibration is completed. You shall follow the missing data provisions provided in the relavant missing data sections during the period of data invalidation.

(j) *Measurement Device Installation.*

(1) *General.* If an owner or operator required to report under subpart P, subpart X or subpart Y of this part has process equipment or units that operate continuously and it is not possible to install a required flow meter or other measurement device by April 1, 2010, (or by any later date in 2010 approved by the Administrator as part of an extension of best available monitoring methods per paragraph (d) of this section) without process equipment or unit shutdown, or through a hot tap, the owner or operator may request an extension from the Administrator to delay installing the measurement device until the next scheduled process equipment or unit shutdown. If approval for such an extension is granted by the Administrator, the owner or operator must use best available monitoring methods during the extension period.

(2) *Requests for extension of the use of best available monitoring methods for measurement device installation.* The owner or operator must first provide the Administrator an initial notification of the intent to submit an extension request for use of best available monitoring methods beyond December 31, 2010 (or an earlier date approved by EPA) in cases where measurement device installation would require a process equipment or unit shutdown, or could only be done through a hot tap. The owner or operator must follow-up this initial notification with the complete extension request containing the information specified in paragraph (j)(4) of this section.

(3) *Timing of request.*

(i) The initial notice of intent must be submitted no later than January 1, 2011, or by the end of the approved use of best available monitoring methods extension in 2010, whichever is earlier. The completed extension request must be submitted to the Administrator no later than February 15, 2011.

(ii) Any subsquent extensions to the original request must be submitted to the Administrator within 4 weeks of the owner or operator identifying the need to extend the request, but in any event no later than 4 weeks before the date for the planned process equipment or unit shutdown that was provided in the original request.

(4) *Content of the request.* Requests must contain the following information:

(i) Specific measurement device for which the request is being made and the location where each measurement device will be installed.

(ii) Identification of the specific rule requirements (by rule subpart, section, and paragraph numbers) requiring the measurement device.

(iii) A description of the reasons why the needed equipment could not be installed before April 1, 2010, or by the expiration date for the use of best available monitoring methods, in cases where an extension has been granted under § 98.3(d).

(iv) Supporting documentation showing that it is not practicable to isolate the process equipment or unit and install the measurement device without a full shutdown or a hot tap, and that there was no opportunity during 2010 to install the device. Include the date of the three most recent shutdowns for each relevant process equipment or unit, the frequency of shutdowns for each relevant process equipment or unit, and the date of the next planned process equipment or unit shutdown.

(v) Include a description of the proposed best available monitoring method for estimating GHG emissions during the time prior to installation of the meter.

(5) *Approval criteria.* The owner or operator must demonstrate to the Administrator's satisfaction that it is not reasonably feasible to install the measurement device before April 1, 2010 (or by the expiration date for the use of best available monitoring methods, in cases where an extension has been granted under paragraph(d) of this section) without a process equipment or unit shutdown, or through a hot tap, and that the proposed method for estimating GHG emissions during the time before which the measurement device will be installed is appropriate. The Administrator will not initially approve the use of the proposed best available monitoring method past December 31, 2013.

(6) *Measurement device installation deadline.* Any owner or operator that submits both a timely initial notice of intent and a timely completed extension request under paragraph (j)(3) of this section to extend use of best available monitoring methods for measurement device installation must install all such devices by July 1, 2011 unless the extension request under this paragraph (j) is approved by the Administrator before July 1, 2011.

(7) *One time extension past December 31, 2013.* If an owner or operator determines that a scheduled process equipment or unit shutdown will not occur by December 31, 2013, the owner or operator may re-apply to use best available monitoring methods for one additional time period, not to extend beyond December 31, 2015. To extend use of best available monitoring methods past December 31, 2013, the owner or operator must submit a new extension request by June 1, 2013 that contains the information required in paragraph (j)(4) of this section. The owner or operator must demonstrate to the Administrator's satisfaction that it continues to not be reasonably feasible to install the measurement device before December 31, 2013 without a process equipment or unit shutdown, or that installation of the measurement device could only be done through a hot tap, and that the proposed method for estimating GHG emissions during the time before which the measurement device will be installed is appropriate. An owner or operator that submits a request under this paragraph to extend use of best available monitoring methods for measurement device installation must install all such devices by December 31, 2013, unless the extension request under this paragraph is approved by the Administrator.

4. Section 98.4 is amended by revising paragraphs (i)(2) and (m)(2)(i) to read as follows:

§ 98.4 Authorization and responsibilities of the designated representative.

* * * * *

(i) * * *

(2) The name, organization name (company affiliation-employer), address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the designated representative and any alternate designated representative.

* * * * *

(m) * * *

(2) * * *

(i) The name, organization name (company affiliation-employer) address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of such designated representative or alternate designated representative.

* * * * *

5. Section 98.6 is amended by:

a. Adding in alphabetical order definitions for "Agricultural byproducts," "Primary fuel," "Solid byproducts," "Waste oil," and "Wood residuals."

b. Revising the definitions for "Bulk natural gas liquid or NGL," "Distillate Fuel Oil," "Fossil fuel," "Municipal solid waste or MSW," "Natural gas," and "Natural gas liquids (NGLs)."

c. Removing the definition for "Fossil fuel-fired."

§ 98.6 Definitions.

* * * * *

Agricultural byproducts means those parts of arable crops that are not used for the primary purpose of producing food. Agricultural byproducts include, but are not limited to, oat, corn and wheat straws, bagasse, peanut shells, rice and coconut husks, soybean hulls, palm kernel cake, cottonseed and sunflower seed cake, and pomace.

* * * * *

Bulk natural gas liquid or NGL refers to mixtures of hydrocarbons that have been separated from natural gas as liquids through the process of absorption, condensation, adsorption, or other methods. Generally, such liquids consist of ethane, propane, butanes, and pentanes plus. Bulk NGL is sold to fractionators or to refineries and petrochemical plants where the fractionation takes place.

* * * * *

Distillate Fuel Oil means a classification for one of the petroleum fractions produced in conventional distillation operations and from crackers and hydrotreating process units. The generic term distillate fuel oil includes kerosene, kerosene-type jet fuel, diesel fuels (Diesel Fuels No. 1, No. 2, and No. 4), and fuel oils (Fuel Oils No. 1, No. 2, and No. 4).

* * * * *

Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material, for purpose of creating useful heat.

* * * * *

Municipal solid waste or MSW means solid phase household, commercial/retail, and/or institutional waste. Household waste includes material discarded by single and multiple

residential dwellings, hotels, motels, and other similar permanent or temporary housing establishments or facilities. Commercial/retail waste includes material discarded by stores, offices, restaurants, warehouses, non-manufacturing activities at industrial facilities, and other similar establishments or facilities. Institutional waste includes material discarded by schools, nonmedical waste discarded by hospitals, material discarded by non-manufacturing activities at prisons and government facilities, and material discarded by other similar establishments or facilities. Household, commercial/retail, and institutional waste does not include used oil, wood pellets, construction, renovation, and demolition wastes (which includes, but is not limited to, railroad ties and telephone poles), clean wood, industrial process or manufacturing wastes, medical waste, or motor vehicles (including motor vehicle parts or vehicle fluff). Household, commercial/retail, and institutional wastes include yard waste, refuse-derived fuel, and motor vehicle maintenance materials, limited to vehicle batteries and tires, except where a single waste stream consisting of tires is combusted in a unit.

* * * * *

Natural gas means a naturally occurring mixture of hydrocarbon and non-hydrocarbon gases found in geologic formations beneath the earth's surface, of which the principal constituent is methane. Natural gas may be field quality or pipeline quality. Natural gas is composed of at least 70 percent methane by volume or has a high heat value between 910 and 1150 Btu per standard cubic foot.

Natural gas liquids (NGLs) means those hydrocarbons in natural gas that are separated from the gas as liquids through the process of absorption, condensation, adsorption, or other methods. Generally, such liquids consist of ethane, propane, butanes, and pentanes plus. Bulk NGLs refers to mixtures of NGLs that are sold or delivered as undifferentiated product from natural gas processing plants.

* * * * *

Primary fuel means the fuel that provides the greatest percentage of the annual heat input to a stationary fuel combustion unit.

* * * * *

Solid byproducts means plant matter such as vegetable waste, animal materials/wastes, and other solid biomass, except for wood, wood waste, and sulphite lyes (black liquor).

* * * * *

Waste oil means a petroleum-derived or synthetically-derived oil whose physical properties have changed as a result of storage, handling or use, such that the oil cannot be used for its original purpose. Waste oil consists primarily of automotive oils (*e.g.,* used motor oil, transmission oil, hydraulic fluids, brake fluid, etc.) and industrial oils (*e.g.,* industrial engine oils, metalworking oils, process oils, industrial grease, etc).

* * * * *

Wood residuals means wood waste recovered from three principal sources: Municipal solid waste (MSW); construction and demolition debris; and primary timber processing. Wood residuals recovered from MSW include wooden furniture, cabinets, pallets and containers, scrap lumber (from sources other than construction and demolition activities), and urban tree and landscape residues. Wood residuals from construction and demolition debris originate from the construction, repair, remodeling and demolition of houses and non-residential structures. Wood residuals from primary timber processing include bark, sawmill slabs and edgings, sawdust, and peeler log cores. Other sources of wood residuals include, but are not limited to, railroad ties, telephone and utility poles, pier and dock timbers, wastewater process sludge from paper mills, and logging residues.

* * * * *

6. Section 98.7 is amended by:

a. Removing and reserving paragraph (b).

b. Revising paragraphs (d)(1) and (d)(2).

c. Removing and reserving paragraph (d)(3).

d. Revising paragraphs (d)(4) and (d)(5).

e. Removing and reserving paragraph (d)(6).

f. Revising paragraphs (d)(7) and (d)(8).

g. Removing and reserving paragraph (d)(9).

h. Revising paragraph (d)(10).

i. Removing and reserving paragraph (d)(11).

j. Revising paragraph (e)(4).

k. Removing and reserving paragraph (e)(7).

l. Revising paragraphs (e)(8), (e)(10), (e)(11), (e)(14), (e)(15), (e)(19), (e)(20), (e)(24) through (e)(27).

m. Removing and reserving paragraph (e)(28).

n. Revising paragraph (e)(30), (e)(33), and (e)(36).

o. Adding paragraphs (e)(43) and (e)(44).

p. Removing and reserving paragraph (f)(1) and (g)(3).

q. Revising paragraph (f)(2)

r. Removing and reserving paragraph (g)(3).

s. Adding paragraph (m)(3).

§ 98.7 What standardized methods are incorporated by reference into this part?

* * * * *

(d) * * *

(1) ASME MFC–3M–2004 Measurement of Fluid Flow in Pipes Using Orifice, Nozzle, and Venturi, incorporation by reference (IBR) approved for § 98.344(c) and § 98.364(e).

(2) ASME MFC–4M–1986 (Reaffirmed 1997) Measurement of Gas Flow by Turbine Meters, IBR approved for § 98.344(c) and § 98.364(e).

(3) [Reserved]

(4) ASME MFC–6M–1998 Measurement of Fluid Flow in Pipes Using Vortex Flowmeters, IBR approved for § 98.344(c) and § 98.364(e).

(5) ASME MFC–7M–1987 (Reaffirmed 1992) Measurement of Gas Flow by Means of Critical Flow Venturi Nozzles, IBR approved for § 98.344(c) and § 98.364(e).

(6) [Reserved]

(7) ASME MFC–11M–2006 Measurement of Fluid Flow by Means of Coriolis Mass Flowmeters, IBR approved for § 98.344(c).

(8) ASME MFC–14M–2003 Measurement of Fluid Flow Using Small Bore Precision Orifice Meters, IBR approved for § 98.344(c) and § 98.364(e).

(9) [Reserved]

(10) ASME MFC–18M–2001 Measurement of Fluid Flow Using Variable Area Meters, IBR approved for § 98.344(c), and § 98.364(e).

(11) [Reserved]

(e) * * *

(4) ASTM D240–02 (Reapproved 2007) Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter, IBR approved for § 98.254(e).

* * * * *

(7) [Reserved]

(8) ASTM D1826–94 (Reapproved 2003) Standard Test Method for Calorific (Heating) Value of Gases in Natural Gas Range by Continuous Recording Calorimeter, IBR approved for § 98.254(e).

* * * * *

(10) ASTM D1945–03 Standard Test Method for Analysis of Natural Gas by Gas Chromatography, IBR approved for § 98.74(c), § 98.164(b), § 98.244(b), § 98.254(d), and § 98.344(b).

(11) ASTM D1946–90 (Reapproved 2006) Standard Practice for Analysis of Reformed Gas by Gas Chromatography,

IBR approved for § 98.74(c), § 98.164(b), § 98.254(d), § 98.344(b), and § 98.364(c).

* * * * *

(14) ASTM D2502–04 Standard Test Method for Estimation of Mean Relative Molecular Mass of Petroleum Oils From Viscosity Measurements, IBR approved for § 98.74(c).

(15) ASTM D2503–92 (Reapproved 2007) Standard Test Method for Relative Molecular Mass (Molecular Weight) of Hydrocarbons by Thermoelectric Measurement of Vapor Pressure, IBR approved for § 98.74(c).

* * * * *

(19) ASTM D3238–95 (Reapproved 2005) Standard Test Method for Calculation of Carbon Distribution and Structural Group Analysis of Petroleum Oils by the n-d-M Method, IBR approved for § 98.74(c) and § 98.164(b).

(20) ASTM D3588–98 (Reapproved 2003) Standard Practice for Calculating Heat Value, Compressibility Factor, and Relative Density of Gaseous Fuels, IBR approved for § 98.254(e).

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(24) ASTM D4809–06 Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method), IBR approved for § 98.254(e).

(25) ASTM D4891–89 (Reapproved 2006) Standard Test Method for Heating Value of Gases in Natural Gas Range by Stoichiometric Combustion, IBR approved for § 98.254(e).

(26) ASTM D5291–02 (Reapproved 2007) Standard Test Methods for Instrumental Determination of Carbon, Hydrogen, and Nitrogen in Petroleum Products and Lubricants, IBR approved for § 98.74(c), § 98.164(b), § 98.244(b), and § 98.254(i).

(27) ASTM D5373–08 Standard Test Methods for Instrumental Determination of Carbon, Hydrogen, and Nitrogen in Laboratory Samples of Coal, IBR approved for § 98.74(c), § 98.114(b), § 98.164(b), § 98.174(b), § 98.184(b), § 98.244(b), § 98.254(i), § 98.274(b), § 98.284(c), § 98.284(d), § 98.314(c), § 98.314(d), § 98.314(f), and § 98.334(b).

(28) [Reserved]

* * * * *

(30) ASTM D6348–03 Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, IBR approved for § 98.54(b),§ 98.224(b), and § 98.414(n).

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(33) ASTM D6866–08 Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis, IBR approved for § 98.34(d), § 98.34(e), and § 98.36(e).

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(36) ASTM D7459–08 Standard Practice for Collection of Integrated Samples for the Speciation of Biomass (Biogenic) and Fossil-Derived Carbon Dioxide Emitted from Stationary Emissions Sources, IBR approved for § 98.34(d), § 98.34(e), and § 98.36(e).

* * * * *

(43) ASTM D2503–92(2007) Standard Test Method for Relative Molecular Mass (Molecular Weight) of Hydrocarbons by Thermoelectric Measurement of Vapor Pressure, IBR approved for § 98.254(d).

(44) ASTM D2593–93(2009) Standard Test Method for Butadiene Purity and Hydrocarbon Impurities by Gas Chromatography, IBR approved for § 98.244(b).

* * * * *

(f) * * *

(1) [Reserved]

(2) GPA 2261–00 Analysis for Natural Gas and Similar Gaseous Mixtures by Gas Chromatography, IBR approved for § 98.164(b), § 98.254(d), and § 98.344(b).

* * * * *

(g) [Reserved]

* * * * *

(k) The following material is available from the U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460, (202) 272–0167, www.epa.gov.

(1) Protocol for Measuring Destruction or Removal Efficiency (DRE) of Fluorinated Greenhouse Gas Abatement Equipment in Electronics Manufacturing, Version 1, EPA–430–R–10–003.

Subpart C—[Amended]

7. Section 98.30 is amended by:

a. Revising paragraph (b)(4).

b. Revising paragraph (c) introductory text.

c. Adding paragraph (d).

§ 98.30 Definition of the source category.

(b) * * *

(4) Flares, unless otherwise required by provisions of another subpart of this part to use methodologies in this subpart.

* * * * *

(c) For a unit that combusts hazardous waste (as defined in § 261.3 of this chapter), reporting of GHG emissions is not required unless either of the following conditions apply:

* * * * *

(d) You are not required to report GHG emissions from pilot lights. A pilot light is a small permanent auxiliary flame that ignites the burner of a combustion device when the control valve opens.

8. Section 98.32 is revised to read as follows:

§ 98.32 GHGs to report.

You must report CO_2, CH_4, and N_2O mass emissions from each stationary fuel combustion unit, except as otherwise indicated in this subpart.

9. Section 98.33 is amended by:

a. Revising paragraphs (a) introductory text and (a)(1).

b. Revising the definition of "HHV" in Equation C–2a of paragraph (a)(2)(i).

c. Revising and the first two sentences of paragraph (a)(2)(ii) introductory text.

d. In paragraph (a)(2)(ii)(A), revising the first sentence and the definitions of "$(HHV)_i$," "$(Fuel)_i$," and "n" in Equation C–2b.

e. Revising paragraph (a)(2)(ii)(B).

f. Revising the definitions of "CC" and "MW" in Equation C–5 of paragraph (a)(3)(iii).

g. Revising paragraphs (a)(3)(iv), (a)(4)(iii), and (a)(4)(iv).

h. Adding a new paragraph (a)(4)(viii).

i. Revising paragraphs (a)(5) introductory text, (a)(5)(i) introductory text, (a)(5)(i)(A), (a)(5)(i)(B), (a)(5)(ii) introductory text, (a)(5)(ii)(A), (a)(5)(iii) introductory text, (a)(5)(iii)(A), (a)(5)(iii)(B).

j. Redesignating paragraph (a)(5)(iii)(D) as paragraph (a)(5)(iv), and revising newly designated paragraph (a)(5)(iv).

k. Revising paragraph (b)(1)(iv).

l. Adding paragraph (b)(1)(v).

m. Revising paragraphs (b)(2)(ii), (b)(3)(ii)(A), (b)(3)(iii) introductory text, and (b)(3)(iii)(B).

n. Adding paragraph (b)(3)(iv).

o. Adding a second sentence to paragraph (b)(4)(i).

p. Revising paragraphs (b)(4)(ii)(A), (b)(4)(ii)(B), (b)(4)(ii)(E), (b)(4)(ii)(F), and (b)(4)(iii) introductory text.

q. Adding a new paragraph (b)(4)(iv).

r. Revising paragraph (b)(5) and the third sentence of paragraph (b)(6).

s. In paragraph (c)(1), revising the second sentence, and revising the definition of "HHV" in Equation C–8.

t. Revising the second sentence of paragraph (c)(2).

u. In paragraph (c)(4) introductory text, revising the only sentence and revising the definition of "$(HI)_A$" in Equation C–10.

v. Revising paragraphs (c)(4)(i) and (c)(4)(ii).

w. Adding a new paragraph (c)(6).

x. In paragraph (d)(1), revising the first sentence, adding a second sentence, and revising the definition of "R" in Equation C–11.

y. Revising paragraphs (d)(2), (e) introductory text, (e)(1), and (e)(2) introductory text.

z. Revising the definition of "F_c" in Equation C–13 of paragraph (e)(2)(iii).

aa. Revising paragraphs (e)(2)(iv), (e)(2)(vi)(C), and (e)(3).

bb. Reserving paragraph (e)(4).

cc. Revising the first sentence of paragraph (e)(5).

§ 98.33 Calculating GHG emissions.

* * * * *

(a) *CO_2 emissions from fuel combustion.* Calculate CO_2 mass emissions by using one of the four calculation methodologies in paragraphs (a)(1) through (a)(4) of this section, subject to the applicable conditions, requirements, and restrictions set forth in paragraph (b) of this section. Alternatively, for units that meet the conditions of paragraph (a)(5) of this section, you may use CO_2 mass emissions calculation methods from part 75 of this chapter, as described in paragraph (a)(5) of this section. For units that combust both biomass and fossil fuels, you must calculate and report CO_2 emissions from the combustion of biomass separately using the methods in paragraph (e) of this section, except as otherwise provided in paragraphs (a)(5)(iv) and (e) of this section and in § 98.36(d).

(1) *Tier 1 Calculation Methodology.* Calculate the annual CO_2 mass emissions for each type of fuel by using Equation C–1 or C–1a of this section (as applicable).

(i) Use Equation C–1 except when natural gas billing records are used to quantify fuel usage and gas consumption is expressed in units of therms. In that case, use Equation C–1a.

$$CO_2 = 1\times10^{-3} * Fuel * HHV * EF \qquad \text{(Eq. C-1)}$$

Where:

CO_2 = Annual CO_2 mass emissions for the specific fuel type (metric tons).

Fuel = Mass or volume of fuel combusted per year, from company records as defined in § 98.6 (express mass in short tons for solid fuel, volume in standard cubic feet for gaseous fuel, and volume in gallons for liquid fuel).

HHV = Default high heat value of the fuel, from Table C–1 of this subpart (mmBtu per mass or mmBtu per volume, as applicable).

EF = Fuel-specific default CO_2 emission factor, from Table C–1 of this subpart (kg CO_2/mmBtu).

1×10^{-3} = Conversion factor from kilograms to metric tons.

(ii) If natural gas consumption is obtained from billing records and fuel usage is expressed in therms, use Equation C–1a.

$$CO_2 = 1\times10^{-3}\ \left[0.1 * Gas * EF\right] \qquad \text{(Eq. C-1a)}$$

Where:

CO_2 = Annual CO_2 mass emissions from natural gas combustion (metric tons).

Gas = Annual natural gas consumption, from billing records (therms).

EF = Fuel-specific default CO_2 emission factor for natural gas, from Table C–1 of this subpart (kg CO_2/mmBtu).

0.1 = Conversion factor from therms to mmBtu

1×10^{-3} = Conversion factor from kilograms to metric tons.

(2) * * *

(i) * * *

HHV = Annual average high heat value of the fuel (mmBtu per mass or volume). The average HHV shall be calculated according to the requirements of paragraph (a)(2)(ii) of this section.

* * * * *

(ii) The minimum required sampling frequency for determining the annual average HHV (*e.g.,* monthly, quarterly, semi-annually, or by lot) is specified in § 98.34. The method for computing the annual average HHV is a function of unit size and how frequently you perform or receive from the fuel supplier the results of fuel sampling for HHV. * * *

(A) If the results of fuel sampling are received monthly or more frequently, then for each unit with a maximum rated heat input capacity greater than or equal to 100 mmBtu/hr (or for a group of units that includes at least one unit of that size), the annual average HHV shall be calculated using Equation C–2b of this section. * * *

* * * * *

$(HHV)_i$ = Measured high heat value of the fuel, for month "i", or, if applicable, an appropriate substitute data value (mmBtu per mass or volume).

$(Fuel)_i$ = Mass or volume of the fuel combusted during month "i," from company records (express mass in short tons for solid fuel, volume in standard cubic feet for gaseous fuel, and volume in gallons for liquid fuel).

n = Number of months in the year that the fuel is burned in the unit.

(B) If the results of fuel sampling are received less frequently than monthly, or, for a unit with a maximum rated heat input capacity less than 100 mmBtu/hr (or a group of such units) regardless of the HHV sampling frequency, the annual average HHV shall be computed as the arithmetic average HHV for all values for the year (including valid samples and substitute data values under § 98.35).

* * * * *

(3) * * *

(iii) * * *

CC = Annual average carbon content of the gaseous fuel (kg C per kg of fuel). The annual average carbon content shall be determined using the same procedures as specified for HHV in paragraph (a)(2)(ii) of this section.

MW = Annual average molecular weight of the gaseous fuel (kg/kg-mole). The annual average molecular weight shall be determined using the same procedures as specified for HHV in paragraph (a)(2)(ii) of this section.

* * * * *

(iv) Fuel flow meters that measure mass flow rates may be used for liquid or gaseous fuels, provided that the fuel density is used to convert the readings to volumetric flow rates. The density shall be measured at the same frequency as the carbon content. For liquid fuels, you must measure the density using one of the following appropriate methods. You may use a method published by a consensus standards organization, if such a method exists, or you may use industry standard practice. Consensus-based standards organizations include, but are not limited to, the following: ASTM International, the American National Standards Institute (ANSI), the American Gas Association (AGA), the American Society of Mechanical Engineers (ASME), the American Petroleum Institute (API), and the North American Energy Standards Board (NAESB). The method(s) used shall be documented in the Monitoring Plan required under § 98.3(g)(5). Alternatively, for fuel oil, you may use

an applicable default density value provided in paragraph (a)(3)(v) of this section. For gaseous fuels, you may determine the density using any of the following methods. You may use a density meter calibrated according to the manufacturer's instructions, a method published by a consensus standards organization, or an industry standard practice. Document the method used to determine the fuel density in the Monitoring Plan under § 98.3(g)(5).

* * * * *

(4) * * *

(iii) If the CO_2 concentration is measured on a dry basis, a correction for the stack gas moisture content is required. You shall either continuously monitor the stack gas moisture content as described in § 75.11(b)(2) of this chapter or use an appropriate default moisture percentage. For coal, wood, and natural gas combustion, you may use the default moisture values specified in § 75.11(b)(1) of this chapter. Alternatively, for any type of fuel, you may determine an appropriate site-specific default moisture value (or values), using measurements made with EPA Method 4—Determination Of Moisture Content In Stack Gases, in appendix A–3 to part 60 of this chapter. If this option is selected, the site-specific moisture default value(s) must represent the fuel(s) or fuel blends that are combusted in the unit during normal, stable operation, and must account for any distinct difference(s) in the stack gas moisture content associated with different process operating conditions. For each site-specific default moisture percentage, at least nine Method 4 runs are required. Moisture data from the relative accuracy test audit (RATA) of a CEMS may be used for this purpose. Calculate each site-specific default moisture value by taking the arithmetic average of the Method 4 runs. Each site-specific moisture default value shall be updated whenever the owner or operator believes the current value is non-representative, due to changes in unit or process operation, but in any event no less frequently than annually. Use the updated moisture value in the subsequent CO_2 emissions calculations. For each unit operating hour, a moisture correction must be applied to Equation C–6 of this section as follows:

$$CO_2^* = CO_2\left(\frac{100 - \%H_2O}{100}\right) \quad \text{(Eq. C-7)}$$

Where:

CO_2* = Hourly CO_2 mass emission rate, corrected for moisture (metric tons/hr).

CO_2 = Hourly CO_2 mass emission rate from Equation C–6 of this section, uncorrected (metric tons/hr).

$\%H_2O$ = Hourly moisture percentage in the stack gas (measured or default value, as appropriate).

(iv) An oxygen (O_2) concentration monitor may be used in lieu of a CO_2 concentration monitor to determine the hourly CO_2 concentrations, in accordance with Equation F–14a or F–14b (as applicable) in appendix F to part 75 of this chapter, if the effluent gas stream monitored by the CEMS consists solely of combustion products (i.e., no process CO_2 emissions or CO_2 emissions from sorbent are mixed with the combustion products) and if only fuels that are listed in Table 1 in section 3.3.5 of appendix F to part 75 of this chapter are combusted in the unit. If the O_2 monitoring option is selected, the F-factors used in Equations F–14a and F–14b shall be determined according to section 3.3.5 or section 3.3.6 of appendix F to part 75 of this chapter, as applicable. If Equation F–14b is used, the hourly moisture percentage in the stack gas shall be determined in accordance with paragraph (a)(4)(iii) of this section.

* * * * *

(viii) If a portion of the flue gases generated by a unit subject to Tier 4 (*e.g.,* a slip stream) is continuously diverted from the main flue gas exhaust system for the purpose of heat recovery or some other similar process, and then exhausts through a stack that is not equipped with the continuous emission monitors to measure CO_2 mass emissions, provided that the CO_2 concentration in the diverted stream is not altered in any way (*e.g.,* by chemical reaction or dilution) before the diverted stream exits to the atmosphere, an estimate of the hourly average volumetric flow rate (scfh) of the diverted gas stream shall be made at the point where it exits the main exhaust system, by using the best available information (*e.g.,* correlations of operating parameters versus flow measurements made with EPA Method 2 in appendix A–2 to part 60 of this chapter, engineering analysis, or other methods). Each hourly average volumetric flow rate (scfh) measured at the main flue gas stack shall then be added to the corresponding estimate of the hourly average flow rate of the diverted gas stream, to determine the total hourly average stack gas volumetric flow rate "Q", for use in Equation C–6 of this section. The method use to estimate the hourly flow rate of the diverted portion of the flue gas exhaust stream shall be documented in the Monitoring Plan required under § 98.3(g)(5).

(5) *Alternative methods for certain units subject to Part 75 of this chapter.* Certain units that are not subject to subpart D of this part and that report data to EPA according to part 75 of this chapter may qualify to use the alternative methods in this paragraph (a)(5), in lieu of using any of the four calculation methodology tiers.

(i) For a unit that combusts only natural gas and/or fuel oil, is not subject to subpart D of this part, monitors and reports heat input data year-round according to appendix D to part 75 of this chapter, but is not required by the applicable part 75 program to report CO_2 mass emissions data, calculate the annual CO_2 mass emissions for the purposes of this part as follows:

(A) Use the hourly heat input data from appendix D to part 75 of this chapter, together with Equation G–4 in appendix G to part 75 of this chapter to determine the hourly CO_2 mass emission rates, in units of tons/hr;

(B) Use Equations F–12 and F–13 in appendix F to part 75 of this chapterto calculate the quarterly and cumulative annual CO_2 mass emissions, respectively, in units of short tons; and

* * * * *

(ii) For a unit that combusts only natural gas and/or fuel oil, is not subject to subpart D of this part, monitors and reports heat input data year-round according to § 75.19 of this chapter but is not required by the applicable part 75 program to report CO_2 mass emissions data, calculate the annual CO_2 mass emissions for the purposes of this part as follows:

(A) Calculate the hourly CO_2 mass emissions, in units of short tons, using Equation LM–11 in § 75.19(c)(4)(iii) of this chapter.

* * * * *

(iii) For a unit that is not subject to subpart D of this part, uses flow rate and CO_2 (or O_2) CEMS to report heat input data year-round according to part 75 of

this chapter, but is not required by the applicable part 75 program to report CO_2 mass emissions data, calculate the annual CO_2 mass emissions as follows:

(A) Use Equation F–11 or F–2 (as applicable) in appendix F to part 75 of this chapter to calculate the hourly CO_2 mass emission rates from the CEMS data. If an O_2 monitor is used, convert the hourly average O_2 readings to CO_2 using Equation F–14a or F–14b in appendix F to part 75 of this chapter (as applicable), before applying Equation F–11 or F–2.

(B) Use Equations F–12 and F–13 in appendix F to part 75 of this chapter to calculate the quarterly and cumulative annual CO_2 mass emissions, respectively, in units of short tons.

* * * * *

(iv) For units that qualify to use the alternative CO_2 emissions calculation methods in paragraphs (a)(5)(i) through (a)(5)(iii) of this section, if both biomass and fossil fuel are combusted during the year, separate calculation and reporting of the biogenic CO_2 mass emissions (as described in paragraph (e) of this section) is optional.

(b) * * *

(1) * * *

(iv) May not be used if you routinely perform fuel sampling and analysis for the fuel high heat value (HHV) or routinely receive the results of HHV sampling and analysis from the fuel supplier at the minimum frequency specified in § 98.34(a), or at a greater frequency. In such cases, Tier 2 shall be used. This restriction does not apply to paragraphs (b)(1)(ii) and (b)(1)(v) of this section.

(v) May be used for natural gas combustion in a unit of any size, in cases where the annual natural gas consumption is obtained from fuel billing records in units of therms.

(2) * * *

(ii) May be used in a unit with a maximum rated heat input capacity greater than 250 mmBtu/hr for the combustion of natural gas and/or distillate fuel oil.

* * * * *

(3) * * *

(ii) * * *

(A) The use of Tier 1 or 2 is permitted, as described in paragraphs (b)(1)(iii), (b)(1)(v), and (b)(2)(ii) of this section.

* * * * *

(iii) Shall be used for a fuel not listed in Table C–1 of this subpart if the fuel is combusted in a unit with a maximum rated heat input capacity greater than 250 mmBtu/hr (or, pursuant to § 98.36(c)(3), in a group of units served by a common supply pipe, having at least one unit with a maximum rated heat input capacity greater than 250 mmBtu/hr), provided that both of the following conditions apply:

* * * * *

(B) The fuel provides 10% or more of the annual heat input to the unit or, if § 98.36(c)(3) applies, to the group of units served by a common supply pipe.

(iv) Shall be used when specified in another applicable subpart of this part, regardless of unit size.

(4) * * *

(i) * * * Tier 4 may also be used for any group of stationary fuel combustion units, process units, or manufacturing units that share a common stack or duct.

(ii) * * *

(A) The unit has a maximum rated heat input capacity greater than 250 mmBtu/hr, or if the unit combusts municipal solid waste and has a maximum rated input capacity greater than 600 tons per day of MSW.

(B) The unit combusts solid fossil fuel or MSW as the primary fuel.

* * * * *

(E) The installed CEMS include a gas monitor of any kind or a stack gas volumetric flow rate monitor, or both and the monitors have been certified, either in accordance with the requirements of part 75 of this chapter, part 60 of this chapter, or an applicable State continuous monitoring program.

(F) The installed gas or stack gas volumetric flow rate monitors are required, either by an applicable Federal or State regulation or by the unit's operating permit, to undergo periodic quality assurance testing in accordance with either appendix B to part 75 of this chapter, appendix F to part 60 of this chapter, or an applicable State continuous monitoring program.

(iii) Shall be used for a unit with a maximum rated heat input capacity of 250 mmBtu/hr or less and for a unit that combusts municipal solid waste with a maximum rated input capacity of 600 tons of MSW per day or less, if the unit meets all of the following three conditions:

* * * * *

(iv) May apply to common stack or duct configurations where:

(A) The combined effluent gas streams from two or more stationary fuel combustion units are vented through a monitored common stack or duct. In this case, Tier 4 shall be used if all of the conditions in paragraph (b)(4)(iv)(A)(1) of this section or all of the conditions in paragraph (b)(4)(iv)(A)(2) of this section are met.

(1) At least one of the units meets the requirements of paragraphs (b)(4)(ii)(A) through (b)(4)(ii)(C) of this section, and the CEMS installed at the common stack (or duct) meet the requirements of paragraphs (b)(4)(ii)(D) through (b)(4)(ii)(F) of this section.

(2) At least one of the units and the monitors installed at the common stack or duct meet the requirements of paragraph (b)(4)(iii) of this section.

(B) The combined effluent gas streams from a process or manufacturing unit and a stationary fuel combustion unit are vented through a monitored common stack or duct. In this case, Tier 4 shall be used if the combustion unit and the monitors installed at the common stack or duct meet the applicability criteria specified in paragraph (b)(4)(iv)(A)(1), or (b)(4)(iv)(A)(2) of this section.

(C) The combined effluent gas streams from two or more manufacturing or process units are vented through a common stack or duct. In this case, if any of the units is required by an applicable subpart of this part to use Tier 4, the CO_2 mass emissions may either be monitored at each individual unit, or the combined CO_2 mass emissions may be monitored at the common stack or duct. However, if it is not feasible to monitor the individual units, the combined CO_2 mass emissions shall be monitored at the common stack or duct.

(5) The Tier 4 Calculation Methodology shall be used:

(i) Starting on January 1, 2010, for a unit that is required to report CO_2 mass emissions beginning on that date, if all of the monitors needed to measure CO_2 mass emissions have been installed and certified by that date.

(ii) No later than January 1, 2011, for a unit that is required to report CO_2 mass emissions beginning on January 1, 2010, if all of the monitors needed to measure CO_2 mass emissions have not been installed and certified by January 1, 2010. In this case, you may use Tier 2 or Tier 3 to report GHG emissions for 2010. However, if the required CEMS are certified some time in 2010, you need not wait until January 1, 2011 to begin using Tier 4. Rather, you may switch from Tier 2 or Tier 3 to Tier 4 as soon as CEMS certification testing is successfully completed. If this reporting option is chosen, you must document the change in CO_2 calculation methodology in the Monitoring Plan required under § 98.3(g)(5) and in the GHG emissions report under § 98.3(c). Data recorded by the CEMS during a certification test period in 2010 may be used for reporting under this part, provided that the following two conditions are met:

(A) The certification tests are passed in sequence, with no test failures.

(B) No unscheduled maintenance or repair of the CEMS is performed during the certification test period.

(iii) No later than 180 days following the date on which a change is made that triggers Tier 4 applicability under paragraph (b)(4)(ii) or (b)(4)(iii) of this section (*e.g.,* a change in the primary fuel, manner of unit operation, or installed continuous monitoring equipment).

(6) * * * However, for units that use either the Tier 4 or the alternative calculation methodology specified in paragraph (a)(5)(iii) of this section, CO_2 emissions from the combustion of all fuels shall be based solely on CEMS measurements.

(c) * * *

(1) * * * Use the same values for fuel consumption that you use for the Tier 1 or Tier 3 calculation.

* * * * *

HHV = Default high heat value of the fuel from Table C–1 of this subpart; alternatively, for Tier 3, if actual HHV data are available for the reporting year, you may average these data using the procedures specified in paragraph (a)(2)(ii) of this section, and use the average value in Equation C–8 (mmBtu per mass or volume).

* * * * *

(2) * * * Use the same values for fuel consumption and HHV that you use for the Tier 2 calculation.

* * * * *

(4) Use Equation C–10 of this section for: units subject to subpart D of this part; units that qualify for and elect to use the alternative CO_2 mass emissions calculation methodologies described in paragraph (a)(5) of this section; and units that use the Tier 4 Calculation Methodology.

* * * * *

$(HI)_A$ = Cumulative annual heat input from combustion of the fuel (mmBtu).

* * * * *

(i) If only one type of fuel listed in Table C–2 of this subpart is combusted during the reporting year, substitute the cumulative annual heat input from combustion of the fuel into Equation C–10 of this section to calculate the annual CH_4 or N_2O emissions. For units in the Acid Rain Program and units that report heat input data to EPA year-round according to part 75 of this chapter, obtain the cumulative annual heat input directly from the electronic data reports required under § 75.64 of this chapter. For Tier 4 units, use the best available information, as described in paragraph (c)(4)(ii)(C) of this section, to estimate the cumulative annual heat input $(HI)_A$.

(ii) If more than one type of fuel listed in Table C–2 of this subpart is combusted during the reporting year, use Equation C–10 of this section separately for each type of fuel, except as provided in paragraph (c)(4)(ii)(B) of this section. Determine the appropriate values of $(HI)_A$ as follows:

(A) For units in the Acid Rain Program and other units that report heat input data to EPA year-round according to part 75 of this chapter, obtain $(HI)_A$ for each type of fuel from the electronic data reports required under § 75.64 of this chapter, except as otherwise provided in paragraphs (c)(4)(ii)(B) and (c)(4)(ii)(D) of this section.

(B) For a unit that uses CEMS to monitor hourly heat input according to part 75 of this chapter, the value of $(HI)_A$ obtained from the electronic data reports under § 75.64 of this chapter may be attributed exclusively to the fuel with the highest F-factor, when the reporting option in 3.3.6.5 of appendix F to part 75 of this chapter is selected and implemented.

(C) For Tier 4 units, use the best available information (*e.g.,* fuel feed rate measurements, fuel heating values, engineering analysis) to estimate the value of $(HI)_A$ for each type of fuel. Instrumentation used to make these estimates is not subject to the calibration requirements of § 98.3(i) or to the QA requirements of § 98.34.

(D) Units in the Acid Rain Program and other units that report heat input data to EPA year-round according to part 75 of this chapter may use the best available information described in paragraph (c)(4)(ii)(C) of this section, to estimate $(HI)_A$ for each fuel type, whenever fuel-specific heat input values cannot be directly obtained from the electronic data reports under § 75.64 of this chapter.

* * * * *

(6) Calculate the annual CH_4 and N_2O mass emissions from the combustion of blended fuels as follows:

(i) If the mass or volume of each component fuel in the blend is measured before the fuels are mixed and combusted, calculate and report CH_4 and N_2O emissions separately for each component fuel, using the applicable procedures in this paragraph (c).

(ii) If the mass or volume of each component fuel in the blend is not measured before the fuels are mixed and combusted, a reasonable estimate of the percentage composition of the blend, based on best available information, is required. Perform the following calculations for each component fuel, "i," that is listed in Table C–2:

(A) Multiply $(\%\ Fuel)_i$, the estimated mass or volume percentage (decimal fraction) of component fuel "i," by the total annual mass or volume of the blended fuel combusted during the reporting year, to obtain an estimate of the annual consumption of component "i;"

(B) Multiply the result from paragraph (c)(6)(ii)(A) of this section by the HHV of the fuel (default value or, if available, the measured annual average value), to obtain an estimate of the annual heat input from component "i;"

(C) Calculate the annual CH_4 and N_2O emissions from component "i," using Equation C–8, C–9a, or C–10 of this section, as applicable;

(D) Sum the annual CH_4 emissions across all component fuels to obtain the annual CH_4 emissions for the blend. Similarly sum the annual N_2O emissions across all component fuels to obtain the annual N_2O emissions for the blend. Report these annual emissions totals.

(d) * * *

(1) When a unit is a fluidized bed boiler, is equipped with a wet flue gas desulfurization system, or uses other acid gas emission controls with sorbent injection to remove acid gases, if the chemical reaction between the acid gas and the sorbent produces CO_2 emissions, use Equation C–11 of this section to calculate the CO_2 emissions from the sorbent, except when those CO_2 emissions are monitored by CEMS. When a sorbent other than $CaCO_3$ is used, determine site-specific values of R and MW_S.

* * * * *

R = The number of moles of CO_2 released upon capture of one mole of the acid gas species being removed (R = 1.00 when the sorbent is $CaCO_3$ and the targeted acid gas species is SO_2).

* * * * *

(2) The total annual CO_2 mass emissions reported for the unit shall include the CO_2 emissions from the combustion process and the CO_2 emissions from the sorbent.

(e) *Biogenic CO_2 emissions from combustion of biomass with other fuels.* Use the applicable procedures of this paragraph (e) to estimate biogenic CO_2 emissions from units that combust a combination of biomass and fossil fuels (*i.e.,* either co-fired or blended fuels). Separate reporting of biogenic CO_2 emissions from the combined combustion of biomass and fossil fuels is required for those biomass fuels listed in Table C–1 of this section and for municipal solid waste. In addition, when a biomass fuel that is not listed in Table C–1 is combusted in a unit that has a maximum rated heat input greater than 250 mmBtu/hr, if the biomass fuel accounts for 10% or more of the annual heat input to the unit, and if the unit

does not use CEMS to quantify its annual CO_2 mass emissions, then, pursuant to § 98.33(b)(3)(iii), Tier 3 must be used to determine the carbon content of the biomass fuel and to calculate the biogenic CO_2 emissions from combustion of the fuel. Notwithstanding these requirements, separate reporting of biogenic CO_2 emissions is optional for units subject to subpart D of this part and for units that use the CO_2 mass emissions calculation methodologies in part 75 of this chapter, pursuant to paragraph (a)(5) of this section; however, if the owner or operator opts to report biogenic CO_2 emissions separately for these units, the appropriate method(s) in this paragraph (e) shall be used. Separate reporting of biogenic CO_2 emissions from the combustion of tires is also optional, but may be reported by following the provisons of paragraph (e)(3) of this section.

(1) You may use Equation C–1 of this subpart to calculate the annual CO_2 mass emissions from the combustion of the biomass fuels listed in Table C–1 of this subpart (except MSW and tires), in a unit of any size, including units equipped with a CO_2 CEMS, except when the use of Tier 2 is required as specified in paragraph (b)(1)(iv) of this section. Determine the quantity of biomass combusted using one of the following procedures in this paragraph (e)(1), as appropriate, and document the selected procedures in the Monitoring Plan under § 98.3(g):

(i) Company records.

(ii) The procedures in paragraph (e)(5) of this section.

(iii) The best available information for premixed fuels that contain biomass and fossil fuels (*e.g.,* liquid fuel mixtures containing biodiesel).

(2) You may use the procedures of this paragraph if the following three conditions are met: first, a CO_2 CEMS (or a surrogate O_2 monitor) and a stack gas flow rate monitor are used to determine the annual CO_2 mass emissions (either according to part 75 of this chapter, the Tier 4 Calculation Methodology, or the alternative calculation methodology specified in paragraph (a)(5)(iii) of this section); second, neither MSW nor tires is combusted in the unit during the reporting year; and third, the CO_2 emissions consist solely of combustion products (*i.e.,* no process or sorbent emissions included).

* * * * *

(iii) * * *

F_c = Fuel-specific carbon based F-factor, either a default value from Table 1 in section 3.3.5 of appendix F to part 75 of this chapter, or a site-specific value determined under section 3.3.6 of appendix F to part 75 (scf CO_2/mmBtu).

* * * * *

(iv) Subtract V_{ff} from V_{total} to obtain V_{bio}, the annual volume of CO_2 from the combustion of biomass.

* * * * *

(vi) * * *

(C) From the electronic data report required under § 75.64 of this chapter, for units in the Acid Rain Program and other units using CEMS to monitor and report CO_2 mass emissions according to part 75 of this chapter. However, before calculating the annual biogenic CO_2 mass emissions, multiply the cumulative annual CO_2 mass emissions by 0.91 to convert from short tons to metric tons.

(3) You must use the procedures in paragraphs (e)(3)(i) through (e)(3)(iii) of this section to determine the annual biogenic CO_2 emissions from the combustion of MSW. These procedures also may be used for any unit that co-fires biomass and fossil fuels, including units equipped with a CO_2 CEMS, and units for which optional separate reporting of biogenic CO_2 emissions from the combustion of tires is selected.

(i) Use an applicable CO_2 emissions calculation method in this section to quantify the total annual CO_2 mass emissions from the unit.

(ii) Determine the relative proportions of biogenic and non-biogenic CO_2 emissions in the flue gas on a quarterly basis using the method specified in § 98.34(d) (for units that combust MSW as the primary fuel or as the only fuel with a biogenic component) or in § 98.34(e) (for other units, including units that combust tires).

(iii) Determine the annual biogenic CO_2 mass emissions from the unit by multiplying the total annual CO_2 mass emissions by the annual average biogenic decimal fraction obtained from § 98.34(d) or § 98.34(e), as applicable.

(4) [Reserved]

(5) If Equation C–1 or Equation C–2a of this section is selected to calculate the annual biogenic mass emissions for wood, wood waste, or other solid biomass-derived fuel, Equation C–15 of this section may be used to quantify biogenic fuel consumption, provided that all of the required input parameters are accurately quantified. * * *

* * * * *

10. Section 98.34 is amended by:

a. Revising paragraphs (a)(2), (a)(3), (a)(6), (b)(1) introductory text, (b)(1)(i) introductory text, (b)(1)(i)(A), (b)(1)(i)(B), (b)(1)(i)(C), (b)(1)(ii), (b)(1)(iii), (b)(1)(vi), (b)(3)(ii), and (b)(3)(v).

b. Removing paragraph (b)(4).

c. Redesignating paragraph (b)(5) as (b)(4).

d. Revising newly designated paragraph (b)(4).

e. Revising paragraphs (c) introductory text, (c)(1)(i), (c)(1)(ii), (c)(2), (c)(3), and (c)(4).

f. Adding paragraphs (c)(6) and (c)(7).

g. Revising paragraphs (d), (e), (f) introductory text, (f)(1), (f)(3), and (f)(5).

h. Adding new paragraphs (f)(7) and (f)(8).

i. Removing paragraph (g).

§ 98.34 Monitoring and QA/QC requirements.

* * * * *

(a) * * *

(2) The minimum required frequency of the HHV sampling and analysis for each type of fuel or fuel mixture (blend) is specified in this paragraph. When the specified frequency for a particular fuel or blend is based on a specified time period (*e.g.,* week, month, quarter, or half-year), fuel sampling and analysis is required only for those time periods in which the fuel or blend is combusted. The owner or operator may perform fuel sampling and analysis more often than the minimum required frequency, in order to obtain a more representative annual average HHV.

(i) For natural gas, semiannual sampling and analysis is required (*i.e.,* twice in a calendar year, with consecutive samples taken at least four months apart).

(ii) For coal and fuel oil, and for any other solid or liquid fuel that is delivered in lots, analysis of at least one representative sample from each fuel lot is required. For fuel oil, as an alternative to sampling each fuel lot, a sample may be taken upon each addition of oil to the unit's storage tank. Flow proportional sampling, continuous drip sampling, or daily manual oil sampling may also be used, in lieu of sampling each fuel lot. For the purposes of this section, a fuel lot is defined as either:

(A) A shipment or delivery of a single fuel (*e.g.,* ship load, barge load, group of trucks, group of railroad cars, oil delivery via pipeline from a tank farm, etc.); or

(B) If multiple deliveries of a particular type of fuel are received from the same supply source in a given calendar month, the deliveries for that month are considered, collectively, to comprise a fuel lot, requiring only one representative sample.

(iii) For liquid fuels other than fuel oil, and for gaseous fuels other than natural gas (including biogas), sampling and analysis is required at least once per calendar quarter. To the extent

practicable, consecutive quarterly samples shall be taken at least 30 days apart.

(iv) For other solid fuels (except MSW), weekly sampling is required to obtain composite samples, which are then analyzed monthly.

(v) For fuel blends that are received already mixed, as described in paragraph (a)(3)(ii) of this section, determine the HHV of the blend as follows. For blends of solid fuels (except MSW), weekly sampling is required to obtain composite samples, which are analyzed monthly. For blends of liquid or gaseous fuels, sampling and analysis is required at least once per calendar quarter. More frequent sampling is recommended if the composition of the blend varies significantly during the year.

(3) *Special Considerations for Blending of Fuels.* In situations where different types of fuel listed in Table C–1 of this subpart (for example, different ranks of coal or different grades of fuel oil) are in the same state of matter (*i.e.,* solid, liquid, or gas), and are blended prior to combustion, use the following procedures to determine the appropriate CO_2 emission factor and HHV for the blend.

(i) If the fuels to be blended are received separately, and if the quantity (mass or volume) of each fuel is measured before the fuels are mixed and combusted, then, for each component of the blend, calculate the CO_2 mass emissions separately. Substitute into Equation C–2a of this subpart the total measured mass or volume of the component fuel (from company records), together with the appropriate default CO_2 emission factor from Table C–1, and the annual average HHV, calculated according to § 98.33(a)(2)(ii). In this case, the fact that the fuels are blended prior to combustion is of no consequence.

(ii) If the fuel is received as a blend (*i.e.,* already mixed), a reasonable estimate of the relative proportions of the components of the blend must be made, using the best available information (*e.g.,* the approximate annual average mass or volume percentage of each fuel, based on the typical or expected range of values). Determine the appropriate CO_2 emission factor and HHV for use in Equation C–2a of this subpart, as follows:

(A) Consider the blend to be the "fuel type," measure its HHV at the frequency prescribed in paragraph (a)(2)(v) of this section, and determine the annual average HHV value for the blend according to § 98.33(a)(2)(ii).

(B) Calculate a heat-weighted CO_2 emission factor, $(EF)_B$, for the blend, using Equation C–16 of this section. The heat-weighting in Equation C–16 is provided by the default HHVs (from Table C–1) and the estimated mass or volume percentages of the components of the blend.

(C) Substitute into Equation C–2a of this subpart, the annual average HHV for the blend (from paragraph (a)(3)(ii)(A) of this section) and the calculated value of $(EF)_B$, along with the total mass or volume of the blend combusted during the reporting year, to determine the annual CO_2 mass emissions from combustion of the blend.

$$(EF)_B = \frac{\sum_{i=1}^{n}\left[(HHV)_i \ (\%Fuel)_i \ (EF)_i\right]}{(HHV)_B} \qquad \text{(Eq. C-16)}$$

Where:

$(EF)_B$ = Heat-weighted CO_2 emission factor for the blend (kg CO_2/mmBtu)

$(HHV)_I$ = Default high heat value for fuel "i" in the blend, from Table C–1 (mmBtu per mass or volume)

$(\%Fuel)_I$ = Estimated mass or volume percentage of fuel "i" (mass % or volume %, as applicable, expressed as a decimal fraction; e.g., 25% = 0.25)

$(EF)_I$ = Default CO_2 emission factor for fuel "i" from Table C–1 (mmBtu per mass or volume)

$(HHV)_B$ = Annual average high heat value for the blend, calculated according to § 98.33(a)(2)(ii) (mmBtu per mass or volume)

(iii) Note that for the case described in paragraph (a)(3)(ii) of this section, if measured HHV values for the individual fuels in the blend or for the blend itself are not routinely received at the minimum frequency prescribed in paragraph (a)(2) of this section (or at a greater frequency), and if the unit qualifies to use Tier 1, calculate $(HHV)_B$*, the heat-weighted default HHV for the blend, using Equation C–17 of this section. Then, use Equation C–16 of this section, replacing the term $(HHV)_B$ with $(HHV)_B$* in the denominator, to determine the heat-weighted CO_2 emission factor for the blend. Finally, substitute into Equation C–1 of this subpart, the calculated values of $(HHV)_B$* and $(EF)_B$, along with the total mass or volume of the blend combusted during the reporting year, to determine the annual CO_2 mass emissions from combustion of the blend.

$$HHV_B^* = \sum_{i=1}^{n}\left[(HHV)_i \ (\%Fuel)_i\right] \qquad \text{(Eq. C-17)}$$

Where:

$(HHV)_B$* = Heat-weighted default high heat value for the blend (mmBtu per mass or Volume)

$(HHV)_I$ = Default high heat value for fuel "i" in the blend, from Table C–1 (mmBtu per mass or volume)

$(\%Fuel)_I$ = Estimated mass or volume percentage of fuel "i" in the blend (mass % or volume %, as applicable, expressed as a decimal fraction)

(iv) If the fuel blend described in paragraph (a)(3)(ii) of this section consists of a mixture of fuel(s) listed in Table C–1 of this subpart and one or more fuels not listed in Table C–1, calculate CO_2 and other GHG emissions only for the Table C–1 fuel(s), using the best available estimate of the mass or volume percentage(s) of the Table C–1 fuel(s) in the blend. In this case, Tier 1 shall be used, with the following modifications to Equations C–17 and C–1, to account for the fact that not all of the fuels in the blend are listed in Table C–1:

(A) In Equation C–17, apply the term $(Fuel)_i$ only to the Table C–1 fuels. For each Table C–1 fuel, $(Fuel)_i$ will be the estimated mass or volume percentage of the fuel in the blend, divided by the sum of the mass or volume percentages of the Table C–1 fuels. For example,

suppose that a blend consists of two Table C–1 fuels ("A" and "B") and one fuel type ("C") not listed in the Table, and that the volume percentages of fuels A, B, and C in the blend, expressed as decimal fractions, are, respectively, 0.50, 0.30, and 0.20. The term $(Fuel)_i$ in Equation C–17 for fuel A will be 0.50/(0.50 + 0.30) = 0.625, and for fuel B, $(Fuel)_i$ will be 0.30/(0.50 + 0.30) = 0.375.

(B) In Equation C–1, the term "Fuel" will be equal to the total mass or volume of the blended fuel combusted during the year multiplied by the sum of the mass or volume percentages of the Table C–1 fuels in the blend. For the example in paragraph (a)(3)(iv)(A) of this section, "Fuel" = (Annual volume of the blend combusted) (0.80).

* * * * *

(6) You must use one of the following appropriate fuel sampling and analysis methods. You may use a method published by a consensus standards organization if such a method exists, or you may use industry consensus standard practice to determine the high heat values. Consensus-based standards organizations include, but are not limited to, the following: ASTM International, the American National Standards Institute (ANSI), the American Gas Association (AGA), the American Society of Mechanical Engineers (ASME), the American Petroleum Institute (API), and the North American Energy Standards Board (NAESB). Alternatively, for gaseous fuels, the HHV may be calculated using chromatographic analysis together with standard heating values of the fuel constituents, provided that the gas chromatograph is operated, maintained, and calibrated according to the manufacturer's instructions. The method(s) used shall be documented in the Monitoring Plan required under § 98.3(g)(5).

(b) * * *

(1) You must calibrate each oil and gas flow meter according to § 98.3(i) and the provisions of this paragraph (b)(1).

(i) Perform calibrations using any of the test methods and procedures in this paragraph (b)(1)(i). The method(s) used shall be documented in the Monitoring Plan required under § 98.3(g)(5).

(A) You may use an appropriate flow meter calibration method published by a consensus standards organization, if such a method exists. Consensus-based standards organizations include, but are not limited to, the following: ASTM International, the American National Standards Institute (ANSI), the American Gas Association (AGA), the American Society of Mechanical Engineers (ASME), the American Petroleum Institute (API), and the North American Energy Standards Board (NAESB).

(B) You may use the calibration procedures specified by the flow meter manufacturer.

(C) You may use an industry-accepted or industry consensus standard calibration practice.

(ii) In addition to the initial calibration required by § 98.3(i), recalibrate each fuel flow meter (except as otherwise provided in paragraph (b)(1)(iii) of this section) either annually, at the minimum frequency specified by the manufacturer, or at the interval specified by industry consensus standard practice.

(iii) Fuel billing meters are exempted from the initial and ongoing calibration requirements of this paragraph and from the Monitoring Plan and recordkeeping requirements of § 98.3(g)(5)(i)(C) and (g)(7), provided that the fuel supplier and the unit combusting the fuel do not have any common owners and are not owned by subsidiaries or affiliates of the same company. Meters used exclusively to measure the flow rates of fuels that are only used for unit startup or ignition are also exempted from the initial and ongoing calibration requirements of this paragraph.

* * * * *

(vi) If a mixture of liquid or gaseous fuels is transported by a common pipe, you may either separately meter each of the fuels prior to mixing, using flow meters calibrated according to § 98.3(i), or consider the fuel mixture to be the "fuel type" and meter the mixed fuel, using a flow meter calibrated according to § 98.3(i).

* * * * *

(3) * * *

(ii) For each type of fuel, the minimum required frequency for collecting and analyzing samples for carbon content and (if applicable) molecular weight is specified in this paragraph. When the sampling frequency is based on a specified time period (*e.g.,* week, month, quarter, or half-year), fuel sampling and analysis is required for only those time periods in which the fuel is combusted.

(A) For natural gas, semiannual sampling and analysis is required (*i.e.,* twice in a calendar year, with consecutive samples taken at least four months apart).

(B) For coal and fuel oil and for any other solid or liquid fuel that is delivered in lots, analysis of at least one representative sample from each fuel lot is required. For fuel oil, as an alternative to sampling each fuel lot, a sample may be taken upon each addition of oil to the storage tank. Flow proportional sampling, continuous drip sampling, or daily manual oil sampling may also be used, in lieu of sampling each fuel lot. For the purposes of this section, a fuel lot is defined as either of the following:

(1) A shipment or delivery of a single fuel (*e.g.,* ship load, barge load, group of trucks, group of railroad cars, oil delivery via pipeline from a tank farm, etc.).

(2) If multiple deliveries of a particular type of fuel are received from the same supply source in a given calendar month, the deliveries for that month are considered, collectively, to comprise a fuel lot, requiring only one representative sample.

(C) For liquid fuels other than fuel oil and for biogas; sampling and analysis is required at least once per calendar quarter. To the extent practicable, consecutive quarterly samples shall be taken at least 30 days apart.

(D) For other solid fuels (except MSW), weekly sampling is required to obtain composite samples, which are then analyzed monthly.

(E) For gaseous fuels other than natural gas and biogas (*e.g.,* process gas), daily sampling and analysis to determine the carbon content and molecular weight of the fuel is required if continuous, on-line equipment, such as a gas chromatograph, is in place to make these measurements. Otherwise, weekly sampling and analysis shall be performed.

(F) For mixtures (blends) of solid fuels, weekly sampling is required to obtain composite samples, which are analyzed monthly. For blends of liquid fuels, and for gas mixtures consisting only of natural gas and biogas, sampling and analysis is required at least once per calendar quarter. For gas mixtures that contain gases other than natural gas (including biogas), daily sampling and analysis to determine the carbon content and molecular weight of the fuel is required if continuous, on-line equipment is in place to make these measurements. Otherwise, weekly sampling and analysis shall be performed.

* * * * *

(v) To calculate the CO_2 mass emissions from combustion of a blend of fuels in the same state of matter (solid, liquid, or gas), you may either:

(A) Apply Equation C–3, C–4 or C–5 of this subpart (as applicable) to each component of the blend, if the mass or volume, the carbon content, and (if applicable), the molecular weight of each component are accurately measured prior to blending; or

(B) Consider the blend to be the "fuel type." Then, at the frequency specified

in paragraph (b)(3)(ii)(F) of this section, measure the carbon content and, if applicable, the molecular weight of the blend and calculate the annual average value of each parameter in the manner described in § 98.33(a)(2)(ii). Also measure the mass or volume of the blended fuel combusted during the reporting year. Substitute these measured values into Equation C–3, C–4, or C–5 of this subpart (as applicable).

(4) You must use one of the following appropriate fuel sampling and analysis methods. You may use a method published by a consensus standards organization if such a method exists, or you may use industry consensus standard practice to determine the carbon content and molecular weight (for gaseous fuel) of the fuel. Consensus-based standards organizations include, but are not limited to, the following: ASTM International, the American National Standards Institute (ANSI), the American Gas Association (AGA), the American Society of Mechanical Engineers (ASME), the American Petroleum Institute (API), and the North American Energy Standards Board (NAESB). Alternatively, the results of chromatographic analysis of the fuel may be used, provided that the gas chromatograph is operated, maintained, and calibrated according to the manufacturer's instructions. The method(s) used shall be documented in the Monitoring Plan required under § 98.3(g)(5).

(c) For the Tier 4 Calculation Methodology, the CO_2, flow rate, and (if applicable) moisture monitors must be certified prior to the applicable deadline specified in § 98.33(b)(5).

(1) * * *

(i) Sections 75.20(c)(2), (c)(4), and (c)(5) through (c)(7) of this chapter and appendix A to part 75 of this chapter.

(ii) The calibration drift test and relative accuracy test audit (RATA) procedures of Performance Specification 3 in appendix B to part 60 of this chapter (for the CO_2 concentration monitor) and Performance Specification 6 in appendix B to part 60 of this chapter (for the continuous emission rate monitoring system (CERMS)).

* * * * *

(2) If an O_2 concentration monitor is used to determine CO_2 concentrations, the applicable provisions of part 75 of this chapter, part 60 of this chapter, or an applicable State continuous monitoring program shall be followed for initial certification and on-going quality assurance, and all required RATAs of the monitor shall be done on a percent CO_2 basis.

(3) For ongoing quality assurance, follow the applicable procedures in either appendix B to part 75 of this chapter, appendix F to part 60 of this chapter, or an applicable State continuous monitoring program. If appendix F to part 60 of this chapter is selected for on-going quality assurance, perform daily calibration drift assessments for both the CO_2 monitor (or surrogate O_2 monitor) and the flow rate monitor, conduct cylinder gas audits of the CO_2 concentration monitor in three of the four quarters of each year (except for non-operating quarters), and perform annual RATAs of the CO_2 concentration monitor and the CERMS.

(4) For the purposes of this part, the stack gas volumetric flow rate monitor RATAs required by appendix B to part 75 of this chapter and the annual RATAs of the CERMS required by appendix F to part 60 of this chapter need only be done at one operating level, representing normal load or normal process operating conditions, both for initial certification and for ongoing quality assurance.

* * * * *

(6) For certain applications where combined process emissions and combustion emissions are measured, the CO_2 concentrations in the flue gas may be considerably higher than for combustion emissions alone. In such cases, the span of the CO_2 monitor may, if necessary, be set higher than the specified levels in the applicable regulations. If the CO_2 span value is set higher than 20 percent CO_2, the cylinder gas audits of the CO_2 monitor under appendix F to part 60 of this chapter may be performed at 40 to 60 percent and 80 to 100 percent of span, in lieu of the prescribed calibration levels of 5 to 8 percent CO_2 and 10 to 14 percent CO_2.

(7) Hourly average data from the CEMS shall be validated in a manner consistent with one of the following: §§ 60.13(h)(2)(i) through (h)(2)(vi) of this chapter; § 75.10(d)(1) of this chapter; or the hourly data validation requirements of an applicable State CEM regulation.

(d) When municipal solid waste (MSW) is either the primary fuel combusted in a unit or the only fuel with a biogenic component combusted in the unit, determine the biogenic portion of the CO_2 emissions using ASTM D6866–08 Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis (incorporated by reference, *see* § 98.7) and ASTM D7459–08 Standard Practice for Collection of Integrated Samples for the Speciation of Biomass (Biogenic) and Fossil-Derived Carbon Dioxide Emitted from Stationary Emissions Sources (incorporated by reference, *see* § 98.7). Perform the ASTM D7459–08 sampling and the ASTM D6866–08 analysis at least once in every calendar quarter in which MSW is combusted in the unit. Collect each gas sample during normal unit operating conditions for at least 24 consecutive hours or for as long as is deemed necessary to obtain a representative sample. One suggested alternative sampling approach would be to collect an integrated sample by extracting a small amount of flue gas (*e.g.,* 1 to 5 cc) in each unit operating hour during the quarter. Separate the total annual CO_2 emissions into the biogenic and non-biogenic fractions using the average proportion of biogenic emissions of all samples analyzed during the reporting year. Express the results as a decimal fraction (*e.g.,* 0.30, if 30 percent of the CO_2 is biogenic). When MSW is the primary fuel for multiple units at the facility, and the units are fed from a common fuel source, testing at only one of the units is sufficient.

(e) For other units that combust combinations of biomass fuel(s) (or heterogeneous fuels that have a biomass component, *e.g.,* tires) and fossil (or other non-biogenic) fuel(s), in any proportions, ASTM D6866–08 and ASTM D7459–08 may be used to determine the biogenic portion of the CO_2 emissions. Perform the ASTM D7459–08 sampling and the ASTM D6866–08 analysis in every calendar quarter in which biomass and non-biogenic fuels are co-fired in the unit. Collect each gas sample using ASTM D7459–08 during normal unit operation for at least 24 consecutive hours or for as long as is necessary to obtain a representative sample. If the types of fuels combusted in the unit and their relative proportions are not consistent throughout the quarter, more frequent, periodic sampling of the flue gas should be considered. For example, an integrated sample could be collected by extracting a small amount of the flue gas (*e.g.,* 1 to 5 cc) in each unit operating hour of the quarter. If the primary fuel for multiple units at the facility consists of tires, and the units are fed from a common fuel source, testing at only one of the units is sufficient.

(f) The records required under § 98.3(g)(2)(i) shall include an explanation of how the following parameters are determined from company records (or, if applicable, from the best available information):

(1) Fuel consumption, when the Tier 1 and Tier 2 Calculation Methodologies

are used, including cases where § 98.36(c)(4) applies.

* * * * *

(3) Fossil fuel consumption when § 98.33(e)(2) applies to a unit that uses CEMS to quantify CO_2 emissions and that combusts both fossil and biomass fuels.

* * * * *

(5) Quantity of steam generated by a unit when § 98.33(a)(2)(iii) applies.

* * * * *

(7) Fuel usage for CH_4 and N_2O emissions calculations under § 98.33(c)(4)(ii).

(8) Mass of biomass combusted, for premixed fuels that contain biomass and fossil fuels under § 98.33(e)(1)(iii).

11. Section 98.35 is amended by revising paragraph (a) to read as follows:

§ 98.35 Procedures for estimating missing data.

* * * * *

(a) For all units subject to the requirements of the Acid Rain Program, and all other stationary combustion units subject to the requirements of this part that monitor and report emissions and heat input data in accordance with part 75 of this chapter, the missing data substitution procedures in part 75 of this chapter shall be followed for CO_2 concentration, stack gas flow rate, fuel flow rate, high heating value, and fuel carbon content.

* * * * *

12. Section 98.36 is amended by:

a. Revising paragraph (b)(5).

b. Removing paragraphs (b)(9) and (b)(10).

c. Redesignating paragraphs (b)(6) through (b)(8) as paragraphs (b)(8) through (b)(10), respectively.

d. Revising newly designated paragraphs (b)(8) and (b)(9).

e. Adding new paragraphs (b)(6) and (b)(7).

f. Revising paragraphs (c)(1)(ii), (c)(1)(vi), and (c)(1)(vii).

g. Redesignating paragraph (c)(1)(viii) as paragraph (c)(1)(x), and revising newly designated paragraph (c)(1)(x).

h. Removing paragraph (c)(1)(ix).

i. Adding new paragraphs (c)(1)(viii) and (c)(1)(ix).

j. Revising paragraphs (c)(2) introductory text, (c)(2)(ii), (c)(2)(iii), and (c)(2)(v).

k. Removing paragraph (c)(2)(viii).

l. Redesignating paragraphs (c)(2)(vi) and (c)(2)(vii) as paragraphs (c)(2)(viii) and (c)(2)(ix), and revising newly designated paragraphs (c)(2)(viii) and (c)(2)(ix).

m. Adding new paragraphs (c)(2)(vi) and (c)(2)(vii).

n. Revising paragraphs (c)(3) introductory text, (c)(3)(ii), (c)(3)(iii), and (c)(3)(vii).

o. Removing paragraph (c)(3)(viii).

p. Adding new paragraphs (c)(3)(viii), (c)(3)(ix), and (c)(4).

q. Revising paragraph (d).

r. Revising paragraphs (e)(1)(iii), (e)(2)(i), (e)(2)(ii)(C), (e)(2)(ii)(D), (e)(2)(iii), and (e)(2)(iv)(A), (e)(2)(iv)(C).

s. Adding new paragraphs (e)(2)(iv)(F) and (e)(2)(v)(E).

t. Revising paragraphs (e)(2)(vii)(A), (e)(2)(ix) introductory text, and (e)(2)(x) introductory text.

u. Removing paragraphs (e)(2)(x)(B) and (e)(2)(x)(C).

v. Redesignating paragraph (e)(2)(x)(D) as (e)(2)(x)(B), and revising newly designated paragraph (e)(2)(x)(B).

w. Revising paragraph (e)(2)(xi).

§ 98.36 Data reporting requirements.

* * * * *

(b) * * *

(5) The methodology (*i.e.,* tier) used to calculate the CO_2 emissions for each type of fuel combusted (*i.e.,* Tier 1, 2, 3, or 4).

(6) The methodology start date, for each fuel type.

(7) The methodology end date, for each fuel type.

(8) For a unit that uses Tiers 1, 2, or 3:

(i) The annual CO_2 mass emissions (including biogenic CO_2), and the annual CH_4, and N_2O mass emissions for each type of fuel combusted during the reporting year, expressed in metric tons of each gas and in metric tons of CO_2e; and

(ii) Metric tons of biogenic CO_2 emissions (if applicable).

(9) For a unit that uses Tier 4:

(i) If the total annual CO_2 mass emissions measured by the CEMS consists entirely of non-biogenic CO_2 (*i.e.,* CO_2 from fossil fuel combustion plus, if applicable, CO_2 from sorbent and/or process CO_2), report the total annual CO_2 mass emissions, expressed in metric tons. You are not required to report the combustion CO_2 emissions by fuel type.

(ii) If the total annual CO_2 mass emissions measured by the CEMS includes both biogenic and non-biogenic CO_2, separately report the annual non-biogenic CO_2 mass emissions and the annual CO_2 mass emissions from biomass combustion, each expressed in metric tons. You are not required to report the combustion CO_2 emissions by fuel type.

(iii) An estimate of the heat input from each type of fuel listed in Table C–2 of this subpart that was combusted in the unit during the report year, and the annual CH_4 and N_2O emissions for each of these fuels, expressed in metric tons of each gas and in metric tons of CO_2e.

* * * * *

(c) * * *

(1) * * *

(ii) The number of units in the group.

* * * * *

(vi) Annual CO_2 mass emissions and annual CH_4, and N_2O mass emissions, aggregated for each type of fuel combusted in the group of units during the report year, expressed in metric tons of each gas and in metric tons of CO_2e. If any of the units burn both fossil fuels and biomass, report also the annual CO_2 emissions from combustion of all fossil fuels combined and annual CO_2 emissions from combustion of all biomass fuels combined, expressed in metric tons.

(vii) The methodology (*i.e.,* tier) used to calculate the CO_2 mass emissions for each type of fuel combusted in the units (*i.e.,* Tier 1, Tier 2, or Tier 3).

(viii) The methodology start date, for each fuel type.

(ix) The methodology end date, for each fuel type.

(x) The calculated CO_2 mass emissions (if any) from sorbent expressed in metric tons.

(2) *Monitored common stack or duct configurations.* When the flue gases from two or more stationary fuel combustion units at a facility are combined together in a common stack or duct before exiting to the atmosphere and if CEMS are used to continuously monitor CO_2 mass emissions at the common stack or duct according to the Tier 4 Calculation Methodology, you may report the combined emissions from the units sharing the common stack or duct, in lieu of separately reporting the GHG emissions from the individual units. This monitoring and reporting alternative may also be used when process off-gases or a mixture of combustion products and process gases are combined together in a common stack or duct before exiting to the atmosphere. Whenever the common stack or duct monitoring option is applied, the following information shall be reported instead of the information in paragraph (b) of this section:

* * * * *

(ii) Number of units sharing the common stack or duct. Report "1" when the flue gas flowing through the common stack or duct includes both combustion products and process off-gases, and all of the effluent comes from a single unit (*e.g.,* a furnace, kiln, or smelter).

(iii) Combined maximum rated heat input capacity of the units sharing the

common stack or duct (mmBtu/hr). This data element is required only when all of the units sharing the common stack are stationary fuel combustion units.

* * * * *

(v) The methodology (tier) used to calculate the CO_2 mass emissions, *i.e.,* Tier 4.

(vi) The methodology start date.

(vii) The methodology end date.

(viii) Total annual CO_2 mass emissions measured by the CEMS, expressed in metric tons. If any of the units burn both fossil fuels and biomass, separately report the annual non-biogenic CO_2 mass emissions (*i.e.,* CO_2 from fossil fuel combustion plus, if applicable, CO_2 from sorbent and/or process CO_2) and the annual CO_2 mass emissions from biomass combustion, each expressed in metric tons.

(ix) An estimate of the heat input from each type of fuel listed in Table C–2 of this subpart that was combusted during the report year in the units sharing the common stack or duct during the report year, and, for each of these fuels, the annual CH_4 and N_2O mass emissions from the units sharing the common stack or duct, expressed in metric tons of each gas and in metric tons of CO_2e.

(3) *Common pipe configurations.* When two or more liquid-fired or gaseous-fired stationary combustion units at a facility combust the same type of fuel and the fuel is fed to the individual units through a common supply line or pipe, you may report the combined emissions from the units served by the common supply line, in lieu of separately reporting the GHG emissions from the individual units, provided that the total amount of fuel combusted by the units is accurately measured at the common pipe or supply line using a fuel flow meter. For Tier 3 applications, the flow meter shall be calibrated in accordance with § 98.34(b). If a portion of the fuel measured at the main supply line is diverted to either: A flare; or another stationary fuel combustion unit (or units), including units that use a CO_2 mass emissions calculation method in part 75 of this chapter; or a chemical or industrial process (where it is used as a raw material but not combusted), and the remainder of the fuel is distributed to a group of combustion units for which you elect to use the common pipe reporting option, you may use company records to subtract out the diverted portion of the fuel from the fuel measured at the main supply line prior to performing the GHG emissions calculations for the group of units using the common pipe option. If the diverted portion of the fuel is combusted, the GHG emissions from the diverted portion shall be accounted for in accordance with the applicable provisions of this part. When the common pipe option is selected, the applicable tier shall be used based on the maximum rated heat input capacity of the largest unit served by the common pipe configuration, except where the applicable tier is based on criteria other than unit size. For example, if the maximum rated heat input capacity of the largest unit is greater than 250 mmBtu/hr, Tier 3 will apply, unless the fuel transported through the common pipe is natural gas or distillate oil, in which case Tier 2 may be used, in accordance with § 98.33(b)(2)(ii). As a second example, in accordance with § 98.33(b)(1)(v), Tier 1 may be used regardless of unit size when natural gas is transported through the common pipe, if the annual fuel consumption is obtained from gas billing records in units of therms. When the common pipe reporting option is selected, the following information shall be reported instead of the information in paragraph (b) of this section:

* * * * *

(ii) The number of units served by the common pipe.

(iii) The highest maximum rated heat input capacity of any unit served by the common pipe (mmBtu/hr).

* * * * *

(vii) Annual CO_2 mass emissions and annual CH_4 and N_2O emissions from each fuel type for the units served by the common pipe, expressed in metric tons of each gas and in metric tons of CO_2e.

(viii) Methodology start date.

(ix) Methodology end date.

(4) The following alternative reporting option applies to situations where a common liquid or gaseous fuel supply is shared between one or more large combustion units, such as boilers or combustion turbines (including units subject to subpart D of this part); and small combustion sources on-site, including but not limited to space heaters and hot water heaters. In this case, you may simplify reporting by attributing all of the GHG emissions from combustion of the shared fuel to the large combustion unit(s), provided that:

(i) The total quantity of the fuel combusted during the report year in the units sharing the fuel supply is measured, either at the "gate" to the facility or at a point inside the facility, using a fuel flow meter, billing meter, or tank drop measurements (as applicable);

(ii) On an annual basis, at least 95 percent (by mass or volume) of the shared fuel is combusted in the large combustion unit(s), and the remainder is combusted in the small combustion sources. Company records may be used to determine the percentage distribution of the shared fuel to the large and small units; and

(iii) The use of this reporting option is documented in the Monitoring Plan required under § 98.3(g)(5). Indicate in the Monitoring Plan which units share the common fuel supply and the method used to demonstrate that this alternative reporting option applies. For the small combustion sources on-site, a description of the types of units and the approximate number of units is sufficient.

(d) *Units subject to part 75 of this chapter.*

(1) For stationary combustion units that are subject to subpart D of this part, you shall report the following unit-level information:

(i) Unit or stack identification numbers. Use exact same unit, common stack, common pipe, or multiple stack identification numbers that represent the monitored locations (*e.g.,* 1, 2, CS001, MS1A, CP001, etc.) that are reported under § 75.64 of this chapter.

(ii) Annual CO_2 emissions at each monitored location, expressed in both short tons and metric tons. Reporting of biogenic CO_2 emissions under § 98.3(c)(4)(ii) and § 98.3(c)(4)(iii)(A) is optional. Subpart D units are not required to report biogenic CO_2 emissions under §§ 98.3(c)(4)(ii) and (c)(4)(iii)(A).

(iii) Annual CH_4 and N_2O emissions at each monitored location, for each fuel type listed in Table C–2 that was combusted during the year (except as otherwise provided in § 98.33(c)(4)(ii)(B)), expressed in metric tons of CO_2e.

(iv) The total heat input from each fuel listed in Table C–2 that was combusted during the year (except as otherwise provided in § 98.33(c)(4)(ii)(B)), expressed in mmBtu.

(v) Identification of the Part 75 methodology used to determine the CO_2 mass emissions.

(vi) Methodology start date.

(vii) Methodology end date.

(viii) Acid Rain Program indicator.

(ix) Annual CO_2 mass emissions from the combustion of biomass, expressed in metric tons of CO_2e (optional).

(2) For units that use the alternative CO_2 mass emissions calculation methods provided in § 98.33(a)(5), you shall report the following unit-level information:

(i) Unit, stack, or pipe ID numbers. Use exact same unit, common stack,

common pipe, or multiple stack identification numbers that represent the monitored locations (*e.g.,* 1, 2, CS001, MS1A, CP001, etc.) that are reported under § 75.64 of this chapter.

(ii) For units that use the alternative methods specified in § 98.33(a)(5)(i) and (ii) to monitor and report heat input data year-round according to appendix D to part 75 of this chapter or § 75.19 of this chapter:

(A) Each type of fuel combusted in the unit during the reporting year.

(B) The methodology used to calculate the CO_2 mass emissions for each fuel type.

(C) Methodology start date.

(D) Methodology end date.

(E) A code or flag to indicate whether heat input is calculated according to appendix D to part 75 of this chapter or § 75.19 of this chapter.

(F) Annual CO_2 emissions at each monitored location, across all fuel types, expressed in metric tons of CO_2e.

(G) Annual heat input from each type of fuel listed in Table C–2 of this subpart that was combusted during the reporting year, expressed in mmBtu.

(H) Annual CH_4 and N_2O emisions at each monitored location, from each fuel type listed in Table C–2 of this subpart that was combusted during the reporting year (except as otherwise provided in § 98.33(c)(4)(ii)(D)), expressed in metric tons CO_2e.

(I) Annual CO_2 mass emissions from the combustion of biomass, expressed in metric tons CO_2e (optional).

(iii) For units with continuous monitoring systems that use the alternative method for units with continuous monitoring systems in § 98.33(a)(5)(iii) to monitor heat input year-round according to part 75 of this chapter:

(A) Each type of fuel combusted during the reporting year.

(B) Methodology used to calculate the CO_2 mass emissions.

(C) Methodology start date.

(D) Methodology end date.

(E) A code or flag to indicate that the heat input data is derived from CEMS measurements.

(F) The total annual CO_2 emissions at each monitored location, expressed in metric tons of CO_2e.

(G) Annual heat input from each type of fuel listed in Table C–2 of this subpart that was combusted during the reporting year, expressed in mmBtu.

(H) Annual CH_4 and N_2O emisions at each monitored location, from each fuel type listed in Table C–2 of this subpart that was combusted during the reporting year (except as otherwise provided in § 98.33(c)(4)(ii)(B)), expressed in metric tons CO_2e.

(I) Annual CO_2 mass emissions from the combustion of biomass, expressed in metric tons CO_2e (optional).

(e) * * *

(1) * * *

(iii) Are not in the Acid Rain Program, but are required to monitor and report CO_2 mass emissions and heat input data year-round, in accordance with part 75 of this chapter.

(2) * * *

(i) For the Tier 1 Calculation Methodology, report the total quantity of each type of fuel combusted in the unit or group of aggregated units (as applicable) during the reporting year, in short tons for solid fuels, gallons for liquid fuels and standard cubic feet or, if applicable, therms for gaseous fuels.

(ii) * * *

(C) The high heat values used in the CO_2 emissions calculations for each type of fuel combusted during the reporting year, in mmBtu per short ton for solid fuels, mmBtu per gallon for liquid fuels, and mmBtu per scf for gaseous fuels. Report a HHV value for each calendar month in which HHV determination is required. If multiple values are obtained in a given month, report the arithmetic average value for the month. Indicate whether each reported HHV is a measured value or a substitute data value.

(D) If Equation C–2c of this subpart is used to calculate CO_2 mass emissions, report the total quantity (*i.e.,* pounds) of steam produced from MSW or solid fuel combustion during each month of the reporting year, and the ratio of the maximum rate heat input capacity to the design rated steam output capacity of the unit, in mmBtu per lb of steam.

(iii) For the Tier 2 Calculation Methodology, keep records of the methods used to determine the HHV for each type of fuel combusted and the date on which each fuel sample was taken, except where fuel sampling data are received from the fuel supplier. In that case, keep records of the dates on which the results of the fuel analyses for HHV are received.

(iv) * * *

(A) The quantity of each type of fuel combusted in the unit or group of units (as applicable) during each month of the reporting year, in short tons for solid fuels, gallons for liquid fuels, and scf for gaseous fuels.

* * * * *

(C) The carbon content and, if applicable, gas molecular weight values used in the emission calculations (including both valid and substitute data values). For each calendar month of the reporting year in which carbon content and, if applicable, molecular weight determination is required, report a value of each parameter. If multiple values of a parameter are obtained in a given month, report the arithmetic average value for the month. Express carbon content as a decimal fraction for solid fuels, kg C per gallon for liquid fuels, and kg C per kg of fuel for gaseous fuels. Express the gas molecular weights in units of kg per kg-mole.

* * * * *

(F) The annual average HHV, when measured HHV data, rather than a default HHV from Table C–1 of this subpart, are used to calculate CH_4 and N_2O emissions for a Tier 3 unit, in accordance with § 98.33(c)(1).

(v) * * *

(E) The date on which each fuel sample was taken, except where fuel sampling data are received from the fuel supplier. In that case, keep records of the dates on which the results of the fuel analyses for carbon content and (if applicable) molecular weight are received.

* * * * *

(vii) * * *

(A) Whether the CEMS certification and quality assurance procedures of part 75 of this chapter, part 60 of this chapter, or an applicable State continuous monitoring program were used.

* * * * *

(ix) For units that combust both fossil fuel and biomass, when biogenic CO_2 is determined according to § 98.33(e)(2), you shall report the following additional information, as applicable:

* * * * *

(x) When ASTM methods D7459–08 and D6866–08 are used to determine the biogenic portion of the annual CO_2 emissions from MSW combustion, as described in § 98.34(d), report:

* * * * *

(B) The annual biogenic CO_2 mass emissions from MSW combustion, in metric tons.

(xi) When ASTM methods D7459–08 and D6866–08 are used in accordance with § 98.34(e) to determine the biogenic portion of the annual CO_2 emissions from a unit that co-fires biogenic fuels (or partly-biogenic fuels, including tires if you are electing to report biogenic CO_2 emissions from tire combustion) and non-biogenic fuels, you shall report the results of each quarterly sample analysis, expressed as a decimal fraction (*e.g.,* if the biogenic fraction of the CO_2 emissions is 30 percent, report 0.30).

* * * * *

13. Table C–1 of Supart C of Part 98 is amended by:

a. Revising the title to read "Table C–1 to Subpart C—Default CO_2 Emission Factors and High Heat Values for Various Types of Fuel."

b. Revising the entry for "Pipeline (Weighted U.S. Average)."

c. Removing the entry for "Still Gas."

d. Adding an entry for "Waste Oil" to follow the entry for "Residual Fuel Oil No. 6."

e. Adding an entry for "Ethanol" to follow the entry for "Ethane."

f. Revising the entry for "Fossil fuel-derived fuels (solid)."

g. Revising the entry for "Municipal Solid Waste."

h. Adding entries for "Plastics" and "Petroleum Coke" to follow the entry for "Tires."

i. Revising the entry for "Fossil fuel-derived fuels (gaseous)."

j. Adding entries for "Propane Gas" and "Fuel Gas" to follow the entry for "Coke Oven Gas."

k. Revising the entry for "Biomass fuels—solid."

l. Revising the entry for "Biomass fuels—liquid" by centering "Biomass fuels—liquid."

m. Revising the entries for "Ethanol" and "Biodiesel" that follow the entry for "Biomass fuels—liquid."

n. Revising footnote "1."

o. Adding a new footnote "2."

TABLE C–1 TO SUBPART C—DEFAULT CO_2 EMISSION FACTORS AND HIGH HEAT VALUES FOR VARIOUS TYPES OF FUEL

Fuel type	Default high heat value	Default CO_2 emission factor
* * * *	* *	*
(Weighted U.S. Average)	1.028×10^{-3}	53.02.
* * * *	* *	*
Waste Oil	0.135	74.00.
* * * *	* *	*
Ethanol	0.084	68.44.
* * * *	* *	*
Other fuels (solid)	mmBtu/short ton	kg CO_2/mmBtu.
Municipal Solid Waste	9.95 [1]	90.7.
* * * *	* *	*
Plastics	38.00	75.00.
Petroleum Coke	30.00	102.41.
Other fuels (gaseous)	mmBtu/scf	kg CO_2/mmBtu.
* * * *	* *	*
Propane Gas	2.516×10^{-3}	61.46.
Fuel Gas [2]	1.388×10^{-3}	59.00.
Biomass fuels—solid	mmBtu/short ton	kg CO_2/mmBtu.
* * * *	* *	*
Ethanol	0.084	68.44.
Biodiesel	0.128	73.84.
* * * *	* *	*

[1] Use of this default HHV is allowed only for units that combust MSW, do not generate steam, and are allowed to use Tier 1.

[2] Reporters subject to subpart X of this part that are complying with § 98.243(d) or subpart Y of this part may only use the default HHV and the default CO_2 emission factor for fuel gas combustion under the conditions prescribed in § 98.243(d)(2)(i) and (d)(2)(ii) and § 98.252(a)(1) and (a)(2), respectively. Otherwise, Tier 3 (Equation C–5) or Tier 4 must be used.

14. The first Table C–2 is removed, and the second Table C–2 is revised to read as follows:

TABLE C–2 TO SUBPART C—DEFAULT CH_4 AND N_2O EMISSION FACTORS FOR VARIOUS TYPES OF FUEL

Fuel type	Default CH_4 emission factor kg CH_4/mmBtu)	Default N_2O emission factor kg N_2O/mmBtu)
Coal and Coke (All fuel types in Table C–1)	1.1×10^{-02}	1.6×10^{-03}
Natural Gas	1.0×10^{-03}	1.0×10^{-04}
Petroleum (All fuel types in Table C–1)	3.0×10^{-03}	6.0×10^{-04}
Municipal Solid Waste	3.2×10^{-02}	4.2×10^{-03}
Tires	3.2×10^{-02}	4.2×10^{-03}
Blast Furnace Gas	2.2×10^{-05}	1.0×10^{-04}
Coke Oven Gas	4.8×10^{-04}	1.0×10^{-04}
Biomass Fuels—Solid (All fuel types in Table C–1)	3.2×10^{-02}	4.2×10^{-03}
Biogas	3.2×10^{-03}	6.3×10^{-04}

TABLE C–2 TO SUBPART C—DEFAULT CH_4 AND N_2O EMISSION FACTORS FOR VARIOUS TYPES OF FUEL—Continued

Fuel type	Default CH_4 emission factor kg CH_4/mmBtu)	Default N_2O emission factor kg N_2O/mmBtu)
Biomass Fuels—Liquid (All fuel types in Table C–1)	1.1×10^{-03}	1.1×10^{-04}

Note: Those employing this table are assumed to fall under the IPCC definitions of the "Energy Industry" or "Manufacturing Industries and Construction". In all fuels except for coal the values for these two categories are identical. For coal combustion, those who fall within the IPCC "Energy Industry" category may employ a value of 1 g of CH_4/MMBtu.

Subpart D—[Amended]

15. Section 98.40 is amended by revising paragraph (a) to read as follows:

§ 98.40 Definition of the source category.

(a) The electricity generation source category comprises electricity generating units that are subject to the requirements of the Acid Rain Program and any other electricity generating units that are required to monitor and report to EPA CO_2 mass emissions year-round according to 40 CFR part 75.

* * * * *

16. Section 98.46 is revised to read as follows:

§ 98.46 Data reporting requirements.

The annual report shall comply with the data reporting requirements specified in § 98.36(d)(1).

17. Section 98.47 is revised to read as follows:

§ 98.47 Records that must be retained.

You shall comply with the recordkeeping requirements of §§ 98.3(g) and 98.37. Records retained under § 75.57(h) of this chapter for missing data events satisfy the recordkeeping requirements of § 98.3(g)(4) for those same events.

Subpart F—[Amended]

18. Section 98.62 is amended by revising paragraphs (a) and (b) to read as follows:

§ 98.62 GHGs to report.

* * * * *

(a) Perfluoromethane (CF_4), and perfluoroethane (C_2F_6) emissions from anode effects in all prebake and Søderberg electrolysis cells.

(b) CO_2 emissions from anode consumption during electrolysis in all prebake and Søderberg electrolysis cells.

* * * * *

19. Section 98.63 is amended by:

a. In paragraph (a), revising the only sentence and the definitions of "E_{PFC}," and "E_m" in Equation F–1.

b. Revising the only sentence of paragraph (b).

c. Revising paragraph (c).

§ 98.63 Calculating GHG emissions.

(a) The annual value of each PFC compound (CF_4, C_2F_6) shall be estimated from the sum of monthly values using Equation F–1 of this section:

* * * * *

E_{PFC} = Annual emissions of each PFC compound from aluminum production (metric tons PFC).

E_m = Emissions of the individual PFC compound from aluminum production for the month "m" (metric tons PFC).

(b) Use Equation F–2 of this section to estimate CF_4 emissions from anode effect duration or Equation F–3 of this section to estimate CF_4 emissions from overvoltage, and use Equation F–4 of this section to estimate C_2F_6 emissions from anode effects from each prebake and Søderberg electrolysis cell.

* * * * *

(c) You must calculate and report the annual process CO_2 emissions from anode consumption during electrolysis and anode baking of prebake cells using either the procedures in paragraph (d) of this section, the procedures in paragraphs (e) and (f) of this section, or the procedures in paragraph (g) of this section.

* * * * *

20. Section 98.64 is amended by revising the first sentence of paragraph (a); and by revising paragraph (b) to read as follows:

§ 98.64 Monitoring and QA/QC requirements.

(a) Effective one year after publication of the rule for smelters with no prior measurement or effective three years after publication for facilities with historic measurements, the smelter-specific slope coefficients, overvoltage emission factors, and weight fractions used in Equations F–2, F–3, and F–4 of this subpart must be measured in accordance with the recommendations of the EPA/IAI Protocol for Measurement of Tetrafluoromethane (CF_4) and Hexafluoroethane (C_2F_6) Emissions from Primary Aluminum Production (2008), except the minimum frequency of measurement shall be every 10 years unless a change occurs in the control algorithm that affects the mix of types of anode effects or the nature of the anode effect termination routine. * * *

(b) The minimum frequency of the measurement and analysis is annually except as follows:

(1) Monthly for anode effect minutes per cell day (or anode effect overvoltage and current efficiency).

(2) Monthly for aluminum production.

(3) Smelter-specific slope coefficients, overvoltage emission factors, and weight fractions according to paragraph (a) of this section.

* * * * *

21. Section 98.65 is amended by revising the only sentence of paragraph (a) to read as follows:

§ 98.65 Procedures for estimating missing data.

* * * * *

(a) Where anode or paste consumption data are missing, CO_2 emissions can be estimated from aluminum production per Equation F–8 of this section.

* * * * *

22. Section 98.66 is amended by revising paragraph (c)(1) to read as follows:

§ 98.66 Data reporting requirements.

* * * * *

(c) * * *

(1) Perfluoromethane emissions and perfluoroethane emissions from anode effects in all prebake and all Søderberg electrolysis cells combined.

* * * * *

23. In the table to Supart F of Part 98, revise Table F–1 to read as follows:

TABLE F–1 TO SUBPART F—SLOPE AND OVERVOLTAGE COEFFICIENTS FOR THE CALCULATION OF PFC EMISSIONS FROM ALUMINUM PRODUCTION

Technology	CF_4 slope coefficient [(kg CF_4/metric ton Al)/(AE–Mins/cell-day)]	CF_4 overvoltage coefficient [(kg CF_4/metric ton Al)/(mV)]	Weight fraction C_2F_6/CF_4 [(kg C_2F_6/kg CF_4)]
Center Worked Prebake (CWPB)	0.143	1.16	0.121
Side Worked Prebake (SWPB)	0.272	3.65	0.252
Vertical Stud Søderberg (VSS)	0.092	NA	0.053
Horizontal Stud Søderberg (HSS)	0.099	NA	0.085

24. Table F–2 is amended by revising the entry for "CO_2 Emissions from Pitch Volatiles Combustion (VSS and HSS)" to read as follows:

TABLE F–2 TO SUBPART F—DEFAULT DATA SOURCES FOR PARAMETERS USED FOR CO_2 EMISSIONS

Parameter	Data source
CO_2 Emissions from Prebake Cells (CWPB and SWPB)	
* * * * * * *	
CO_2 Emissions from Pitch Volatiles Combustion (CWPB and SWPB)	
* * * * * * *	

Subpart G—[Amended]

25. Section 98.72 is amended by revising paragraphs (a) and (b) to read as follows:

§ 98.72 GHGs to report.

* * * * *

(a) CO_2 process emissions from steam reforming of a hydrocarbon or the gasification of solid and liquid raw material, reported for each ammonia manufacturing process unit following the requirements of this subpart (CO_2 process emissions reported under this subpart may include CO_2 that is later consumed on-site for urea production, and therefore is not released to the ambient air from the ammonia manufacturing process unit).

(b) CO_2, CH_4, and N_2O emissions from each stationary fuel combustion unit. You must report these emissions under subpart C of this part (General Stationary Fuel Combustion Sources), by following the requirements of subpart C, except that for ammonia manufacturing processes subpart C does not apply to any CO_2 resulting from combustion of the waste recycle stream (commonly referred to as the purge gas stream).

* * * * *

26. Section 98.73 is amended by:

a. Revising paragraph (b) introductory text.

b. Revising the definition of "$CO_{2,G}$" in Equation G–1 of paragraph (b)(1).

c. Revising the definition of "$CO_{2,L}$" in Equation G–2 of paragraph (b)(2).

d. Revising the definition of "$CO_{2,S}$" in Equation G–3 of paragraph (b)(3).

e. Revising the definition of "CO_2" in Equation G–5 of paragraph (b)(5).

f. Removing paragraph (b)(6).

§ 98.73 Calculating GHG emissions.

* * * * *

(b) Calculate and report under this subpart process CO_2 emissions using the procedures in paragraphs (b)(1) through (b)(5) of this section for gaseous feedstock, liquid feedstock, or solid feedstock, as applicable.

(1) * * *

$CO_{2,G,k}$ = Annual CO_2 emissions arising from gaseous feedstock consumption (metric tons).

* * * * *

(2) * * *

$CO_{2,L,k}$ = Annual CO_2 emissions arising from liquid feedstock consumption (metric tons).

* * * * *

(3) * * *

$CO_{2,S,k}$ = Annual CO_2 emissions arising from solid feedstock consumption (metric tons).

* * * * *

(5) * * *

CO_2 = Annual combined CO_2 emissions from all ammonia processing units (metric tons) (CO_2 process emissions reported under this subpart may include CO_2 that is later consumed on-site for urea production, and therefore is not released to the ambient air from the ammonia manufacturing process unit(s)).

* * * * *

27. Section 98.74 is amended by revising paragraph (d) and by removing and reserving paragraph (f) to read as follows:

§ 98.74 Monitoring and QA/QC requirements.

* * * * *

(d) Calibrate all oil and gas flow meters that are used to measure liquid and gaseous feedstock volumes and flow rates (except for gas billing meters) according to the monitoring and QA/QC requirements for the Tier 3 methodology in § 98.34(b)(1). Perform oil tank drop measurements (if used to quantify feedstock volumes) according to § 98.34(b)(2).

* * * * *

28. Section 98.75 is amended by revising the first sentence of paragraph (a); and by revising paragraph (b) to read as follows:

§ 98.75 Procedures for estimating missing data.

* * * * *

(a) For missing data on monthly carbon contents of feedstock, the substitute data value shall be the arithmetic average of the quality-assured values of that carbon content in the month preceding and the month immediately following the missing data incident. * * *

(b) For missing feedstock supply rates used to determine monthly feedstock consumption, you must determine the best available estimate(s) of the parameter(s), based on all available process data.

29. Section 98.76 is amended by:

a. Revising paragraphs (a) introductory text and (b)(6).

b. Removing paragraphs (b)(12) through (b)(15).

c. Redesignating paragraph (b)(16) as paragraph (b)(12).

c. Adding a new paragraph (b)(13).

d. Removing paragraphs (b)(17) and (c).

§ 98.76 Data reporting requirements.

* * * * *

(a) If a CEMS is used to measure CO_2 emissions, then you must report the relevant information required under § 98.36 for the Tier 4 Calculation Methodology and the following information in this paragraph (a):

* * * * *

(b) * * *

(6) Sampling analysis results of carbon content of feedstock as determined for QA/QC of supplier data under § 98.74(e).

* * * * *

(12) Annual urea production (metric tons) and method used to determine urea production.

(13) CO_2 from the steam reforming of a hydrocarbon or the gasification of solid and liquid raw material at the ammonia manufacturing process unit used to produce urea and the method used to determine the CO_2 consumed in urea production.

Subpart P—[Amended]

30. Section 98.164 is amended by revising paragraph (b)(1) to read as follows:

§ 98.164 Monitoring and QA/QC requirements.

* * * * *

(b) * * *

(1) Calibrate all oil and gas flow meters that are used to measure liquid and gaseous feedstock volumes (except for gas billing meters) according to the monitoring and QA/QC requirements for the Tier 3 methodology in § 98.34(b)(1). Perform oil tank drop measurements (if used to quantify liquid fuel or feedstock consumption) according to § 98.34(b)(2). Calibrate all solids weighing equipment according to the procedures in § 98.3(i).

* * * * *

Subpart V—[Amended]

31. Section 98.226 is amended by removing paragraph (o).

Subpart X—[Amended]

32. Section 98.240 is amended by revising paragraph (a); and by adding paragraph (g) to read as follows:

§ 98.240 Definition of the source category.

(a) The petrochemical production source category consists of all processes that produce acrylonitrile, carbon black, ethylene, ethylene dichloride, ethylene oxide, or methanol, except as specified in paragraphs (b) through (g) of this section. The source category includes processes that produce the petrochemical as an intermediate in the onsite production of other chemicals as well as processes that produce the petrochemical as an end product for sale or shipment offsite.

* * * * *

(g) A process that solely distills or recycles waste solvent that contains a petrochemical is not part of the petrochemical production source category.

33. Section 98.242 is amended by revising paragraph (a)(1) and paragraph (b) introductory text to read as follows:

§ 98.242 GHGs to report.

* * * * *

(a) * * *

(1) If you comply with § 98.243(b) or (d), report under this subpart the calculated CO_2, CH_4, and N_2O emissions for each stationary combustion source and flare that burns any amount of petrochemical process off-gas. If you comply with § 98.243(b), also report under this subpart the measured CO_2 emissions from process vents routed to stacks that are not associated with stationary combustion units.

* * * * *

(b) CO_2, CH_4, and N_2O combustion emissions from stationary combustion units.

* * * * *

34. Section 98.243 is amended by:

a. Revising the second sentence of paragraph (b).

b. Revising the definition of "MVC" in Equation X–1 in paragraph (c)(5)(i).

c. Revising paragraph (d).

§ 98.243 Calculating GHG emissions.

* * * * *

(b) * * * For each stack (except flare stacks) that includes emissions from combustion of petrochemical process off-gas, calculate CH_4 and N_2O emissions in accordance with subpart C of this part (use the Tier 3 methodology, emission factors for "Petroleum" in Table C–2 of subpart C of this part, and either the default high heat value for fuel gas in Table C–1 of subpart C of this part or a calculated HHV, as allowed in Equation C–8 of subpart C of this part).

* * *

(c) * * *

(5) * * *

(i) * * *

MVC = Molar volume conversion factor (849.5 scf per kg-mole at 68 °F and 14.7 pounds per square inch absolute or 836.6 scf/kg-mole at 60 °F and 14.7 pounds per square inch absolute).

* * * * *

(d) *Optional combustion methodology for ethylene production processes.* For each ethylene production process, calculate GHG emissions from each combustion unit that burns fuel that contains any off-gas from the ethylene process as specified in paragraphs (d)(1) through (d)(5) of this section.

(1) Except as specified in paragraphs (d)(2) and (d)(5) of this section, calculate CO_2 emissions using the Tier 3 or Tier 4 methodology in subpart C of this part.

(2) You may use either Equation C–1 or Equation C–2a in subpart C of this part to calculate CO_2 emissions from combustion of any ethylene process off-gas streams that meet either of the conditions in paragraphs (d)(2)(i) or (d)(2)(ii) of this section (for any default values in the calculation, use the defaults for fuel gas in Table C–1 of subpart C of this part). Follow the otherwise applicable procedures in subpart C to calculate emissions from combustion of all other fuels in the combustion unit.

(i) The annual average flow rate of fuel gas (that contains ethylene process off-gas) in the fuel gas line to the combustion unit, prior to any split to individual burners or ports, does not exceed 345 standard cubic feet per minute at 60°F and 14.7 pounds per square inch absolute, and a flow meter is not installed at any point in the line supplying fuel gas or an upstream common pipe. Calculate the annual average flow rate using company records assuming total flow is evenly distributed over 525,600 minutes per year.

(ii) The combustion unit has a maximum rated heat input capacity of less than 30 MMBtu/hr, and a flow meter is not installed at any point in the line supplying fuel gas (that contains ethylene process off-gas) or an upstream common pipe.

(3) Except as specified in paragraph (d)(5) of this section, calculate CH_4 and N_2O emissions using the applicable procedures in § 98.33(c) for the same tier methodology that you used for calculating CO_2 emissions.

(i) For all gaseous fuels that contain ethylene process off-gas, use the emission factors for "Petroleum" in Table C–2 of subpart C of this part

(General Stationary Fuel Combustion Sources).

(ii) For Tier 3, use either the default high heat value for fuel gas in Table C–1 of subpart C of this part or a calculated HHV, as allowed in Equation C–8 of subpart C of this part.

(4) You are not required to use the same Tier for each stationary combustion unit that burns ethylene process off-gas.

(5) For each flare, calculate CO_2, CH_4, and N_2O emissions using the methodology specified in § 98.253(b)(1) through (b)(3).

35. Section 98.244 is amended by revising paragraphs (b)(1) through (b)(3) and (b)(4) introductory text; and by adding paragraphs (b)(4)(xi) through (b)(4)(xiii) to read as follows:

§ 98.244 Monitoring and QA/QC requirements.

* * * * *

(b) * * *

(1) Operate, maintain, and calibrate belt scales or other weighing devices as described in Specifications, Tolerances, and Other Technical Requirements For Weighing and Measuring Devices NIST Handbook 44 (2009) (incorporated by reference, *see* § 98.7), or follow procedures specified by the measurement device manufacturer. You must recalibrate each weighing device according to one of the following frequencies. You may recalibrate either biennially (*i.e.,* once every two years) or at the minimum frequency specified by the manufacturer.

(2) Operate and maintain all flow meters used for gas and liquid feedstocks and products according to the manufacturer's recommended procedures. You must calibrate each of these flow meters according to one of the following. You may use either an industry consensus standard method or methods specified by the flow meter manufacturer. Each flow meter must meet the applicable accuracy specification in § 98.3(i), except as otherwise specified in § 98.3(i)(4) through (i)(6). You must recalibrate each flow meter according to one of the following frequencies. You may recalibrate either biennially, at the minimum frequency specified by the manufacturer, or at the interval specified by the industry consensus standard practice used.

(3) You must perform tank level measurements (if used to determine feedstock or product flows) according to one of the following methods. You may use any standard method published by a consensus-based standards organization (*e.g.,* ASTM, API, etc.) or you may use industry standard practice.

(4) Use any applicable methods specified in paragraphs (b)(4)(i) through (b)(4)(xiii) of this section to determine the carbon content or composition of feedstocks and products and the average molecular weight of gaseous feedstocks and products. Calibrate instruments in accordance with paragraphs (b)(4)(i) through (b)(4)(xiii), as applicable. For coal used as a feedstock, the samples for carbon content determinations shall be taken at a location that is representative of the coal feedstock used during the corresponding monthly period. For carbon black products, samples shall be taken of each grade or type of product produced during the monthly period. Samples of coal feedstock or carbon black product for carbon content determinations may be either grab samples collected and analyzed monthly or a composite of samples collected more frequently and analyzed monthly. Analyses conducted in accordance with methods specified in paragraphs (b)(4)(i) through (b)(4)(xiii) of this section may be performed by the owner or operator, by an independent laboratory, or by the supplier of a feedstock.

* * * * *

(xi) ASTM D2593–93 (Reapproved 2009) Standard Test Method for Butadiene Purity and Hydrocarbon Impurities by Gas Chromatography, (incorporated by reference, *see* § 98.7), effective as of January 1, 2010.

(xii) An industry standard practice for carbon black feedstock oils and carbon black products, effective as of January 1, 2010.

(xiii) Modifications of existing analytical methods or other analytical methods that are applicable to your process provided that the methods listed in § 98.244(b)(4)(i) through § 98.244(b)(4)(xii) are not appropriate because the relevant compounds cannot be detected, the quality control requirements are not technically feasible, or use of the method would be unsafe, effective as of January 1, 2010.

36. Section 98.246 is amended by:

a. Revising paragraphs (a) introductory text and (a)(4).

b. Removing and reserving paragraph (a)(7).

c. Revising paragraph (a)(10).

d. Adding paragraph (a)(11).

e. Revising paragraphs (b) introductory text, and (b)(1) through (b)(5).

f. Revising paragraph (c).

§ 98.246 Data reporting requirements.

* * * * *

(a) If you use the mass balance methodology in § 98.243(c), you must report the information specified in paragraphs (a)(1) through (a)(11) of this section for each type of petrochemical produced, reported by process unit.

* * * * *

(4) Each of the monthly volume, mass, and carbon content values used in Equations X–1 through X–3 of this subpart (*i.e.,* the directly measured values, substitute values, or the calculated values based on other measured data such as tank levels or gas composition) and the molecular weights for gaseous feedstocks and products used in Equation X–1 of this subpart, and the temperture (in °F) at which the gaseous feedstock and product volumes used in Equation X–1 of this subpart were determined. Indicate whether you used the alternative to sampling and analysis specified in § 98.243(c)(4).

* * * * *

(10) You may elect to report the flow and carbon content of wastewater, and you may elect to report the annual mass of carbon released in fugitive emissions and in process vents that are not controlled with a combustion device. These values may be estimated based on engineering analyses. These values are not to be used in the mass balance calculation.

(11) If you determine carbon content or composition of a feedstock or product using a method under § 98.244(b)(4)(xiii), report the information listed in paragraphs (a)(11)(i) through (a)(11)(iii) of this section. Include the information in paragraph (a)(11)(i) of this section in each annual report. Include the information in paragraphs (a)(11)(ii) and (a)(11)(iii) of this section only in the first applicable annual report, and provide any changes to this information in subsequent annual reports.

(i) Name or title of the analytical method.

(ii) A copy of the method. If the method is a modification of a method listed in § 98.244(b)(4)(i) through (xii), you may provide a copy of only the sections that differ from the listed method.

(iii) An explanation of why an alternative to the methods listed in § 98.244(b)(4)(i) through (xii) is needed.

(b) If you measure emissions in accordance with § 98.243(b), then you must report the information listed in paragraphs (b)(1) through (b)(8) of this section.

(1) The petrochemical process unit ID or other appropriate descriptor, and the type of petrochemical produced.

(2) For CEMS used on stacks for stationary combustion units, report the relevant information required under § 98.36 for the Tier 4 calculation

methodology. Section 98.36(b)(9)(iii) does not apply for the purposes of this subpart.

(3) For CEMS used on stacks that are not used for stationary combustion units, report the information required under § 98.36(e)(2)(vi).

(4) The CO_2 emissions from each stack and the combined CO_2 emissions from all stacks (except flare stacks) that handle process vent emissions and emissions from stationary combustion units that burn process off-gas for the petrochemical process unit. For each stationary combustion unit (or group of combustion units monitored with a single CO_2 CEMS) that burns petrochemical process off-gas, provide an estimate based on engineering judgment of the fraction of the total emissions that is attributable to combustion of off-gas from the petrochemical process unit.

(5) For stationary combustion units that burn process off-gas from the petrochemical process unit, report the information related to CH_4 and N_2O emissions as specified in paragraphs (b)(5)(i) through (b)(5)(iv) of this section.

(i) The CH_4 and N_2O emissions from each stack that is monitored with a CO_2 CEMS, expressed in metric tons of each gas and in metric tons of CO_2e. For each stack provide an estimate based on engineering judgment of the fraction of the total emissions that is attributable to combustion of off-gas from the petrochemical process unit.

(ii) The combined CH_4 and N_2O emissions from all stationary combustion units, expressed in metric tons of each gas and in metric tons of CO_2e.

(iii) The quantity of each type of fuel used in Equation C–8 in § 98.33(c) for each stationary combustion unit or group of units (as applicable) during the reporting year, expressed in short tons for solid fuels, gallons for liquid fuels, and scf for gaseous fuels.

(iv) The HHV (either default or annual average from measured data) used in Equation C–8 in § 98.33(c) for each stationary combustion unit or group of combustion units (as applicable).

* * * * *

(c) If you comply with the combustion methodology specified in § 98.243(d), you must report under this subpart the information listed in paragraphs (c)(1) through (c)(5) of this section.

(1) The ethylene process unit ID or other appropriate descriptor.

(2) For each stationary combustion unit that burns ethylene process off-gas (or group of stationary sources with a common pipe), except flares, the relevant information listed in § 98.36 for the applicable Tier methodology. For each stationary combustion unit or group of units (as applicable) that burns ethylene process off-gas, provide an estimate based on engineering judgment of the fraction of the total emissions that is attributable to combustion of off-gas from the ethylene process unit.

(3) Information listed in § 98.256(e) of subpart Y of this part for each flare that burns ethylene process off-gas.

(4) Name and annual quantity of each feedstock.

(5) Annual quantity of ethylene produced from each process unit (metric tons).

37. Section 98.247 is amended by:

a. Revising paragraph (a).

b. Adding paragraph (b)(4).

c. Revising paragraph (c).

§ 98.247 Records that must be retained.

* * * * *

(a) If you comply with the CEMS measurement methodology in § 98.243(b), then you must retain under this subpart the records required for the Tier 4 Calculation Methodology in § 98.37, records of the procedures used to develop estimates of the fraction of total emissions attributable to combustion of petrochemical process off-gas as required in § 98.246(b), and records of any annual average HHV calculations.

(b) * * *

(4) The dates and results (*e.g.,* percent calibration error) of the calibrations of each measurement device.

(c) If you comply with the combustion methodology in § 98.243(d), then you must retain under this subpart the records required for the applicable Tier Calculation Methodologies in § 98.37. If you comply with § 98.243(d)(2), you must also keep records of the annual average flow calculations.

Subpart Y—[Amended]

38. Section 98.252 is amended by revising paragraph (a) and the first sentence of paragraph (i) to read as follows:

§ 98.252 GHGs to report.

* * * * *

(a) CO_2, CH_4, and N_2O combustion emissions from stationary combustion units and from each flare. Calculate and report the emissions from stationary combustion units under subpart C of this part (General Stationary Fuel Combustion Sources) by following the requirements of subpart C, except for emissions from combustion of fuel gas. For CO_2 emissions from combustion of fuel gas, use either Equation C–5 in subpart C of this part or the Tier 4 methodology in subpart C of this part, unless either of the conditions in paragraphs (a)(1) or (2) of this section are met, in which case use either Equations C–1 or C–2a in subpart C of this part. For CH_4 and N_2O emissions from combustion of fuel gas, use the applicable procedures in § 98.33(c) for the same tier methodology that was used for calculating CO_2 emissions. (Use the default CH_4 and N_2O emission factors for "Petroleum (All fuel types in Table C–1)" in Table C–2 of this part. For Tier 3, use either the default high heat value for fuel gas in Table C–1 of subpart C of this part or a calculated HHV, as allowed in Equation C–8 of subpart C of this part.) You may aggregate units, monitor common stacks, or monitor common (fuel) pipes as provided in § 98.36(c) when calculating and reporting emissions from stationary combustion units. Calculate and report the emissions from flares under this subpart.

(1) The annual average fuel gas flow rate in the fuel gas line to the combustion unit, prior to any split to individual burners or ports, does not exceed 345 standard cubic feet per minute at 60°F and 14.7 pounds per square inch absolute and either of the conditions in paragraph (a)(1)(i) or (ii) of this section exist. Calculate the annual average flow rate using company records assuming total flow is evenly distributed over 525,600 minutes per year.

(i) A flow meter is not installed at any point in the line supplying fuel gas or an upstream common pipe.

(ii) The fuel gas line contains only vapors from loading or unloading, waste or wastewater handling, and remediation activities that are combusted in a thermal oxidizer or thermal incinerator.

(2) The combustion unit has a maximum rated heat input capacity of less than 30 MMBtu/hr and either of the following conditions exist:

(i) A flow meter is not installed at any point in the line supplying fuel gas or an upsteam common pipe; or

(ii) The fuel gas line contains only vapors from loading or unloading, waste or wastewater handling, and remediation activities that are combusted in a thermal oxidizer or thermal incinerator.

* * * * *

(i) CO_2 emissions from non-merchant hydrogen production process units (not including hydrogen produced from catalytic reforming units) under this subpart. * * *

39. Section 98.253 is amended by:

a. Revising paragraph (b)(1)(ii)(A).

b. Revising the definition of "MVC" in Equation Y–3 in paragraph (b)(1)(iii)(C).

c. Revising paragraph (c)(1)(ii).
d. Revising the definition of "MVC" in Equation Y–6 in paragraph (c)(2)(i).
e. Revising paragraph (c)(2)(ii).
f. Revising the definition of "CB_Q" and "n" in Equation Y–11 in paragraph (e)(3).
g. Revising the first sentence of paragraph (f) introductory text and the last sentence of paragraph (f)(1).
h. Revising the definition of "MVC" in Equation Y–12 in paragraph (f)(4).
i. Revising the definition of "M_{dust}" in Equation Y–13 in paragraph (g)(2).
j. Revising paragraphs (h) introductory text and (h)(2).
k. In paragraph (i)(1), revising the first two sentences and the definition of "MVC" in Equation Y–18.
l. In paragraph (j), revising both sentences; and revising the definitions of "$(VR)_p$," "$(MF_x)_p$," and "MVC" in Equation Y–19.
m. In paragraph (k), revising the first sentence and the definition of "MVC" in Equation Y–20.
n. Revising paragraph (m) introductory text.
o. Revising the definitions of "MF_{CH4}" and "MVC" in Equation Y–23 in paragraph (m)(2).
p. Revising paragraph (n).

§ 98.253 Calculating GHG emissions.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) If you monitor gas composition, calculate the CO_2 emissions from the flare using either Equation Y–1a or Equation Y–1b of this section. If daily or more frequent measurement data are available, you must use daily values when using Equation Y–1a or Equation Y–1b of this section; otherwise, use weekly values.

$$CO_2 = 0.98 \times 0.001 \times \left(\sum_{p=1}^{n} \left[\frac{44}{12} \times (Flare)_p \times \frac{(MW)_p}{MVC} \times (CC)_p \right] \right) \quad \text{(Eq. Y-1a)}$$

Where:

CO_2 = Annual CO_2 emissions for a specific fuel type (metric tons/year).
0.98 = Assumed combustion efficiency of a flare.
0.001 = Unit conversion factor (metric tons per kilogram, mt/kg).
n = Number of measurement periods. The minimum value for n is 52 (for weekly measurements); the maximum value for n is 366 (for daily measurements during a leap year).
p = Measurement period index.
44 = Molecular weight of CO_2 (kg/kg-mole).
12 = Atomic weight of C (kg/kg-mole).
$(Flare)_p$ = Volume of flare gas combusted during measurement period (standard cubic feet per period, scf/period). If a mass flow meter is used, measure flare gas flow rate in kg/period and replace the term "$(MW)_p$/MVC" with "1".
$(MW)_p$ = Average molecular weight of the flare gas combusted during measurement period (kg/kg-mole). If measurements are taken more frequently than daily, use the arithmetic average of measurement values within the day to calculate a daily average.
MVC = Molar volume conversion factor (849.5 scf/kg-mole at 68 °F and 14.7 pounds per square inch absolute (psia) or 836.6 scf/kg-mole at 60 °F and 14.7 psia).
$(CC)_p$ = Average carbon content of the flare gas combusted during measurement period (kg C per kg flare gas). If measurements are taken more frequently than daily, use the arithmetic average of measurement values within the day to calculate a daily average.

$$CO_2 = \sum_{p=1}^{n} \left[(Flare)_p \times \frac{44}{MVC} \times 0.001 \times \left(\frac{(\%CO_2)_p}{100\%} + \sum_{x=1}^{y} \left\{ 0.98 \times \frac{(\%C_x)_p}{100\%} \times CMN_x \right\} \right) \right] \quad \text{(Eq. Y-1b)}$$

Where:

CO_2 = Annual CO_2 emissions for a specific fuel type (metric tons/year).
n = Number of measurement periods. The minimum value for n is 52 (for weekly measurements); the maximum value for n is 366 (for daily measurements during a leap year).
p = Measurement period index.
$(Flare)_p$ = Volume of flare gas combusted during measurement period (standard cubic feet per period, scf/period). If a mass flow meter is used, you must determine the average molecular weight of the flare gas during the measurement period and convert the mass flow to a volumetric flow.
44 = Molecular weight of CO_2 (kg/kg-mole).
MVC = Molar volume conversion factor (849.5 scf/kg-mole at 68°F and 14.7 psia or 836.6 scf/kg-mole at 60°F and 14.7 psia).
0.001 = Unit conversion factor (metric tons per kilogram, mt/kg).
$(\%CO_2)_p$ = Mole percent CO_2 concentration in the flare gas stream during the measurement period (mole percent = percent by volume).
y = Number of carbon-containing compounds other than CO_2 in the flare gas stream.
x = Index for carbon-containing compounds other than CO_2.
0.98 = Assumed combustion efficiency of a flare (mole CO_2 per mole carbon).
$(\%C_x)_p$ = Mole percent concentration of compound "x" in the flare gas stream during the measurement period (mole percent = percent by volume)
CMN_x = Carbon mole number of compound "x" in the flare gas stream (mole carbon atoms per mole compound). E.g., CMN for ethane (C_2H_6) is 2; CMN for propane (C_3H_8) is 3.

* * * * *

(iii) * * *

(C)

* * * * *

MVC = Molar volume conversion factor (849.5 scf/kg-mole at 68 °F and 14.7 psia or 836.6 scf/kg-mole at 60 °F and 14.7 psia).

* * * * *

(c) * * *

(1) * * *

(ii) For catalytic cracking units whose process emissions are discharged through a combined stack with other CO_2 emissions (*e.g.,* co-mingled with emissions from a CO boiler) you must also calculate the other CO_2 emissions using the applicable methods for the applicable subpart (*e.g.,* subpart C of this part in the case of a CO boiler). Calculate the process emissions from the catalytic cracking unit or fluid coking unit as the difference in the CO_2 CEMS emissions and the calculated emissions associated with the additional units discharging through the combined stack.

(2) * * *

(i)

* * * * *

MVC = Molar volume conversion factor (849.5 scf/kg-mole at 68 °F and 14.7 psia or 836.6 scf/kg-mole at 60 °F and 14.7 psia).

* * * * *

(ii) Either continuously monitor the volumetric flow rate of exhaust gas from

the fluid catalytic cracking unit regenerator or fluid coking unit burner prior to the combustion of other fossil fuels or calculate the volumetric flow rate of this exhaust gas stream using either Equation Y–7a or Equation Y–7b of this section.

$$Q_r = \frac{\left(79 * Q_a + \left(100 - \%O_{oxy}\right) * Q_{oxy}\right)}{100 - \%CO_2 - \%CO - \%O_2} \qquad \text{(Eq. Y-7a)}$$

Where:

Q_r = Volumetric flow rate of exhaust gas from the fluid catalytic cracking unit regenerator or fluid coking unit burner prior to the combustion of other fossil fuels (dscfh).

Q_a = Volumetric flow rate of air to the fluid catalytic cracking unit regenerator or fluid coking unit burner, as determined from control room instrumentation (dscfh).

Q_{oxy} = Volumetric flow rate of oxygen enriched air to the fluid catalytic cracking unit regenerator or fluid coking unit burner as determined from control room instrumentation (dscfh).

$\%O_2$ = Hourly average percent oxygen concentration in exhaust gas stream from the fluid catalytic cracking unit regenerator or fluid coking unit burner (percent by volume—dry basis).

$\%O_{oxy}$ = O_2 concentration in oxygen enriched gas stream inlet to the fluid catalytic cracking unit regenerator or fluid coking unit burner based on oxygen purity specifications of the oxygen supply used for enrichment (percent by volume—dry basis).

$\%CO_2$ = Hourly average percent CO_2 concentration in the exhaust gas stream from the fluid catalytic cracking unit regenerator or fluid coking unit burner (percent by volume—dry basis).

%CO = Hourly average percent CO concentration in the exhaust gas stream from the fluid catalytic cracking unit regenerator or fluid coking unit burner (percent by volume—dry basis). When no auxiliary fuel is burned and a continuous CO monitor is not required under 40 CFR part 63 subpart UUU, assume %CO to be zero.

$$Q_r = \frac{\left(78.1 * Q_a + \left(\%N_{2,oxy}\right) * Q_{oxy}\right)}{\%N_{2,exhaust}} \qquad \text{(Eq. Y-7b)}$$

Where:

Q_r = Volumetric flow rate of exhaust gas from the fluid catalytic cracking unit regenerator or fluid coking unit burner prior to the combustion of other fossil fuels (dscfh).

Q_a = Volumetric flow rate of air to the fluid catalytic cracking unit regenerator or fluid coking unit burner, as determined from control room instrumentation (dscfh).

Q_{oxy} = Volumetric flow rate of oxygen enriched air to the fluid catalytic cracking unit regenerator or fluid coking unit burner as determined from control room instrumentation (dscfh).

$\%N_{2,oxy}$ = N_2 concentration in oxygen enriched gas stream inlet to the fluid catalytic cracking unit regenerator or fluid coking unit burner based on measured value or maximum N_2 impurity specifications of the oxygen supply used for enrichment (percent by volume—dry basis).

$\%N_{2,exhaust}$ = Hourly average percent N_2 concentration in the exhaust gas stream from the fluid catalytic cracking unit regenerator or fluid coking unit burner (percent by volume—dry basis).

* * * * *

(e) * * *

(3) * * *

CB_Q = Coke burn-off quantity per regeneration cycle or measurement period from engineering estimates (kg coke/cycle or kg coke/measurement period).

n = Number of regeneration cycles or measurement periods in the calendar year.

* * * * *

(f) For on-site sulfur recovery plants and for sour gas sent off site for sulfur recovery, calculate and report CO_2 process emissions from sulfur recovery plants according to the requirements in paragraphs (f)(1) through (f)(5) of this section, or, for non-Claus sulfur recovery plants, according to the requirements in paragraph (j) of this section regardless of the concentration of CO_2 in the vented gas stream. * * *

(1) * * * Other sulfur recovery plants must either install a CEMS that complies with the Tier 4 Calculation Methodology in subpart C, or follow the requirements of paragraphs (f)(2) through (f)(5) of this section, or (for non-Claus sulfur recovery plants only) follow the requirements in paragraph (j) of this section to determine CO_2 emissions for the sulfur recovery plant.

* * * * *

(4) * * *

MVC = Molar volume conversion factor (849.5 scf/kg-mole at 68 °F and 14.7 psia or 836.6 scf/kg-mole at 60 °F and 14.7 psia).

* * * * *

(g) * * *

(2) * * *

M_{dust} = Annual mass of petroleum coke dust removed from the process through the dust collection system of the coke calcining unit from facility records (metric ton petroleum coke dust/year). For coke calcining units that recycle the collected dust, the mass of coke dust removed from the process is the mass of coke dust collected less the mass of coke dust recycled to the process.

* * * * *

(h) For asphalt blowing operations, calculate CO_2 and CH_4 emissions according to the requirements in paragraph (j) of this section regardless of the CO_2 and CH_4 concentrations or according to the applicable provisions in paragraphs (h)(1) and (h)(2) of this section.

* * * * *

(2) For asphalt blowing operations controlled by thermal oxidizer or flare, calculate CO_2 using either Equation Y–16a or Equation Y–16b of this section and calculate CH_4 emissions using Equation Y–17 of this section, provided these emissions are not already included in the flare emissions calculated in paragraph (b) of this section or in the stationary combustion unit emissions required under subpart C of this part (General Stationary Fuel Combustion Sources).

$$CO_2 = 0.98 \times \left(Q_{AB} \times CEF_{AB} \times \frac{44}{12} \right) \quad \text{(Eq. Y-16a)}$$

Where:

CO_2 = Annual CO_2 emissions from controlled asphalt blowing (metric tons CO_2/year).

0.98 = Assumed combustion efficiency of thermal oxidizer or flare.

Q_{AB} = Quantity of asphalt blown (MMbbl/year).

CEF_{AB} = Carbon emission factor from asphalt blowing from facility-specific test data (metric tons C/MMbbl asphalt blown); default = 2,750.

44 = Molecular weight of CO_2 (kg/kg-mole).

12 = Atomic weight of C (kg/kg-mole).

$$CO_2 = Q_{AB} \times \left(EF_{AB,CO_2} + 0.98 \times \left[\left(CEF_{AB} \times \frac{44}{12} \right) - EF_{AB,CO_2} \right] \right) \quad \text{(Eq. Y-16b)}$$

Where:

CO_2 = Annual CO_2 emissions from controlled asphalt blowing (metric tons CO_2/year).

Q_{AB} = Quantity of asphalt blown (MMbbl/year).

0.98 = Assumed combustion efficiency of thermal oxidizer or flare.

$EF_{AB,CO2}$ = Emission factor for CO_2 from uncontrolled asphalt blowing from facility-specific test data (metric tons CO_2/MMbbl asphalt blown); default = 1,100.

CEF_{AB} = Carbon emission factor from asphalt blowing from facility-specific test data (metric tons C/MMbbl asphalt blown); default = 2,750.

44 = Molecular weight of CO_2 (kg/kg-mole).

12 = Atomic weight of C (kg/kg-mole).

$$CH_4 = 0.02 \times \left(Q_{AB} \times EF_{AB,CH_4} \right) \quad \text{(Eq. Y-17)}$$

Where:

CH_4 = Annual methane emissions from controlled asphalt blowing (metric tons CH_4/year).

0.02 = Fraction of methane uncombusted in thermal oxidizer or flare based on assumed 98% combustion efficiency.

Q_{AB} = Quantity of asphalt blown (million barrels per year, MMbbl/year).

$EF_{AB,CH4}$ = Emission factor for CH_4 from uncontrolled asphalt blowing from facility-specific test data (metric tons CH_4/MMbbl asphalt blown); default = 580.

(i) * * *

(1) Use the process vent method in paragraph (j) of this section to calculate the CH_4 emissions from the depressurization of the coke drum or vessel regardless of the CH_4 concentration and also calculate the CH_4 emissions from the subsequent opening of the vessel for coke cutting operations using Equation Y–18 of this section. If you have coke drums or vessels of different dimensions, use the process vent method in paragraph (j) of this section and Equation Y–18 for each set of coke drums or vessels of the same size and sum the resultant emissions across each set of coke drums or vessels to calculate the CH_4 emissions for all delayed coking units.

* * * * *

MVC = Molar volume conversion factor (849.5 scf/kg-mole at 68 °F and 14.7 psia or 836.6 scf/kg-mole at 60 °F and 14.7 psia).

* * * * *

(j) For each process vent not covered in paragraphs (a) through (i) of this section that can be reasonably expected to contain greater than 2 percent by volume CO_2 or greater than 0.5 percent by volume of CH_4 or greater than 0.01 percent by volume (100 parts per million) of N_2O, calculate GHG emissions using the Equation Y–19 of this section. You must use Equation Y–19 of this section to calculate CH_4 emissions for catalytic reforming unit depressurization and purge vents when methane is used as the purge gas or if you elected this method as an alternative to the methods in paragraphs (f), (h), or (k) of this section.

* * * * *

$(VR)_p$ = Average volumetric flow rate of process gas during the event (scf per hour) from measurement data, process knowledge, or engineering estimates.

$(MF_x)_p$ = Mole fraction of GHG × in process vent during the event (kg-mol of GHG ×/kg-mol vent gas) from measurement data, process knowledge, or engineering estimates.

* * * * *

MVC = Molar volume conversion factor (849.5 scf/kg-mole at 68 °F and 14.7 psia or 836.6 scf/kg-mole at 60 °F and 14.7 psia).

* * * * *

(k) For uncontrolled blowdown systems, you must calculate CH4 emissions either using the methods for process vents in paragraph (j) of this section regardless of the CH_4 concentration or using Equation Y20 of this section. * * *

* * * * *

MVC = Molar volume conversion factor (849.5 scf/kg-mole at 68 °F and 14.7 psia or 836.6 scf/kg-mole at 60 °F and 14.7 psia).

* * * * *

(m) For storage tanks, except as provided in paragraph (m)(4) of this section, calculate CH_4 emissions using the applicable methods in paragraphs (m)(1) through (m)(3) of this section.

(2) * * *

MF_{CH4} = Average mole fraction of CH_4 in vent gas from the unstabilized crude oil storage tanks from facility measurements (kg-mole CH_4/kg-mole gas); use 0.27 as a default if measurement data are not available.

* * * * *

MVC = Molar volume conversion factor (849.5 scf/kg-mole at 68 °F and 14.7 psia or 836.6 scf/kg-mole at 60 °F and 14.7 psia).

* * * * *

(n) For crude oil, intermediate, or product loading operations for which the vapor-phase concentration of methane is 0.5 volume percent or more, calculate CH_4 emissions from loading operations using vapor-phase methane composition data (from measurement data or process knowledge) and the emission estimation procedures provided in Section 5.2 of the AP–42: "Compilation of Air Pollutant Emission Factors, Volume 1: Stationary Point and Area Sources." For loading operations in which the vapor-phase concentration of methane is less than 0.5 volume percent, you may assume zero methane emissions.

40. Section 98.254 is amended by:

a. Revising paragraph (a).

b. Revising paragraph (b).
c. Revising paragraph (c).
d. Revising paragraphs (d) introductory text and (d)(6).
e. Adding a new paragraph (d)(6).
f. Revising paragraph (e) introductory text.
g. Revising paragraph (f) introductory text and (f)(1).
h. Removing and reserving paragraph (f)(2).
i. Removing paragraph (f)(4).
j. Revising paragraph (g).
k. Revising the second sentence of paragraph (h).
l. Removing paragraph (l).

§ 98.254 Monitoring and QA/QC requirements.

(a) Fuel flow meters, gas composition monitors, and heating value monitors that are associated with sources that use a CEMS to measure CO_2 emissions according to subpart C of this part or that are associated with stationary combustion sources must meet the applicable monitoring and QA/QC requirements in § 98.34.

(b) All gas flow meters, gas composition monitors, and heating value monitors that are used to provide data for the GHG emissions calculations in this subpart for sources other than those subject to the requirements in paragraph (a) of this section shall be calibrated according to the procedures in the applicable methods specified in paragraphs (c) through (g) of this section or the procedures specified by the manufacturer. In the case of gas flow meters, all gas flow meters must meet the calibration accuracy requirements in § 98.3(i). You must recalibrate each gas flow meter according to one of the following frequencies. You may recalibrate either biennially (every two years), at the minimum frequency specified by the manufacturer, or at the interval specified by the industry consensus standard practice used. You must recalibrate each gas composition monitor and heating value monitor according to one of the following frequencies. You may recalibrate either annually, at the minimum frequency specified by the manufacturer, or at the interval specified by the industry consensus standard practice used.

(c) For flare or sour gas flow meters, operate, calibrate, and maintain the flow meter according to one of the following. You may use a method published by a consensus-based standards organization or the procedures specified by the flow meter manufacturer. Consensus-based standards include, but are not limited to, the following: ASTM International, the American Society of Mechanical Engineers (ASME), and the American Gas Association (AGA).

(d) Except as provided in paragraph (g) of this section, determine gas composition and, if required, average molecular weight of the gas using any of the following methods. Alternatively, the results of chromatographic analysis of the fuel may be used, provided that the gas chromatograph is operated, maintained, and calibrated according to the manufacturer's instructions; and the methods used for operation, maintenance, and calibration of the gas chromatograph are documented in the written Monitoring Plan for the unit under § 98.3(g)(5).

* * * * *

(6) ASTM D2503–92 (Reapproved 2007) Standard Test Method for Relative Molecular Mass (Molecular Weight) of Hydrocarbons by Thermoelectric Measurement of Vapor Pressure (incorporated by reference, *see* § 98.7).

(e) Determine flare gas higher heating value using any of the following methods. Alternatively, the results of chromatographic analysis of the fuel may be used, provided that the gas chromatograph is operated, maintained, and calibrated according to the manufacturer's instructions; and the methods used for operation, maintenance, and calibration of the gas chromatograph are documented in the written Monitoring Plan for the unit under § 98.3(g)(5).

* * * * *

(f) For gas flow meters used to comply with the requirements in § 98.253(c)(2)(ii) or § 98.253(j), install, operate, calibrate, and maintain each gas flow meter according to the requirements in 40 CFR 63.1572(c) and the following requirements.

(1) Locate the flow monitor at a site that provides representative flow rates. Avoid locations where there is swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

* * * * *

(g) For exhaust gas CO_2/CO/O_2 composition monitors used to comply with the requirements in § 98.253(c)(2), install, operate, calibrate, and maintain exhaust gas composition monitors according to the the requirements in 40 CFR 60.105a(b)(2) or 40 CFR 63.1572(c) or according to the manufacturer's specifications and requirements.

(h) * * * Calibrate the measurement device according to the procedures specified by NIST handbook 44 or the procedures specified by the manufacturer. * * *

* * * * *

41. Section 98.256 is amended by:
a. Revising paragraph (e)(6).
b. Redesignating paragraphs (e)(7) through (e)(9) as (e)(8) through (e)(10), respectively.
c. Adding a new paragraph (e)(7).
d. Revising newly designated paragraphs (e)(8) and (e)(9).
e. Revising paragraphs (f)(6) through (f)(8).
f. Redesignating paragraphs (f)(9) through (f)(12) as (f)(10) through (f)(13), respectively.
g. Adding a new paragraph (f)(9).
h. Revising newly designated paragraphs (f)(11) through (f)(13).
i. Revising paragraphs (g)(5), (h)(2), (h)(4), and (h)(6).
j. Adding paragraph (h)(7).
k. Revising paragraphs (i)(5), (i)(6), (i)(8), and (j)(2).
l. Redesignating paragraph (j)(8) as (j)(9).
m. Adding a new paragraph (j)(8).
n. Revising paragraphs (k)(1), (k)(3), (l) introductory text, (l)(5), and (m).
o. Revising paragraph (o).

§ 98.256 Data reporting requirements.

* * * * *

(e) * * *

(6) If you use Equation Y–1a of this subpart, an indication of whether daily or weekly measurement periods are used, the annual volume of flare gas combusted (in scf/year) and the annual average molecular weight (in kg/kg-mole), the molar volume conversion factor (in scf/kg-mole), and annual average carbon content of the flare gas (in kg carbon per kg flare gas).

(7) If you use Equation Y–1b of this subpart, an indication of whether daily or weekly measurement periods are used, the annual volume of flare gas combusted (in scf/year), the molar volume conversion factor (in scf/kg-mole), the annual average CO_2 concentration (volume or mole percent), the number of carbon containing compounds other than CO_2 in the flare gas stream, and for each of the carbon containing compounds other than CO_2 in the flare gas stream:

(i) The annual average concentration of the compound (volume or mole percent).

(ii) The carbon mole number of the compound (moles carbon per mole compound).

(8) If you use Equation Y–2 of this subpart, an indication of whether daily or weekly measurement periods are used, the annual volume of flare gas combusted (in million (MM) scf/year) and the annual average higher heating value of the flare gas (in MMBtu per MMscf).

(9) If you use Equation Y–3 of this subpart, the annual volume of flare gas combusted (in MMscf/year) during

normal operations, the annual average higher heating value of the flare gas (in MMBtu/MMscf), the number of SSM events exceeding 500,000 scf/day, the volume of gas flared (in scf/event), the average molecular weight (in kg/kg-mole), the molar volume conversion factor (in scf/kg-mole), and carbon content of the flare gas (in kg carbon per kg flare) for each SSM event over 500,000 scf/day.

* * * * *

(f) * * *

(6) If you use a CEMS, the relevant information required under § 98.36 for the Tier 4 Calculation Methodology, the CO_2 annual emissions as measured by the CEMS (unadjusted to remove CO_2 combustion emissions associated with additional units, if present) and the process CO_2 emissions as calculated according to § 98.253(c)(1)(ii). Report the CO_2 annual emissions associated with sources other than those from the coke burn-off in the applicable subpart (*e.g.,* subpart C of this part in the case of a CO boiler).

(7) If you use Equation Y–6 of this subpart, the annual average exhaust gas flow rate, $\%CO_2$, %CO, and the molar volume conversion factor (in scf/kg-mole).

(8) If you use Equation Y–7a of this subpart, the annual average flow rate of inlet air and oxygen-enriched air, $\%O_2$, $\%O_{oxy}$, $\%CO_2$, and %CO.

(9) If you use Equation Y–7b of this subpart, the annual average flow rate of inlet air and oxygen-enriched air, $\%N_{2,oxy}$, and $\%N_{2,exhaust}$.

* * * * *

(11) Indicate whether you use a measured value, a unit-specific emission factor, or a default emission factor for CH_4 emissions. If you use a unit-specific emission factor for CH_4, report the unit-specific emission factor for CH_4, the units of measure for the unit-specific factor, the activity data for calculating emissions (*e.g.,* if the emission factor is based on coke burn-off rate, the annual quantity of coke burned), and the basis for the factor.

(12) Indicate whether you use a measured value, a unit-specific emission factor, or a default emission factor for N_2O emissions. If you use a unit-specific emission factor for N_2O, report the unit-specific emission factor for N_2O, the units of measure for the unit-specific factor, the activity data for calculating emissions (*e.g.,* if the emission factor is based on coke burn-off rate, the annual quantity of coke burned), and the basis for the factor.

(13) If you use Equation Y–11 of this subpart, the number of regeneration cycles or measurement periods during the reporting year, the average coke burn-off quantity per cycle or measurement period, and the average carbon content of the coke.

(g) * * *

(5) If the GHG emissions for the low heat value gas are calculated at the flexicoking unit, also report the calculated annual CO_2, CH_4, and N_2O emissions for each unit, expressed in metric tons of each pollutant emitted, and the applicable equation input parameters specified in paragraphs (f)(7) through (f)(13) of this section.

(h) * * *

(2) Maximum rated throughput of each independent sulfur recovery plant, in metric tons sulfur produced/stream day, a description of the type of sulfur recovery plant, and an indication of the method used to calculate CO_2 annual emissions for the sulfur recovery plant (*e.g.,* CO_2 CEMS, Equation Y–12, or process vent method in § 98.253(j)).

* * * * *

(4) If you use Equation Y–12 of this subpart, the annual volumetric flow to the sulfur recovery plant (in scf/year), the molar volume conversion factor (in scf/kg-mole), and the annual average mole fraction of carbon in the sour gas (in kg-mole C/kg-mole gas).

* * * * *

(6) If you use a CEMS, the relevant information required under § 98.36 for the Tier 4 Calculation Methodology, the CO_2 annual emissions as measured by the CEMS and the annual process CO_2 emissions calculated according to § 98.253(f)(1). * * *

(7) If you use the process vent method in § 98.253(j) for a non-Claus sulfur recovery plant, the relevant information required under paragraph (l)(5) of this section.

(i) * * *

(5) If you use Equation Y–13 of this subpart, annual mass and carbon content of green coke fed to the unit, the annual mass and carbon content of marketable coke produced, the annual mass of coke dust removed from the process through dust collection systems, and an indication of whether coke dust is recycled to the unit (e.g., all dust is recycled, a portion of the dust is recycled, or none of the dust is recycled).

(6) If you use a CEMS, the relevant information required under § 98.36 for the Tier 4 Calculation Methodology, the CO_2 annual emissions as measured by the CEMS and the annual process CO_2 emissions calculated according to § 98.253(g)(1).

* * * * *

(8) Indicate whether you use a measured value, a unit-specific emission factor, or a default emission factor for N_2O emissions. If you use a unit-specific emission factor for N_2O, report the unit-specific emission factor for N_2O, the units of measure for the unit-specific factor, the activity data for calculating emissions (*e.g.,* if the emission factor is based on coke burn-off rate, the annual quantity of coke burned), and the basis for the factor.

(j) * * *

(2) The quantity of asphalt blown (in Million bbl) at the unit in the reporting year.

* * * * *

(8) If you use Equation Y–16b of this subpart, the CO_2 emission factor used and the basis for its value and the carbon emission factor used and the basis for its value.

* * * * *

(k) * * *

(1) The cumulative annual CH_4 emissions (in metric tons of CH_4) for all delayed coking units at the facility.

* * * * *

(3) The total number of delayed coking units at the facility, the total number of delayed coking drums at the facility, and for each coke drum or vessel: The dimensions, the typical gauge pressure of the coking drum when first vented to the atmosphere, typical void fraction, the typical drum outage (*i.e.,* the unfilled distance from the top of the drum, in feet), the molar volume conversion factor (in scf/kg-mole), and annual number of coke-cutting cycles.

* * * * *

(l) For each process vent subject to § 98.253(j), the owner or operator shall report:

* * * * *

(5) The annual volumetric flow discharged to the atmosphere (in scf), and an indication of the measurement or estimation method, annual average mole fraction of each GHG above the concentration threshold or otherwise required to be reported and an indication of the measurement or estimation method, the molar volume conversion factor (in scf/kg-mole), and for intermittent vents, the number of venting events and the cumulative venting time.

(m) For uncontrolled blowdown systems, the owner or operator shall report:

(1) An indication of whether the uncontrolled blowdown emission are reported under § 98.253(k) or § 98.253(j) or a statement that the facility does not have any uncontrolled blowdown systems.

(2) The cumulative annual CH_4 emissions (in metric tons of CH_4) for uncontrolled blowdown systems.

(3) For uncontrolled blowdown systems reporting under § 98.253(k), the total quantity (in Million bbl) of crude oil plus the quantity of intermediate products received from off-site that are processed at the facility in the reporting year, the methane emission factor used for uncontrolled blowdown systems, the basis for the value, and the molar volume conversion factor (in scf/kg-mole).

(4) For uncontrolled blowdown systems reporting under § 98.253(j), the relevant information required under paragraph (l)(5) of this section.

* * * * *

(o) * * *

(1) The cumulative annual CH_4 emissions (in metric tons of CH_4) for all storage tanks, except for those used to process unstabilized crude oil.

(2) For storage tanks other than those processing unstabilized crude oil:

(i) The method used to calculate the reported storage tank emissions for storage tanks other than those processing unstabilized crude (Section 7.1 of the AP–42: "Compilation of Air Pollutant Emission Factors, Volume 1: Stationary Point and Area Sources", including TANKS Model (Version 4.09D) or similar programs, or Equation Y–22 of this section, other).

(ii) The total quantity (in MMbbl) of crude oil plus the quantity of intermediate products received from off-site that are processed at the facility in the reporting year.

(3) The cumulative CH_4 emissions (in metric tons of CH_4) for storage tanks used to process unstabilized crude oil or a statement that the facility did not receive any unstabilized crude oil during the reporting year.

(4) For storage tanks that process unstabilized crude oil:

(i) The method used to calculate the reported unstabilized crude oil storage tank emissions .

(ii) The quantity of unstabilized crude oil received during the calendar year (in MMbbl).

(iii) The average pressure differential (in psi).

(iv) The molar volume conversion factor (in scf/kg-mole).

(v) The average mole fraction of CH_4 in vent gas from unstabilized crude oil storage tanks and the basis for the mole fraction.

(vi) If you did not use Equation Y–23, the tank-specific methane composition data and the gas generation rate data used to estimate the cumulative CH_4 emissions for storage tanks used to process unstabilized crude oil.

* * * * *

42. Section 98.257 is revised to read as follows:

§ 98.257 Records that must be retained.

In addition to the records required by § 98.3(g), you must retain the records of all parameters monitored under § 98.255. If you comply with the combustion methodology in § 98.252(a), then you must retain under this subpart the records required for the Tier 3 and/or Tier 4 Calculation Methodologies in § 98.37 and you must keep records of the annual average flow calculations.

Subpart AA—[Amended]

43. Section 98.273 is amended by:

a. Revising paragraphs (a)(1) and (a)(2).

b. Revising paragraphs (b)(1) and (b)(2).

c. Revising paragraphs (c)(1) and (c)(2).

§ 98.273 Calculating GHG emissions.

(a) * * *

(1) Calculate fossil fuel-based CO_2 emissions from direct measurement of fossil fuels consumed and default emissions factors according to the Tier 1 methodology for stationary combustion sources in § 98.33(a)(1). A higher tier from § 98.33(a) may be used to calculate fossil fuel-based CO_2 emissions if the respective monitoring and QA/QC requirements described in § 98.34 are met.

(2) Calculate fossil fuel-based CH_4 and N_2O emissions from direct measurement of fossil fuels consumed, default or site-specific HHV, and default emissions factors and convert to metric tons of CO_2 equivalent according to the methodology for stationary combustion sources in § 98.33(c).

* * * * *

(b) * * *

(1) Calculate fossil CO_2 emissions from fossil fuels from direct measurement of fossil fuels consumed and default emissions factors according to the Tier 1 Calculation Methodology for stationary combustion sources in § 98.33(a)(1). A higher tier from § 98.33(a) may be used to calculate fossil fuel-based CO_2 emissions if the respective monitoring and QA/QC requirements described in § 98.34 are met.

(2) Calculate CH_4 and N_2O emissions from fossil fuels from direct measurement of fossil fuels consumed, default or site-specific HHV, and default emissions factors and convert to metric tons of CO_2 equivalent according to the methodology for stationary combustion sources in § 98.33(c).

* * * * *

(c) * * *

(1) Calculate CO_2 emissions from fossil fuel from direct measurement of fossil fuels consumed and default HHV and default emissions factors, according to the Tier 1 Calculation Methodology for stationary combustion sources in § 98.33(a)(1). A higher tier from § 98.33(a) may be used to calculate fossil fuel-based CO_2 emissions if the respective monitoring and QA/QC requirements described in § 98.34 are met.

(2) Calculate CH_4 and N_2O emissions from fossil fuel from direct measurement of fossil fuels consumed, default or site-specific HHV, and default emissions factors and convert to metric tons of CO_2 equivalent according to the methodology for stationary combustion sources in § 98.33(c); use the default HHV listed in Table C–1 of subpart C and the default CH_4 and N_2O emissions factors listed in Table AA–2 of this subpart.

* * * * *

44. Section 98.276 is amended by revising the introductory text to read as follows:

§ 98.276 Data reporting requirements.

In addition to the information required by § 98.3(c) and the applicable information required by § 98.36, each annual report must contain the information in paragraphs (a) through (k) of this section as applicable:

* * * * *

45. In the Tables to Subpart AA of Part 98, Table AA–2 is revised to read as follows:

TABLE AA–2 OF SUBPART AA—KRAFT LIME KILN AND CALCINER EMISSIONS FACTORS FOR FOSSIL FUEL-BASED CH_4 AND N_2O

Fuel	Fossil fuel-based emissions factors (kg/mmBtu HHV)			
	Kraft lime kilns		Kraft calciners	
	CH_4	N_2O	CH_4	N_2O
Residual Oil				0.0003
Distillate Oil			0.0027	0.0004
Natural Gas	0.0027	0		0.0001
Biogas				0.0001
Petroleum coke			NA	[a]NA

[a] Emission factors for kraft calciners are not available.

Subpart OO—[Amended]

46. Section 98.410 is amended by revising paragraph (b) to read as follows:

§ 98.410 Definition of the source category.

* * * * *

(b) To produce a fluorinated GHG means to manufacture a fluorinated GHG from any raw material or feedstock chemical. Producing a fluorinated GHG includes the manufacture of a fluorinated GHG as an isolated intermediate for use in a process that will result in its transformation either at or outside of the production facility. Producing a fluorinated GHG also includes the creation of a fluorinated GHG (with the exception of HFC–23) that is captured and shipped off site for any reason, including destruction. Producing a fluorinated GHG does not include the reuse or recycling of a fluorinated GHG, the creation of HFC–23 during the production of HCFC–22, the creation of intermediates that are created and transformed in a single process with no storage of the intermediates, or the creation of fluorinated GHGs that are released or destroyed at the production facility before the production measurement at § 98.414(a).

* * * * *

47. Section 98.414 is amended by:

a. Adding a second and third sentence to paragraph (a).

b. Revising paragraph (h).

c. Removing and reserving paragraph (j).

d. Adding new paragraphs (n) through (q).

§ 98.414 Monitoring and QA/QC requirements.

(a) * * * If the measured mass includes more than one fluorinated GHG, the concentrations of each of the fluorinated GHGs, other than low-concentration constituents, shall be measured as set forth in paragraph (n) of this section. For each fluorinated GHG, the mean of the concentrations of that fluorinated GHG (mass fraction) measured under paragraph (n) of this section shall be multiplied by the mass measurement to obtain the mass of that fluorinated GHG coming out of the production process.

* * * * *

(h) You must measure the mass of each fluorinated GHG that is fed into the destruction device and that was previously produced as defined at § 98.410(b). Such fluorinated GHGs include but are not limited to quantities that are shipped to the facility by another facility for destruction and quantities that are returned to the facility for reclamation but are found to be irretrievably contaminated and are therefore destroyed. You must use flowmeters, weigh scales, or a combination of volumetric and density measurements with an accuracy and precision of one percent of full scale or better. If the measured mass includes more than trace concentrations of materials other than the fluorinated GHG being destroyed, you must estimate the concentrations of fluorinated GHG being destroyed considering current or previous representative concentration measurements and other relevant process information. You must multiply this concentration (mass fraction) by the mass measurement to obtain the mass of the fluorinated GHG destroyed.

* * * * *

(n) If the mass coming out of the production process includes more than one fluorinated GHG, you shall measure the concentrations of all of the fluorinated GHGs, other than low-concentration constituents, as follows:

(1) *Analytical Methods.* Use a quality-assured analytical measurement technology capable of detecting the analyte of interest at the concentration of interest and use a procedure validated with the analyte of interest at the concentration of interest. Where standards for the analyte are not available, a chemically similar surrogate may be used. Acceptable analytical measurement technologies include but are not limited to gas chromatography (GC) with an appropriate detector, infrared (IR), fourier transform infrared (FTIR), and nuclear magnetic resonance (NMR). Acceptable methods include EPA Method 18 in Appendix A–1 of 40 CFR part 60; EPA Method 320 in Appendix A of 40 CFR part 63; the Protocol for Measuring Destruction or Removal Efficiency (DRE) of Fluorinated Greenhouse Gas Abatement Equipment in Electronics Manufacturing, Version 1, EPA–430–R–10–003, (March 2010) (incorporated by reference, *see* § 98.7); ASTM D6348–03 Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy (incorporated by reference, *see* § 98.7); or other analytical methods validated using EPA Method 301 in Appendix A of 40 CFR part 63 or some other scientifically sound validation protocol. The validation protocol may include analytical technology manufacturer specifications or recommendations.

(2) *Documentation in GHG Monitoring Plan.* Describe the analytical method(s) used under paragraph (n)(1) of this section in the site GHG Monitoring Plan as required under § 98.3(g)(5). At a minimum, include in the description of the method a description of the analytical measurement equipment and procedures, quantitative estimates of the method's accuracy and precision for the analytes of interest at the concentrations of interest, as well as a description of how these accuracies and precisions were estimated, including the validation protocol used.

(3) *Frequency of measurement.* Perform the measurements at least once by October 12, 2010 if the fluorinated GHG product is being produced on August 11, 2010. Perform the measurements within 60 days of commencing production of any fluorinated GHG product that was not being produced on August 11, 2010.

Repeat the measurements if an operational or process change occurs that could change the identities or significantly change the concentrations of the fluorinated GHG constituents of the fluorinated GHG product. Complete the repeat measurements within 60 days of the operational or process change.

(4) *Measure all product grades.* Where a fluorinated GHG is produced at more than one purity level (*e.g.,* pharmaceutical grade and refrigerant grade), perform the measurements for each purity level.

(5) *Number of samples.* Analyze a minimum of three samples of the fluorinated GHG product that have been drawn under conditions that are representative of the process producing the fluorinated GHG product. If the relative standard deviation of the measured concentrations of any of the fluorinated GHG constituents (other than low-concentration constituents) is greater than or equal to 15 percent, draw and analyze enough additional samples to achieve a total of at least six samples of the fluorinated GHG product.

(o) All analytical equipment used to determine the concentration of fluorinated GHGs, including but not limited to gas chromatographs and associated detectors, IR, FTIR and NMR devices, shall be calibrated at a frequency needed to support the type of analysis specified in the site GHG Monitoring Plan as required under § 98.414(n) and § 98.3(g)(5) of this part. Quality assurance samples at the concentrations of concern shall be used for the calibration. Such quality assurance samples shall consist of or be prepared from certified standards of the analytes of concern where available; if not available, calibration shall be performed by a method specified in the GHG Monitoring Plan.

(p) Isolated intermediates that are produced and transformed at the same facility are exempt from the monitoring requirements of this section.

(q) Low-concentration constituents are exempt from the monitoring and QA/QC requirements of this section.

48. Section 98.416 is amended by:

a. Revising paragraph (a)(3).

b. Removing and reserving paragraph (a)(4).

c. Revising paragraph (a)(11).

d. Revising paragraphs (c) introductory text and (c)(1).

e. Revising paragraph (d) introductory text.

f. Adding paragraphs (f) through (h).

§ 98.416 Data reporting requirements.

* * * * *

(a) * * *

(3) Mass in metric tons of each fluorinated GHG that is destroyed at that facility and that was previously produced as defined at § 98.410(b). Quantities to be reported under this paragraph (a)(3) of this section include but are not limited to quantities that are shipped to the facility by another facility for destruction and quantities that are returned to the facility for reclamation but are found to be irretrievably contaminated and are therefore destroyed.

* * * * *

(11) Mass in metric tons of each fluorinated GHG that is fed into the destruction device and that was previously produced as defined at § 98.410(b). Quantities to be reported under this paragraph (a)(11) of this section include but are not limited to quantities that are shipped to the facility by another facility for destruction and quantities that are returned to the facility for reclamation but are found to be irretrievably contaminated and are therefore destroyed.

* * * * *

(c) Each bulk importer of fluorinated GHGs or nitrous oxide shall submit an annual report that summarizes its imports at the corporate level, except for shipments including less than twenty-five kilograms of fluorinated GHGs or nitrous oxide, transshipments, and heels that meet the conditions set forth at § 98.417(e). The report shall contain the following information for each import:

(1) Total mass in metric tons of nitrous oxide and each fluorinated GHG imported in bulk, including each fluorinated GHG constituent of the fluorinated GHG product that makes up between 0.5 percent and 100 percent of the product by mass.

* * * * *

(d) Each bulk exporter of fluorinated GHGs or nitrous oxide shall submit an annual report that summarizes its exports at the corporate level, except for shipments including less than twenty-five kilograms of fluorinated GHGs or nitrous oxide, transshipments, and heels. The report shall contain the following information for each export:

* * * * *

(f) By March 31, 2011, all fluorinated GHG production facilities shall submit a one-time report that includes the concentration of each fluorinated GHG constituent in each fluorinated GHG product as measured under § 98.414(n). If the facility commences production of a fluorinated GHG product that was not included in the initial report or performs a repeat measurement under § 98.414(n) that shows that the identities or concentrations of the fluorinated GHG constituents of a fluorinated GHG product have changed, then the new or changed concentrations, as well as the date of the change, must be reflected in a revision to the report. The revised report must be submitted to EPA by the March 31st that immediately follows the measurement under § 98.414(n).

(g) Isolated intermediates that are produced and transformed at the same facility are exempt from the reporting requirements of this section.

(h) Low-concentration constituents are exempt from the reporting requirements of this section.

49. Section 98.417 is amended by revising paragraph (a)(2); and by adding paragraphs (f) and (g) to read as follows:

§ 98.417 Records that must be retained.

(a) * * *

(2) Records documenting the initial and periodic calibration of the analytical equipment (including but not limited to GC, IR, FTIR, or NMR), weigh scales, flowmeters, and volumetric and density measures used to measure the quantities reported under this subpart, including the industry standards or manufacturer directions used for calibration pursuant to § 98.414(m) and (o).

* * * * *

(f) Isolated intermediates that are produced and transformed at the same facility are exempt from the recordkeeping requirements of this section.

(g) Low-concentration constituents are exempt from the recordkeeping requirements of this section.

50. Section 98.418 is revised to read as follows:

§ 98.418 Definitions.

Except as provided below, all of the terms used in this subpart have the same meaning given in the Clean Air Act and subpart A of this part. If a conflict exists between a definition provided in this subpart and a definition provided in subpart A, the definition in this subpart shall take precedence for the reporting requirements in this subpart.

Isolated intermediate means a product of a process that is stored before subsequent processing. An isolated intermediate is usually a product of chemical synthesis. Storage of an isolated intermediate marks the end of a process. Storage occurs at any time the intermediate is placed in equipment used solely for storage.

Low-concentration constituent means, for purposes of fluorinated GHG production and export, a fluorinated GHG constituent of a fluorinated GHG product that occurs in the product in concentrations below 0.1 percent by mass. For purposes of fluorinated GHG

import, low-concentration constituent means a fluorinated GHG constituent of a fluorinated GHG product that occurs in the product in concentrations below 0.5 percent by mass. Low-concentration constituents do not include fluorinated GHGs that are deliberately combined with the product (e.g., to affect the performance characteristics of the product).

Subpart PP—[Amended]

51. Section 98.422 is amended by revising paragraphs (a) and (b) to read as follows:

§ 98.422 GHGs to report.

(a) Mass of CO_2 captured from production process units.

(b) Mass of CO_2 extracted from CO_2 production wells.

* * * * *

52. Section 98.423 is amended by:

a. Revising the first sentence of paragraph (a) introductory text.

b. Revising the first sentence of paragraphs (a)(1) and (a)(2).

c. Redesignating paragraph (b) as paragraph (c) and revising the only sentence in newly designated paragraph (c).

d. Adding a new paragraph (b).

§ 98.423 Calculating CO_2 Supply.

(a) Except as allowed in paragraph (b) of this section, calculate the annual mass of CO_2 captured, extracted, imported, or exported through each flow meter in accordance with the procedures specified in either paragraph (a)(1) or (a)(2) of this section. * * *

(1) For each mass flow meter, you shall calculate quarterly the mass of CO_2 in a CO_2 stream in metric tons by multiplying the mass flow by the composition data, according to Equation PP–1 of this section. * * *

* * * * *

(2) For each volumetric flow meter, you shall calculate quarterly the mass of CO_2 in a CO_2 stream in metric tons by multiplying the volumetric flow by the concentration and density data, according to Equation PP–2 of this section. * * *

* * * * *

(b) As an alternative to paragraphs (a)(1) through (3) of this section for CO_2 that is supplied in containers, calculate the annual mass of CO_2 supplied in containers delivered by each CO_2 stream in accordance with the procedures specified in either paragraph (b)(1) or (b)(2) of this section. If multiple CO_2 streams are used to deliver CO_2 to containers, you shall calculate the annual mass of CO_2 supplied in containers delivered by all CO_2 streams according to the procedures specified in paragraph (b)(3) of this section.

(1) For each CO_2 stream that delivers CO_2 to containers, for which mass is measured, you shall calculate CO_2 supply in containers using Equation PP–1 of this section.

Where:

$CO_{2,u}$ = Annual mass of CO_2 (metric tons) supplied in containers delivered by CO_2 stream u.

$C_{CO2,p,u}$ = Quarterly CO_2 concentration measurement of CO_2 stream u that delivers CO_2 to containers in quarter p (wt. $\%CO_2$).

$Q_{p,u}$ = Quarterly mass of contents supplied in all containers delivered by CO_2 stream u in quarter p (metric tons).

p = Quarter of the year.

u = CO_2 stream that delivers to containers.

(2) For each CO_2 stream that delivers to containers, for which volume is measured, you shall calculate CO_2 supply in containers using Equation PP–2 of this section.

Where:

$CO_{2,u}$ = Annual mass of CO_2 (metric tons) supplied in containers delivered by CO_2 stream u.

$C_{CO2,p,u}$ = Quarterly CO_2 concentration measurement of CO_2 stream u that delivers CO_2 to containers in quarter p (vol. $\%CO_2$).

Q_p = Quarterly volume of contents supplied in all containers delivered by CO_2 stream u in quarter p (metric tons) (standard cubic meters).

D_p = Quarterly CO_2 stream density determination for CO_2 stream u in quarter p (metric tons per standard cubic meter).

p = Quarter of the year.

u = CO_2 stream that delivers to containers.

(3) To aggregate data, sum the mass of CO_2 supplied in containers delivered by all CO_2 streams in accordance with Equation PP–3 of this section.

Where:

CO_2 = Annual mass of CO_2 (metric tons) supplied in containers delivered by all CO_2 streams.

$CO_{2,u}$ = Annual mass of CO_2 (metric tons) supplied in containers delivered by CO_2 stream u.

u = CO_2 stream that delivers to containers.

(c) Importers or exporters that import or export CO_2 in containers shall calculate the total mass of CO_2 imported or exported in metric tons based on summing the mass in each CO_2 container using weigh bills, scales, or load cells according to Equation PP–4 of this section.

* * * * *

53. Section 98.424 is amended by revising paragraphs (a)(1), (a)(2), (a)(5)introductory text, (a)(5)(ii), the last sentence in paragraph (b)(2); and by adding paragraph (c) to read as follows:

§ 98.424 Monitoring and QA/QC requirements.

(a) * * *

(1) Reporters following the procedures in paragraph (a) of § 98.423 shall determine quantity using a flow meter or meters located in accordance with this paragraph.

(i) If the CO_2 stream is segregated such that only a portion is captured for commercial application or for injection, you must locate the flow meter after the point of segregation.

(ii) Reporters that have a mass flow meter or volumetric flow meter installed to measure the flow of a CO_2 stream that meets the requirements of paragraph (a)(1)(i) of this section shall base calculations in § 98.423 of this subpart on the installed mass flow or volumetric flow meters.

(iii) Reporters that do not have a mass flow meter or volumetric flow meter installed to measure the flow of the CO_2 stream that meets the requirements of paragraph (a)(1)(i) of this section shall base calculations in § 98.423 of this subpart on the flow of gas transferred off site using a mass flow meter or a volumetric flow meter located at the point of off-site transfer.

(2) Reporters following the procedures in paragraph (b) of § 98.423 shall determine quantity in accordance with this paragraph.

(i) Reporters that supply CO_2 in containers using weigh bills, scales, or load cells shall measure the mass of contents of each CO_2 container to which the CO_2 stream delivered, sum the mass of contents supplied in all containers to which the CO_2 stream delivered during each quarter, sample the CO_2 stream delivering CO_2 to containers on a quarterly basis to determine the composition of the CO_2 stream, and apply Equation PP–1.

(ii) Reporters that supply CO_2 in containers using loaded container volumes shall measure the volume of contents of each CO_2 container to which the CO_2 stream delivered, sum the volume of contents supplied in all containers to which the CO_2 stream delivered during each quarter, sample the CO_2 stream on a quarterly basis to determine the composition of the CO_2 stream, determine the density quarterly, and apply Equation PP–2.

* * * * *

(5) Reporters using Equation PP–2 of this subpart shall determine the density of the CO_2 stream on a quarterly basis in order to calculate the mass of the CO_2 stream according to one of the following procedures:

* * * * *

(ii) You shall follow industry standard practices.

(b) * * *

(2) * * * Acceptable methods include U.S. Food and Drug Administration food-grade specifications for CO_2 (*see* 21 CFR 184.1240) and ASTM standard E1747–95(Reapproved 2005) Standard Guide for Purity of Carbon Dioxide Used in Supercritical Fluid Applications (incorporated by reference, *see* § 98.7 of subpart A of this part).

(c) If you measure the flow of the CO_2 stream with a volumetric flow meter, you shall convert all measured volumes of carbon dioxide to the following standard industry temperature and pressure conditions: standard cubic meters at a temperature of 60 degrees Fahrenheit and at an absolute pressure of 1 atmosphere. If you apply the density value for CO_2 at standard conditions, you must use must use 0.0018704 metric tons per standard cubic meter.

54. Section 98.425 is amended by adding a new paragraph (d) to read as follows:

§ 98.425 Procedures for estimating missing data.

* * * * *

(d) Whenever the quality assurance procedures in § 98.424(a)(2) of this subpart cannot be followed to measure quarterly quantity of CO_2 in containers, the most appropriate of the following missing data procedures shall be followed:

(1) A quarterly quantity of CO_2 in containers that is missing may be substituted with a quarterly value measured during another representative quarter of the current reporting year.

(2) A quarterly quantity of CO_2 in containers that is missing may be substituted with a quarterly value measured during the same quarter from the past reporting year.

(3) The quarterly quantity of CO_2 in containers recorded for purposes of product tracking and billing according to the reporter's established procedures may be substituted for any period during which measurement equipment is inoperable.

55. Section 98.426 is amended by:

a. Revising paragraphs (a) introductory text and (a)(2).

b. Adding a new paragraph (a)(5).

c. Revising paragraphs (b) introductory text and (b)(2).

d. Adding a new paragraph (b)(7).

e. Revising paragraphs (c) and (e)(1).

§ 98.426 Data reporting requirements.

* * * * *

(a) If you use Equation PP–1 of this subpart, report the following information for each mass flow meter or CO_2 stream that delivers CO_2 to containers:

* * * * *

(2) Quarterly mass in metric tons of CO_2.

* * * * *

(5) The location of the flow meter in your process chain in relation to the points of CO_2 stream capture, deyhdration, compression, and other processing.

(b) If you use Equation PP–2 of this subpart, report the following information for each volumetric flow meter or CO_2 stream that delivers CO_2 to containers:

* * * * *

(2) Quarterly volume in standard cubic meters of CO_2.

* * * * *

(7) The location of the flow meter in your process chain in relation to the points of CO_2 stream capture, deyhdration, compression, and other processing.

(c) If you use Equation PP–3 of this subpart report the annual CO_2 mass in metric tons from all flow meters and CO_2 streams that delivers CO_2 to containers.

* * * * *

(e) * * *

(1) The type of equipment used to measure the total flow of the CO_2 stream or the total mass or volume in CO_2 containers.

* * * * *

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Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 431, 447, and 457
Medicaid Program and Children's Health Insurance Program (CHIP); Revisions to the Medicaid Eligibility Quality Control and Payment Error Rate Measurement Programs; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 431, 447, and 457

[CMS–6150–F]

RIN 0938–AP69

Medicaid Program and Children's Health Insurance Program (CHIP); Revisions to the Medicaid Eligibility Quality Control and Payment Error Rate Measurement Programs

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

ACTION: Final rule.

SUMMARY: This final rule implements provisions from the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) (Pub. L. 111–3) with regard to the Medicaid Eligibility Quality Control (MEQC) and Payment Error Rate Measurement (PERM) programs. This final rule also codifies several procedural aspects of the process for estimating improper payments in Medicaid and the Children's Health Insurance Program (CHIP).

DATES: *Effective Date:* These regulations are effective on September 10, 2010.

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SUPPLEMENTARY INFORMATION:

I. Background

A. Medicaid Eligibility Quality Control Program

The Medicaid Eligibility Quality Control (MEQC) program is set forth in section 1903(u) of the Social Security Act (the Act) and requires States to report to the Secretary the ratio of States' erroneous excess payments for medical assistance to total expenditures for medical assistance. Section 1903(u) of the Act also sets a 3-percent threshold for improper payments in any fiscal year and the Secretary may withhold payments to States based on the amount of improper payments that exceed the threshold. The traditional MEQC program is based on State reviews of Medicaid cases identified through a statistically reliable Statewide sample of cases selected from the State's eligibility files and excludes separate CHIP programs. These reviews are conducted to determine whether the sampled cases meet applicable Medicaid eligibility requirements.

B. The Improper Payments Information Act of 2002

The Improper Payments Information Act of 2002 (IPIA), (Pub. L. 107–300, enacted on November 26, 2002) requires the heads of Federal agencies to annually review programs they oversee to determine if they are susceptible to significant erroneous payments. If any programs are found to be susceptible to significant improper payments, then the agency must estimate the amount of improper payments, report those estimates to the Congress, and submit a report on actions the agency is taking to reduce erroneous expenditures. The IPIA directed the Office of Management and Budget (OMB) to provide guidance on implementation. OMB defines "significant erroneous payments" as annual erroneous payments in the program exceeding both 2.5 percent of program payments and $10 million (OMB M–06–23, Appendix C to OMB Circular A–123, August 10, 2006). For those programs found to be susceptible to significant erroneous payments, Federal agencies must provide the estimated amount of improper payments and report on what actions the agency is taking to reduce them, including setting targets for future erroneous payment levels and a timeline by which the targets will be reached.

The Medicaid program and the Children's Health Insurance Program (CHIP) were identified as programs at risk for significant erroneous payments. The Department of Health and Human Services (DHHS) reports the estimated error rates for the Medicaid and CHIP programs in its annual Agency Financial Report (AFR) to Congress.

C. Regulatory History

1. Medicaid Eligibility Quality Control Program

Sections 431.800 through 431.865 set forth the regulatory requirements for States to conduct the annual MEQC measurement. Currently, the MEQC program consists of the following:

- MEQC traditional—Operating MEQC under § 431.800 through § 431.865 and selecting a random sample of all Medicaid applicants and enrollees and reviewing them under guidance in the State Medicaid Manual.
- MEQC pilots—Operating MEQC under a special study or a target population and providing oversight to reduce and prevent errors and improve program administration.
- MEQC waivers—Operating MEQC as a part of a CMS approved section 1115 waiver and reviewing beneficiaries included in the research and demonstration project.

2. Payment Error Rate Measurement (PERM) Program

Section 1102(a) of the Act authorizes the Secretary to establish such rules and regulations as may be necessary for the efficient administration of the Medicaid and CHIP programs. The Medicaid statute at section 1902(a)(6) of the Act and the CHIP statute at section 2107(b)(1) of the Act require States to provide information that the Secretary finds necessary for the administration, evaluation, and verification of the States' programs. Also, section 1902(a)(27) of the Act (and § 457.950 of the regulations) requires providers to submit information regarding payments and claims as requested by the Secretary, State agency, or both. Under the authority of these provisions, we published a proposed rule in the August 27, 2004 **Federal Register** (69 FR 52620) to comply with the requirements of the IPIA and the OMB guidance. The proposed rule set forth provisions for all States to annually estimate improper payments in their Medicaid and CHIP programs and to report the State-specific error rates for purposes of our computing the national improper payment estimates for these programs.

In the October 5, 2005 **Federal Register** (70 FR 58260), we published an interim final rule with comment period (IFC). The IFC responded to public comments on the proposed rule, and informed the public of our national contracting strategy and of our plan to measure improper payments in a subset of States. Our State selection process ensures that a State is measured once, and only once, every 3 years for each program.

In response to the public comments from the October 5, 2005 IFC, we published a second IFC in the August 28, 2006 **Federal Register** (71 FR 51050). The IFC reiterated our national contracting strategy to estimate improper payments in both Medicaid and CHIP fee-for-service (FFS) and managed care, and set forth and invited further comments on State requirements for estimating improper payments due to errors in Medicaid and CHIP eligibility determinations. We also announced that a State's Medicaid and CHIP programs would be reviewed in the same year.

In the August 31, 2007 **Federal Register** (72 FR 50490), we published a final rule for the PERM program, which implements the IPIA requirements. The August 31, 2007 final rule responded to the public comments on the August 28, 2006 IFC and finalized State requirements for submitting claims to the Federal contactors that conduct FFS

and managed care reviews. The August 31, 2007 final rule also finalized State requirements for conducting eligibility reviews and estimating payment error rates due to errors in eligibility determinations.

D. Children's Health Insurance Program Reauthorization Act of 2009

On February 4, 2009, the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) (Pub. L. 111–3) was enacted. (Please note, as a result of this legislation, the program formerly known as the "State Children's Health Insurance Program (SCHIP)" is now referred to as the "Children's Health Insurance Program (CHIP)"). Sections 203 and 601 of the CHIPRA relate to the PERM and MEQC programs.

Section 203 of the CHIPRA establishes an error rate measurement with respect to the enrollment of children under the Express Lane Eligibility option. The law directs States not to include children enrolled using the Express Lane Eligibility option in data or samples used for purposes of complying with the MEQC and PERM requirements. Provisions for States' Express Lane Eligibility option will be set forth in a future rulemaking document.

Section 601(a) of the CHIPRA provides for a 90 percent Federal match for CHIP expenditures related to PERM administration and excludes such expenditures from the 10 percent administrative cap. (Section 2105(c)(2) of the CHIP statute gives States the ability to use an amount up to 10 percent of the CHIP benefit expenditures for outreach efforts, additional services other than the standard benefit package for low-income children, and administrative costs.)

The CHIPRA requires a new PERM rule and delays any calculation of a PERM error rate for CHIP until 6 months after the new PERM rule is effective. Additionally, the CHIPRA provides that States that were scheduled for PERM measurement in fiscal year (FY) 2007 may elect to accept a CHIP PERM error rate determined in whole or in part on the basis of data for FY 2007, or may elect instead to consider its PERM measurement conducted for FY 2010 as the first fiscal year for which PERM applies to the State for CHIP. Similarly, the CHIPRA provides that States that were scheduled for PERM measurement in FY 2008 may elect to accept a CHIP PERM error rate determined in whole or in part on the basis of data for FY 2008, or may elect instead to consider its PERM measurement conducted for FY 2011 as the first fiscal year for which PERM applies to the State for CHIP.

The CHIPRA requires that the new PERM rule include the following:

- Clearly defined criteria for errors for both States and providers.
- Clearly defined processes for appealing error determinations.
- Clearly defined responsibilities and deadlines for States in implementing any corrective action plans.
- A provision that the payment error rate for a State will not include payment errors based on a State's verification of an applicant's self-declaration if a State's self-declaration verification policies meet regulations promulgated by the Secretary or are approved by the Secretary.
- State-specific sample sizes for application of the PERM requirements to CHIP PERM.

In addition, the CHIPRA shall harmonize the PERM and MEQC programs and provides States with the option to apply PERM data resulting from its eligibility reviews for meeting MEQC requirements and vice versa, with certain conditions.

E. CMS Response to the CHIPRA

As required by the CHIPRA, we proposed revised MEQC and PERM provisions in the proposed rule published in the July 15, 2009 **Federal Register** (74 FR 34468).

Section 601(b) of the CHIPRA states that "the Secretary shall not calculate or publish any national or State-specific error rate based on the application of the payment error rate measurement (in this section referred to as 'PERM') requirements to CHIP until after the date that is 6 months after the date on which a new final rule (in this section referred to as the 'new final rule') promulgated after the date of the enactment of this Act and implementing such requirements in accordance with the requirements of subsection (c) is in effect for all States." The CHIP error rate for the FY 2008 cycle was scheduled to be published in the FY 2009 Agency Financial Report (in November 2009), which was less than 6 months after the expected promulgation and effective date of this new final rule. Therefore, the publication of any CHIP error rates for FY 2008 (for States that elect to accept FY 2008 as their first CHIP measurement under PERM) is delayed until at least 6 months after the effective date of this final rule implementing the CHIPRA requirements for PERM.

As noted previously, section 601(d) of the CHIPRA provides that States that were scheduled for PERM measurement in FY 2007 may elect to accept a CHIP PERM error rate determined in whole or in part on the basis of data for FY 2007, or may elect instead to consider its PERM measurement conducted for FY 2010 as the first fiscal year for which PERM applies to the State for CHIP. In addition, the CHIPRA provides that States that were scheduled for PERM measurement in FY 2008 may elect to accept a CHIP PERM error rate determined in whole or in part on the basis of data for FY 2008, or may elect instead to consider its PERM measurement conducted for FY 2011 as the first fiscal year for which PERM applies to the State for CHIP.

Accordingly, a State measured in the FY 2007 cycle that elects to accept the PERM error rate for its CHIP program determined in whole or in part on the basis of data for FY 2007 is required to notify us of its intentions through an acceptance form to be provided to all States in a forthcoming State Health Official letter. Similarly, a State measured in the FY 2008 cycle that elects to accept the PERM error rate for its CHIP program determined in whole or in part on the basis of data for FY 2008 is required to notify us of its intentions through an acceptance form to be provided to all States in a State Health Official letter. If a State measured in the FY 2007 or FY 2008 cycles elects to reject the CHIP PERM rate determined during those cycles, they do not need to notify CMS of this decision. However, information from those cycles will not be used to calculate the State-specific sample sizes and we will rely on the standard assumptions for determining sample size.

It should be noted that immediately after the enactment of CHIPRA, we suspended all CHIP measurement cycles (FY 2008, FY 2009, and FY 2010). Due to the timing of the publication of this final rule for PERM, we decided that CHIP PERM will begin again with the FY 2011 measurement cycle and no retroactive reviews will be done for FYs 2009 and 2010. For this reason, States measured in FY 2007 will not have FY 2010 measured, but will be measured again in FY 2013 and will have the option to consider FY 2013 as their first or second measurement cycle for CHIP PERM as described previously.

In order for section 601(d) of the CHIPRA to be read in harmony with the IPIA, which requires a PERM error rate to be calculated annually, we believe that the appropriate reading of section 601(d) of the CHIPRA, construing the law as a whole and giving effect to all language of the CHIPRA, is that a State may only elect to reject the PERM error rate for the State's CHIP program for FY 2007 or FY 2008. A State scheduled for PERM measurement in FY 2008 still had

its PERM error rate for its Medicaid program measured.

Additionally, the FY 2009 and FY 2010 Medicaid measurements are proceeding with no delays as a result of the CHIPRA. The FY 2009 Medicaid measurement was conducted according to the policies in the August 31, 2007 final rule (72 FR 50490) because the measurement process was complete prior to the publication of this rule. The FY 2010 Medicaid measurement is currently underway; therefore, parts of the measurement process that have already taken place prior to the publication of this final rule (that is, universe submission and sample size determination) will not be repeated once the final rule is effective. However, for parts of the measurement that have yet to be completed (that is, medical and data processing review, error rate calculation, corrective action plans, etc) the policies of this final rule will apply. We do not intend to recalculate any Medicaid error rates already calculated or published prior to the effective date of this final rule.

II. Provisions of the Proposed Regulations and Analysis of and Responses to Public Comments

As a result of the CHIPRA, we proposed a nomenclature change to parts 431, 447, and 457. We revised current regulatory language to reflect the change made by the CHIPRA to refer to the program formerly known as the "State Children's Health Insurance Program (SCHIP)" as the "Children's Health Insurance Program (CHIP)." We also proposed the following revisions to the current PERM provisions:

A. Sample Sizes

Section 601(f) of the CHIPRA requires us to establish State-specific sample sizes for application of the PERM requirements with respect to CHIP for fiscal years beginning with the first fiscal year that begins on or after the date on which the new final rule is in effect for all States, on the basis of such information as the Secretary determines appropriate. In establishing such sample sizes, the Secretary shall, to the greatest extent practicable: (1) Minimize the administrative cost burden on States under Medicaid and CHIP; and (2) maintain State flexibility to manage such programs.

To comply with the IPIA, the PERM program must estimate a national Medicaid and a national CHIP error rate that covers the 50 States and District of Columbia. Consistent with OMB's precision requirements defined in its IPIA guidance, the estimated national error rate for each program must be bound by a 90 percent confidence interval of 2.5 percentage points in either direction of the estimate. Since States administer Medicaid and CHIP and make payments for services rendered under the programs, we collect State-level information at a high level of confidence (the estimated error rate for a State should be bound by a 95 percent confidence interval of 3 percentage points in either direction). To estimate the national error rate, as well as State-specific error rates, reviews are conducted in three areas for both the Medicaid and CHIP programs: (1) FFS; (2) managed care, and (3) program eligibility. The FFS and managed care reviews are referred to jointly as the "claims review," while the program eligibility review is referred to as the "eligibility review."

Samples of payments made on a FFS and managed care basis for the claims review and samples of beneficiaries for the eligibility review are drawn each year in order to calculate a national error rate that meets the precision requirements described in OMB Guidance (OMB M–06–23, Appendix C to OMB Circular A–123, August 10, 2006). The preferred method is to achieve the precision goal with the smallest sample size possible, so as to reduce the burden on States, the Federal government, beneficiaries, and providers. We determined that the most efficient method, statistically, is to draw a sample of States and then draw a sample of payments from the payments made by the sampled States. The process for drawing a sample of States is described in detail in the preamble to the August 31, 2007 final rule (72 FR 50490). We did not propose modifications to the current approach, which samples 17 States per year for a PERM measurement cycle. The proposed rule addressed the State-specific sample sizes for samples of claims and beneficiaries within a State.

In response to the new CHIPRA requirements, we proposed to add new § 431.972, to describe more fully the claims sampling procedures used for the claims review. In addition, we proposed to more fully describe the process for establishing State-specific sample sizes for PERM, although we note that the execution of these responsibilities would remain with CMS and the Federal contractors, not with the States. Under the Secretary's authority at section 1102(a) of the Act and in order to effectively implement the IPIA, we also proposed that these sampling procedures apply to both Medicaid and CHIP.

We proposed to revise § 431.978 to provide additional guidance on State Medicaid and CHIP eligibility sample sizes by clarifying the process for establishing State-specific sample sizes.

1. Fee-for-Service (FFS) and Managed Care

a. Universe Definition

In order to implement the IPIA and related requirements (OMB M–06–23, Appendix C to OMB Circular A–123, August 10, 2006) that require Federal agencies to estimate the amount of improper payments in programs with significant erroneous payments (which includes Medicaid and CHIP), in the current § 431.970(a)(1) we require States to submit "[a]ll adjudicated FFS and managed care claims information, on a quarterly basis, from the review year," so that a sample of payments can be reviewed and from the review findings we can estimate the amount of improper payments in each program. We proposed to remove the word "all" from § 431.970(a)(1) because certain types of payments are excluded from PERM sampling and review for technical reasons. The methodology developed by us to measure improper payments in Medicaid and CHIP focuses on payments made on behalf of or for individual beneficiaries. Accordingly, PERM has excluded certain payments for services not provided to individual beneficiaries such as Disproportionate Share Hospital (DSH) payments to facilities, grants to State agencies or local health departments, and cost-based reconciliations to non-profit providers and Federally-Qualified Health Centers (FQHCs) because the basis of the payment cannot be traced back to an individual beneficiary. This exclusion from PERM sampling was further clarified through instructions issued by CMS to the States at the beginning of each measurement cycle starting with FY 2006.

For the PERM claims review component, the "claims universe" is defined in the new § 431.972 as including payments that were originally paid (paid claims) and for which payment was requested but denied (denied claims) during the Federal fiscal year, and for which there was Federal financial participation (FFP) (or would have been if the claim had not been denied) through Title XIX of the Act (Medicaid) or Title XXI of the Act (CHIP). Depending on the context in which it is used, the claims universe may refer to either the adjudicated FFS claims during the fiscal year under review, or the managed care capitation payments made during the fiscal year under review, for Medicaid or CHIP. We are reiterating our long standing

position that, for PERM purposes, managed care claims are payments made by the State to entities with comprehensive risk contracts that assume full or partial risk for enrolled beneficiaries. FFS claims are claims other than managed care claims. CMS and our contractors may assign certain payments to the PERM FFS or managed care universe in order to ensure consistency across States and across cycles. Given the wide range of payment methodologies employed by States for similar programs, as well as the fact that State definitions of FFS and managed care may not align with PERM definitions as described previously, CMS and our contractors must maintain some flexibility in assigning payments to either FFS or managed care.

Due to the significant variation in State systems for processing, paying, and claiming reimbursement for medical services under Medicaid and CHIP, we did not propose to include a more specific claims universe description in regulation. Rather, States should refer to more detailed claims universe specifications that will be published by us in separate instructions at the beginning of each PERM measurement cycle. However, we proposed that States must establish controls to ensure that the FFS, managed care, and eligibility universes are complete and accurate. For example, this would include the comparisons between the PERM universes and the State's Form CMS–64 and Form CMS–21 financial reports. We are placing this requirement in the regulatory text at § 431.972(a)(2).

b. Stratification

In FY 2006, we measured only the error rate for the FFS component of Medicaid. To obtain the required precision levels while minimizing the sample size, and therefore reducing the burden on States, the claims universe for FFS payments for Medicaid was stratified by service category and a stratified random sample was drawn for each State. In FY 2007 and beyond, we measure the error rates for Medicaid FFS, Medicaid managed care, CHIP FFS, and CHIP managed care separately (to the extent that a State has each of these programs). We also stratify each universe by dollars rather than service category.

Under this stratification and sampling approach, all payments in each universe are sorted from largest to smallest payment amounts. The payments are then divided into strata such that the total payments in each stratum are the same. For example, if five strata are used, the total dollars in each stratum would equal 20 percent of the total dollars in the universe. The first stratum would contain the highest dollar-valued payments, and the last stratum would contain the smallest dollar-valued payments, including all zero-paid and denied claims (denials have a zero dollar amount, and therefore, would appear in the stratum with the smallest dollar values). An equal number of FFS claims or managed care payments are then drawn from each stratum, which means the sample would include proportionately more high-dollar payments and proportionately fewer low-dollar payments and denials, compared to their representation in the universe. This overweighting of higher-dollar payments (which is taken into account when calculating error rates) enables us to draw a smaller sample size that has a reasonable probability of meeting the precision requirements, compared to a perfectly random sample or a sample stratified by service type. Similarly, it reduces the risk that a single very large claim will have a dominant effect on the error rate. In this manner, we reduce burden on States, the Federal government, beneficiaries, and providers.

c. Sample Size

In order to establish State-specific sample sizes, we proposed that the annual sample size in a State's first PERM cycle (referred to as "initial sample" or "base sample") would be 500 FFS claims and 250 managed care payments.

We determined this initial sample size based on the experience of the PERM pilot study, PERM measurement in FY 2008 and FY 2009, and our requirement that the estimated error rate for a State should be bound by a 95 percent confidence interval of 3 percentage points in either direction. Specifically, the sample size is calculated assuming that the universe is "infinite" and the error rate for FFS is 5 percent and the error rate for managed care is 3 percent. (Once the universe contains more than approximately 10,000 sampling units, it can be treated as if it were infinite. Statistically speaking, beyond a universe of approximately 10,000 sampling units, universe size does not affect sample size.) Using these assumptions and historical information on payment variation in FFS and managed care from previous PERM cycles, we have determined that an annual sample of 500 FFS and 250 managed care payments per State per program should meet our State-level precision requirements with reasonable probability.

However, States with Medicaid or CHIP PERM universes under 10,000 line items or capitation payments can notify us in order to have an annual sample size smaller than the base sample size in the initial PERM year or future years. While the universe can be treated as if it were infinite if its size exceeds 10,000 sampling units, if the total universe from which the total (full year) sample is drawn is less than 10,000 sampling units, the sample size may be reduced by the finite population correction factor. The finite population correction is a statistical formula utilized to determine sample size where the population is considered finite rather than infinite. Starting with the FY 2011 measurement cycle, a State that anticipates that the total number of payments in the FFS or managed care universe for either Medicaid or CHIP will be less than 10,000 payments over the Federal fiscal year may notify us before the fiscal year being measured and include information on the anticipated universe size for their State. Our contractor will develop a modified sampling plan for that program in that State.

The State-specific annual sample size in the base PERM year is based on an assumed error rate of 5 percent. If a State's actual PERM error rate in a cycle reveals that precision goals can be achieved in future PERM cycles with either lower or higher sample sizes than indicated by the original assumptions, sample sizes after the first PERM cycle may vary among States according to each State's demonstrated ability, based on PERM experience, to meet desired precision goals.

In subsequent years, we will provide our contractor with information on each State's error rate and payment variation in the previous cycle. Our contractor will review each State's prior PERM cycle claims error rate and payment variation to determine if a smaller or larger claims sample size will be required to meet the precision goal established for that PERM cycle. Our contractor will develop a State-specific sample size for each program in each State. If information from a previous cycle is not available for a particular State or program within the State, the contractor will use the "base sample" size of 500 FFS claims and 250 managed care payments. For States measured in the FY 2007 or FY 2008 cycle that elect to accept their State-specific CHIP PERM error rate determined during those cycles, FY 2007 or FY 2008 would be considered their first PERM cycle for purposes of sample size calculation for CHIP. Therefore, these States would be considered for an adjusted sample size

in their next year of measurement after the publication of the new final rule. For States measured in the FY 2007 or FY 2008 cycle that elect to reject their State-specific CHIP PERM error rate determined during those cycles, information from those cycles would not be used to calculate the State-specific sample sizes, and the "base sample" size of 500 FFS claims and 250 managed care payments would be used.

We proposed to establish a maximum sample size for Medicaid or CHIP FFS or managed care of 1,000 claims. Additionally, as discussed previously, a State with a claims universe of less than 10,000 sampling units in a program may notify us and the annual sample size will be reduced by the finite population correction factor for any PERM cycle. We believe that by taking into consideration prior cycle PERM error rates, as well as the finite population correction factor in establishing State-specific sample sizes, the States' administrative cost burden will be reduced and the program will be more manageable at the State level.

We received the following comments regarding our proposed revisions to the FFS and managed care universe, stratification, and sample sizes.

i. Universe Definition

Comment: Some commenters raised concerns about the proposed definition of the universe for the claims review component ("adjudicated fee-for-service (FFS) or managed care claims information or both, on a quarterly basis, from the review year"), referencing the change that removes the word "all" from the definition used in prior PERM regulations. The commenters expressed concern that this change materially alters the definition of the universe and of a claim, while others stated that the change does not go far enough in excluding certain types of payments, such as non-emergency medical transportation payment records that are not maintained at the beneficiary level, beneficiary-specific payments that are neither FFS or managed care, and offline claims from payment sources other than the Medicaid Management Information System (MMIS). Other commenters raised concerns that allowing a more comprehensive universe definition to be included in annual program instructions rather than regulation will lead to inconsistency across cycles.

Response: The IPIA requires payments matched with Title XIX or Title XXI funds to be included in the PERM universes. Because CMS designed the PERM methodology to sample and review individual, beneficiary-level claims and payments, we have excluded from PERM certain Medicaid and CHIP payments that States do not pay at the beneficiary level. For example, DSH payments to facilities, grants to State agencies or local health departments, and cost-based reconciliations to non-profit providers and FQHCs are excluded from PERM because they cannot be directly tied to an individual beneficiary. These payments will continue to be excluded from PERM sampling and review. However, in addition to these payments, State Medicaid and CHIP programs may make a variety of payments for services provided to individual beneficiaries outside of typical FFS or capitated managed care arrangements, which CMS considers part of FFS or managed care arrangements for purposes of PERM. This language change is intended to give CMS the flexibility to provide clarifying guidance when working with individual States that have unique or complex payment structures for certain types of beneficiary services, while continuing to meet the requirements of IPIA.

We have issued updated versions of the PERM universe and claims detail instructions each year in order to provide States with clarifying guidance on meeting the PERM statutory and regulatory requirements. We have not changed the fundamental definition of a PERM universe, and do not intend to do so through this rulemaking, as PERM must continue to comply with IPIA. Because State programs and payment structures continue to evolve, we would like to maintain the flexibility to continue to refine the data submission specifications to make them easier for the States to interpret and apply, within the constraint of a consistent PERM universe definition.

Regarding the comment on measurement of aggregate payments such as non-emergency medical transportation payments, the regulations at § 431.958 define "payment" as "any payment to a provider, insurer, or managed care organization for a Medicaid or CHIP beneficiary for which there is Medicaid or CHIP Federal financial participation." In some cases, it is appropriate and possible to break aggregate payments down to the beneficiary level. Additionally, because some States make more aggregate payments or payments not stored in the MMIS than others, excluding these payments would result in unequal measurement across States. Accordingly, we are not excluding these payments from the claims universe. However, we will consider developing a methodology for sampling and review of these payments that can be applied consistently across States, taking into account the many variations in State payment systems.

Comment: One commenter questioned what the impact would be of removing the word "all" from the universe and raised concerns as to whether this change could potentially mean additional work for the State in producing the universe.

Response: We appreciate the commenter's concerns. Certain types of payments are excluded from PERM sampling and review for technical reasons. Therefore, the word "all" was removed from § 431.970(a)(1) to more accurately reflect what States are required to submit. States are not required to submit all adjudicated FFS and managed care payments. Rather, certain types of payments, such as adjustments, are excluded. We do not anticipate that this change will have an impact on what States are required to submit for the PERM universe.

Comment: One commenter expressed concern over PERM regulations, guidelines, and communications to providers that use language related to "medical services", "medical documentation" and "medical review" including "medical necessity" despite the fact that there are a variety of Medicaid and CHIP services that do not fit within the medical review model. The commenter stated that this discrepancy causes confusion for State staff and providers when identifying what documentation is required. The commenter believed this issue is also confusing due to the use of the word "claim" throughout documentation pertaining to FFS samples when a variety of services that are included in the review are not generated from a "claim" but rather considered a "payment." The commenter recommended that PERM guidance should reflect this consideration and the terminology should be changed from "medical record review" to "medical and service record review", including revision of communication to providers around the use of the word "claim" to include "payment".

Response: The purpose of all documentation that we develop and provide to States and providers is intended to clarify what is required for the PERM reviews. If improvements can be made to further provide clarification, we will attempt to address these issues. In addition, we have added the following clarification in section II.A.1.a of this final rule, "for PERM purposes, managed care claims are payments made by the State to entities with comprehensive risk contracts that assume full or partial risk for enrolled

beneficiaries. FFS claims are claims other than managed care claims. CMS and its contractors may assign certain payments to the PERM FFS or managed care universe in order to ensure consistency across States and across cycles." Further, we will consider reviewing current guidance and communications to assess where further changes should be made.

ii. Provider Fraud

Comment: We received several comments regarding the current policy on claims from providers under fraud investigation. Commenters recommended dropping these claims from the sample. It was observed by the commenters that beneficiaries under fraud investigation are dropped from the eligibility review and dropping claims from providers under investigation would be consistent policy. Furthermore, commenters noted that certain records may no longer be available if they have been subpoenaed, and that the PERM request for documentation may complicate an investigation.

Response: The IPIA requires Federal agencies to measure "improper payments" and does not distinguish between different types of improper payments (for example, unintentional errors versus fraud). Our current policy is to maintain claims that are from providers who are under fraud investigation in the universe and in the sample when those claims are randomly selected from the universe. If States opt to have the CMS contractor not request supporting documentation for the claims, so as not to disrupt the investigation, the claim is found to be paid in error.

While we appreciate the commenter's concern, we are not adopting the recommendation to drop claims from providers under fraud investigation from the sample. We do not believe that the PERM review will compromise or complicate an investigation because requests for medical records are an expected and routine part of a provider's participation in the Medicaid and CHIP programs. In addition, when a provider is the subject of a fraud investigation, it does not necessarily mean that all of the claims he or she submits are the subject of the investigation. By dropping every claim submitted by the provider from the PERM review, it would mean dropping claims that legitimately should be considered in the error rate.

iii. Universe Stratification

Comment: Some commenters raised concerns about the current stratification process adopted by CMS, in which payments are stratified by dollar. One commenter remarked that dollar stratification has resulted in an oversampling of high dollar claims and an undersampling of low dollar claims. Another commenter raised the concern that stratification by dollar value will lead to an unbalanced sample of the various service categories and all providers will not have an equal chance of being selected due to variances in the dollar value of claims submitted by service providers.

Response: In addition to meeting overall national IPIA precision requirements, we have established criteria for the precision of the State-level estimates. Because of the need to measure each State's error rate accurately, sample sizes for the States will not be proportional to the State's program. Statistical theory suggests that, for the purpose of obtaining a given level of precision, the sample size is independent of the universe size once the universe exceeds about 10,000 units. Beginning with the FY 2007 cycle, we changed to a dollar stratification approach (from a service stratification approach) to improve the precision of the error rate estimate. By intentionally oversampling high dollar claims and undersampling low dollar claims, we were able to reduce the FFS sample size from 1,000 claims to 500 claims and still project error rates with a level of precision that meets OMB requirements. Oversampling the high dollar claims also reduces the risk that a single high dollar claim will have a dominant effect on the error rate. Although claims are sorted by dollar and divided into strata, a random sample is drawn from each stratum so that every claim has a chance of being sampled. Our primary goal in adopting the dollar stratification approach was to develop an efficient sampling plan that would allow calculation of an error rate that meets OMB precision requirements with the smallest possible sample, to reduce the burden on States, providers, and the Federal government. Because PERM estimates an overall payment error rate for FFS, it is not necessary or desirable to design a stratification approach that ensures equal representation of every provider or service type, as long as all payments have some chance of being sampled.

iv. State-Specific Sample Size

Comment: Several commenters discussed our proposed approach to vary the PERM sample size by State as required by the CHIPRA. Some commenters interpreted the CHIPRA requirement that the Secretary establish State-specific sample sizes for application of the PERM requirements to mean that a fixed sample size for each State should be established, and stated that the proposed rule was in conflict with the CHIPRA as it did not establish a fixed sample size for any State. Some commenters questioned whether the maximum FFS sample size (1,000 claims for Medicaid and CHIP respectively) was appropriate or necessary. Other commenters raised concerns about the administrative challenges of planning around uncertain and changing sample sizes. One commenter suggested that the overall sample sizes should be proportional to program size (in most cases CHIP programs are much smaller then Medicaid programs, but the same number of claims and eligibility cases are sampled for review under PERM).

Response: As indicated previously, we are governed not only by the CHIPRA but also by the IPIA and OMB guidance, which does not mandate certain minimum or maximum sample sizes but does require CMS to estimate national error rates for Medicaid and CHIP that meet certain precision requirements. The formula for estimating a sample size highly likely to meet OMB precision requirements takes three factors into consideration: Population size; variation in payments in the universe; and expected error rate. Each of these factors can be determined on a State-specific basis using information from a prior measurement cycle. Therefore, we believe that the proposed approach of calculating a State-specific sample size prior to the beginning of each cycle, using information from the prior cycle, meets the CHIPRA goals. This approach is consistent with the CHIPRA provision that provides the Secretary with flexibility to determine which information is appropriate to use in determining sample sizes.

State sample sizes will be calculated to result in an unbiased estimate of the error rate within a certain level of precision. The State-level rates will be combined to calculate a national error rate within the IPIA-required level of precision. Variation in State sample sizes will not affect the calculation of the national error rate or comparison of the national or State rates over time (both fixed and State-variable sample sizes are designed to result in an unbiased estimate of the error rate). Smaller sample sizes will reduce the precision of the estimates at the State level somewhat but should have less effect on the precision of the national error rates (it will be slightly lower but it will not be a substantial change). The

variance in the estimates will also be slightly greater at the lower sample sizes.

As the State error rates are built up from the independent component rates, sample sizes would be calculated for all six components (for example, Medicaid FFS, Medicaid managed care, Medicaid eligibility, CHIP FFS, CHIP managed care, and CHIP eligibility), and the maximum and minimum sample sizes would apply to each component independently (there is no overall program maximum or minimum). Information specific to each program and component would be used to estimate the State-specific sample size. That is, information from the Medicaid FFS error rate measurement in the previous cycle would be used only to calculate the sample size for Medicaid FFS measurement in the subsequent cycle. Therefore, a State with a high FFS error rate and a low managed care error rate in one cycle could see a larger FFS sample size and a smaller managed care sample size in the next cycle.

The possibility of a larger than "standard" sample size (currently, 500 for FFS and 250 for managed care) is necessary because these sample sizes are not likely to meet the precision requirements if a State's rate is significantly higher than expected. (In FY 2007, 3 Medicaid programs and 8 CHIP programs did not meet the precision requirement with the standard sample sizes.) Failure to meet the State-level precision goals jeopardizes the precision of the national error rate. Thus, if we are to establish State-specific sample sizes it must evaluate all three determinants of sample size (that is, population size, variation in payments in the universe, and expected error rate) for each State and increase the sample size if the error rate is expected to be higher than average, based on the prior cycle findings.

Because reviewing claims requires both staff and monetary resources, a maximum sample size puts a limit on expenditure. Statistical tests suggest that if State-level precision cannot be met with a sample size of 1,000 claims, it is unlikely to be met with any reasonable sample size (the slight increases in precision that could be achieved would be outweighed by the significant expense associated with reviewing thousands of additional claims). However, a substantial increase in the probability of reaching precision goals can be gained by increasing the sample size from 500 to 1,000, so we believe this maximum to be reasonable and prudent.

Finally, while CHIP programs are typically much smaller than Medicaid programs, from a sampling perspective there is generally no difference between a small and large population (number of payments for claims sample, number of beneficiaries for eligibility sample). Specifically, a property of sampling is that, once the population size exceeds about 10,000, it can be treated as if it were an infinite population. Nearly every Medicaid and CHIP program has at least 10,000 payments or 10,000 beneficiaries across a fiscal year, so they are all treated as "infinite" in terms of population size. As a result, the PERM sample sizes are driven primarily by the variation in payments in the universe and the expected error rate, not by program size. If a program does have fewer than 10,000 payments or 10,000 beneficiaries across a fiscal year, the expected population size can be substituted into the calculation to determine an appropriate sample size that will probably be smaller than the "standard" sample size.

We recognize that sample sizes, particularly for eligibility, drive State resource needs. Because all of the information necessary to develop a State-specific sample size will be available to CMS once the State's error rate for the prior cycle is calculated, when CMS sends a State notice of its error rates at the end of a cycle, it will include in that notice the calculation of the sample size for the next cycle. This will provide States with the greatest advanced notice possible. We are considering developing a calculator that States can use to estimate potential sample sizes under a variety of scenarios.

Comment: Several commenters asked questions about our proposed approach regarding base years. Commenters stated that in a base year, the sample size for a State will be that specified in the regulation, not a State-specific sample size calculated using information from a prior cycle (the "base year" is, by definition, the first cycle). Some commenters asked if the Medicaid error rate from FY 2007 or FY 2008 could be used to determine State-specific sample sizes for CHIP in the next measurement cycle, if the State decided not to accept its CHIP error rate from FY 2007 or FY 2008.

Response: The commenters are correct in that the "base year" refers to a State's first cycle, and therefore, the State would have sample sizes as provided in the regulation.

The CHIPRA gives States that participated in the PERM CHIP measurement in FY 2007 and FY 2008 the option of accepting the payment error rate from that cycle or not accepting that rate and treating their next cycle as the first fiscal year for which the PERM requirements apply to the State (in effect, a new "base year"). We believe it is likely that a State with a low CHIP error rate would choose to accept that rate, and would be likely to have a sample size the same as or lower than the base sample size in the next cycle. We believe it is likely that a State with a high CHIP error rate would choose not to accept that rate, and would be allowed to use the base sample size (500 FFS claims and 250 managed care payments), rather than risk having a larger sample size. As a result, for States that have previously participated in PERM, Medicaid and CHIP program sample sizes could vary from the "base year numbers."

The CHIPRA does not provide a similar option for States to accept or reject their Medicaid error rates from previous cycles. Therefore, sample sizes for a State's Medicaid program will be based on the State's error rate from their previous cycle.

Results from FY 2007 (the only year for which CHIP error rates were calculated) indicate that State CHIP rates are not necessarily closely correlated to State Medicaid rates: that is, 7 of the 17 States had Medicaid and CHIP rates that were more than three percentage points apart. Because of differences in error rates and payment variation between Medicaid and CHIP programs, information on Medicaid error rates cannot be used to generate sample sizes for CHIP programs.

Comment: Several commenters inquired as to whether CMS would implement a minimum sample size given that the proposed regulation offers a maximum sample size. The commenters recommended that CMS set a minimum sample size in regulation in order to assist States in planning for resource needs.

Response: We appreciate the commenter's recommendation to adopt a minimum sample size for PERM, but we are not accepting this recommendation at this time. To comply with the IPIA, the PERM program must estimate a national Medicaid and a national CHIP error rate that covers the 50 States and District of Columbia. Consistent with OMB's precision requirements defined in its IPIA guidance, the estimated national error rate for each program must be bound by a 90 percent confidence interval of 2.5 percentage points in either direction of the estimate. By setting a minimum sample size, we risk having sample sizes that are too small for States that had higher error rates in their subsequent PERM cycles. If the realized variation for the State is not as

favorable as the earlier history, the State's error rate will not meet State-level precision requirements and may, in some cases, jeopardize meeting national precision goals. However, the States will still have the potential to reduce their sample sizes based on prior years' data. It is our intention to work closely with our contractor and the States to ensure States are informed well in advance of the measurement cycle of their sample size for planning purposes.

Comment: Commenters expressed concern about the amount of work and time it takes to complete a comparison between the PERM universe and the Form CMS–64 and Form CMS–21 reports. Furthermore, commenters noted that the differences between what States include in the Form CMS–64 and Form CMS–21 reports (for example, adjustments, non-beneficiary specific payments) and how they report the information differs greatly from the individual beneficiary-level claims and payment data provided in the PERM universes.

Commenters also offered suggestions for changes that could be made to the comparison, such as adopting a threshold above which a comparison would be considered valid, or to use the same quarter of data for comparison (which would require a short delay in the PERM universe submission).

Response: The Form CMS–64 and Form CMS–21 comparison is a component of the quality control review process to validate PERM universes, which, like other quality control processes, is discussed in more detail in the PERM universe submission instructions provided to States at the start of each cycle.

The purpose of the comparison, along with the rest of the quality control checks States are asked to complete, is to ultimately provide the most accurate and complete universe of Medicaid and CHIP payments as possible to ensure an unbiased and accurate error rate calculation. The comparison is not expected to be a dollar for dollar match but rather a means for the State and CMS to identify if, in certain areas, there are significant discrepancies that could indicate that payments were not properly included or excluded. We have found over the previous PERM cycles that States often overlook Medicaid or CHIP programs which are processed and paid outside of MMIS and/or managed by other agencies and divisions when developing the PERM universes. The Form CMS–64 and Form CMS–21 comparison serves as a tool for both States and CMS to determine if all payments for services provided to individual beneficiaries for which the State claims Title XIX or Title XXI match are included. As we have found that this quality control step has identified potential problems with the PERM universes, we are not adopting any recommendations to eliminate this process. However, we will work with States to explore options regarding how this process can be more effective for States and CMS. Additionally, we will consider for future cycles how to provide the most detailed information possible about this process so States can plan and prepare accordingly. As a result, we are modifying § 431.972 to include the requirement that States establish controls to ensure the FFS and managed care universes are accurate and complete and to require a comparison of the PERM universes to the Forms CMS–64 and CMS–21.

Comment: We received a number of comments related to universe development and sampling issues including the following:

- One commenter stated that CMS should utilize Medicaid Statistical Information System (MSIS) data for the Medicaid universe submission and if the data is not robust enough, make changes to the MSIS data so it can meet PERM requirements;
- One commenter stated that CMS should only require a universe submission and review if the universe exceeds a pre-established minimum threshold in terms of number of claims or total dollar amount;
- One commenter stated that CMS should review the current sampling methodology which oversamples high dollar claims to determine if the methodology is yielding the desired results;
- One commenter stated that CMS should provide more technical guidance to States for the submission of the claims universe data to prevent differing interpretations of the requirements.

Response: While the MSIS data will not currently fully meet the requirements of PERM, we understand that States are required to pull similar data for several CMS initiatives, resulting in redundancies with already limited State resources. We are currently beginning year two of the minimum data set pilot for PERM, in which our contractor is working with a small number of States, on a voluntary basis, to review available data fields and determine if it would be possible to create one data submission that meets the needs of multiple programs.

The IPIA and OMB guidance (OMB M–06–23, Appendix C to OMB Circular A–123, August 10, 2006) requires that all programs that are susceptible to significant erroneous payments (where the annual erroneous payments in the program exceed both 2.5 percent of program payments and $10 million) must participate in the error rate measurement. Only those programs whose annual erroneous payments fall below this threshold may not be subject to the error rate measurement requirements. Therefore, a single State universe, no matter what the size in terms of claims and dollars, is not eligible for omission from the national error rate measurement in a given cycle.

The current sampling methodology is yielding the desired results. The overweighting of higher dollar payments (which is taken into account when calculating error rates) enables us to draw a smaller sample size that has a reasonable probability of meeting the precision requirements, compared to a perfectly random sample or a sample stratified by service type. In this manner, we reduce burden on States, the Federal government, beneficiaries, and providers.

Finally, we appreciate the recommendation to provide States with more technical guidance on claims submission. We are in the process of developing a PERM manual, which we envision will be a single resource for all PERM-related guidance. As we develop the manual and update data submission and eligibility instructions, we will look for ways in which to improve technical guidance. We are also considering adding this as a topic for discussion with the PERM Technical Advisory Group (TAG).

2. Eligibility

The eligibility sampling requirements are described in § 431.978. The universe for the eligibility component is case-based, not claims-based. The case as a sampling unit only applies to the eligibility component. For PERM eligibility, the "universe" is the total number of Medicaid or CHIP cases, which, as discussed in the proposed rule, is comprised of all beneficiaries, both individuals and families. The eligibility sampling plan and procedures state that the total eligibility sample size must be estimated to achieve within a 3 percent precision level at a 95 percent confidence interval for the eligibility component of the program.

For PERM eligibility, the initial sample size is calculated under the assumption that the error rate is 5 percent and the universe is greater than 10,000 total cases. The estimated error rate for a State should be at a 95 percent confidence interval of 3 percentage points in either direction. This means that the desired precision requirements will be achieved with a high probability

if the actual error rate is 5 percent or less. For this reason, an annual sample of 504 active cases and 204 negative cases should be selected in a State's base PERM year to meet State-level precision requirements with a high probability. Appendix D of the PERM Eligibility Review Instructions elaborates on the theory of sample size at the State-level for the dollar-weighted active case error rates, and is on the CMS Web site at *http://www.cms.gov/perm/downloads/PERM_Eligibility_Review_Guidance.pdf.*

Eligibility sampling is performed by the States, and States have the opportunity to adjust their eligibility sample size based on the eligibility error rate in the previous PERM cycle. After a State's base PERM year, we will determine, with input from the State, a sample size that will meet desired precision goals at lower or higher sample sizes based on the outcome of the State's previous PERM cycle. The sample size could either increase or decrease given the results of the previous review year. We proposed to establish a maximum sample size for eligibility at 1,000 cases. States must submit an eligibility sampling plan by August 1st before the fiscal year being measured and include a proposed sample size for their State. Our contractor will review and approve all eligibility sampling plans. The State must notify CMS that it will be using the same plan from the previous review year if the plan is unchanged. However, we will review State sampling plans from prior cycles in each PERM cycle to ensure that information is accurate and up-to-date. States will be asked for revisions when necessary.

As in the claims universe, States with PERM eligibility universes under 10,000 cases can propose a reduced eligibility sample size for either the base year or any subsequent PERM cycle.

Additionally, section 203 of the CHIPRA describes the State option to enroll children in Medicaid or CHIP based on findings of an Express Lane agency in order to conduct simplified eligibility determinations. Under sections 203(a)(1) and (2) of the CHIPRA, an error rate measurement will be created with respect to the enrollment of children under the Express Lane Eligibility option. The law directs States not to include children enrolled using the Express Lane Eligibility option starting April 1, 2009, in data or samples used for purposes of complying with MEQC and PERM requirements. Provisions for States' Express Lane option will be set forth in a future rulemaking document.

We proposed to revise § 431.814 and § 431.978 to reflect the changes and clarifications specified previously.

We received the following comments regarding our proposed revisions to the eligibility sample sizes.

Comment: A few commenters suggested that we set minimum eligibility sample sizes for active and negative cases.

Response: We cannot adopt this recommendation. By setting a minimum eligibility sample size, we risk having sample sizes that are too small to meet the IPIA's precision requirements for States that had higher error rates in their subsequent PERM cycles. If the realized variation for the State is not as favorable as the earlier history, the State's error rate will not meet State-level precision requirements and may, in some cases, jeopardize meeting national precision goals. However, the States will still have the potential to reduce their eligibility sample sizes based on prior years' data. Reduced State sample sizes will balance the results from the PERM sampling equations with the need to reliably reproduce small error rates. Sample size reductions will be based on a State's previous eligibility error rate in PERM or MEQC (depending upon the method chosen by the State for PERM), the typical margin of error for that previous error rate, and the results from simulation studies on small samples. These studies examined the point at which small samples cease to reliably return known small error rates in the targeted universes. Reduced sample sizes must also meet the confidence and precision requirements.

Comment: One commenter disagreed with setting a maximum sample size and requiring States with eligibility error rates above the 5 percent standard to increase their eligibility sample size. The commenter recommends the sample size remain constant from cycle to cycle.

Response: We disagree with the commenter. We recognize that sample sizes, particularly for eligibility, drive State resource needs. The possibility of a larger sample size is necessary because the standard sample sizes are not likely to meet the IPIA precision requirements if a State's rate is significantly higher than expected. We are setting a maximum sample size in order to keep the sample sizes manageable as CMS would find it necessary for some States to sample significantly more than 1,000 cases to meet IPIA precision requirements.

B. Error Criteria

Under the PERM program, we identify improper payments through claims reviews and eligibility reviews. For the claims review, we perform the following: (1) a data processing review of a sample of FFS and managed care payments to ensure the payments were processed and paid in accordance with State and Federal policy; and (2) a medical review of a sample of FFS payments to ensure that the services were medically necessary, coded correctly, and provided and documented in accordance with State and Federal policy. For the eligibility review, we rely on States to review a sample of beneficiary cases to ensure that they were determined eligible for the program in accordance with documented State policies and procedures and for any services received and paid for by Medicaid or CHIP (as applicable). The PERM eligibility review also considers negative cases (cases where eligibility was denied or terminated). A negative case is in error if the case was improperly denied or incorrectly terminated in accordance with State documented policies and procedures. However, because there are no payments associated with these cases, only a case error rate is calculated. These errors are not factored into the PERM error rate, which is a payment error rate.

Under the IPIA, to be considered an improper payment, the error made must affect payment under applicable Federal policy and State policy. Improper payments include both overpayments and underpayments. A payment is also considered improper where it cannot be discerned whether the payment was proper as a result of insufficient or lack of documentation.

Consistent with the IPIA, the PERM error rate itself does not distinguish between "State" and "provider" errors; all dollars in error identified through PERM reviews contribute to the State error rate. In practice, the data processing and eligibility reviews focus on determinations made by State systems and personnel, while the medical review focuses on documentation maintained and claims submitted by providers.

Section 601(c)(1)(A) of the CHIPRA requires us to promulgate a new final rule that includes clearly defined criteria for errors for both States and providers. Accordingly, we proposed to add § 431.960, "Types of payment errors," to clarify that State or provider errors for purposes of the PERM error rate must affect payment under applicable Federal policy and State policy, and to generally categorize data processing errors and eligibility review errors as State errors and medical review errors as provider errors. The

data processing errors, medical review errors, and eligibility review errors may include, but are not limited to, the types of improper payments discussed below.

1. Claims Review Error Criteria

a. Data processing errors (State errors)

i. Duplicate item

The sampled line item/claim is an exact duplicate of another line item/claim that was previously paid (for example, same patient, same provider, same date of service, same procedure code, and same modifier).

ii. Non-covered service

The State policy indicates that the service is not payable by the Medicaid or CHIP programs and/or the beneficiary is not in the coverage category for that service.

iii. Fee-for-service claim for a managed care service

The beneficiary is enrolled in a managed care organization that should have covered the service, but the sampled service was inappropriately paid by the Medicaid or CHIP FFS component.

iv. Third-party liability

The service should have been paid by a third party and was inappropriately paid by Medicaid or CHIP.

v. Pricing error

Payment for the service does not correspond with the pricing schedule on file and in effect for the date of service.

vi. Logic edit

A system edit was not in place based on policy or a system edit was in place but was not working correctly and the line item/claim was paid (for example, incompatibility between gender and procedure).

vii. Data entry errors

A line item/claim is in error due to clerical errors in the data entry of the claim.

viii. Managed care rate cell error

The beneficiary was enrolled in managed care and payment was made, but for the wrong rate cell.

ix. Managed care payment error

The beneficiary was enrolled in managed care and assigned to the correct rate cell, but the amount paid for that rate cell was incorrect.

x. Other data processing error

Errors not included in any of the above categories.

b. Medical Review Errors (generally provider errors)

i. No documentation

The provider did not respond to the request for records within the required timeframe.

ii. Insufficient documentation

There is not enough documentation to support the service.

iii. Procedure coding error

The procedure was performed but billed using an incorrect procedure code and the result affected the payment amount.

iv. Diagnosis coding error

According to the medical record, the diagnosis was incorrect and resulted in a payment error—as in a Diagnosis Related Group (DRG) error.

v. Unbundling

The provider separately billed and was paid for the separate components of a procedure code when only one inclusive procedure code should have been billed and paid.

vi. Number of unit(s) error

The incorrect number of units was billed for a particular procedure/service, National Drug Code (NDC) units, or revenue code. This does not include claims where the provider billed for less than the allowable amount, as provided for in written State policy.

vii. Medically unnecessary service

The service was medically unnecessary based upon the documentation of the patient's condition in the medical record in accordance with written State policies and procedures related to medical necessity.

viii. Policy violation

A policy is in place regarding the service or procedure performed and medical review indicates that the service or procedure is not in agreement with the documented policy.

ix. Administrative/other medical review error

A payment error was determined by the medical review but does not fit into one of the other medical review error categories, including State-specific non-covered services.

c. Eligibility errors (State errors)

i. Not eligible

An individual beneficiary or family is receiving benefits under the program but does not meet the State's categorical and financial criteria in the first 30 days of eligibility being verified using the State's documented policy and procedures.

ii. Eligible with ineligible services

An individual beneficiary or family meets the State's categorical and financial criteria for receipt of benefits under the Medicaid or CHIP program but was not eligible to receive particular services in accordance with the State's documented policies and procedures.

iii. Undetermined

The case record lacks or contains insufficient documentation, in accordance with the State's documented policies and procedures, to make a definitive review decision for eligibility or ineligibility.

iv. Liability overstated

The beneficiary overpaid toward an assigned liability amount or cost of institutional care and the State paid too little.

v. Liability understated

Beneficiary underpaid toward an assigned liability amount or cost of institutional care and the State paid too much.

vi. Managed care error 1

Ineligible for managed care—Upon verification of residency and program eligibility, the beneficiary is enrolled in managed care but is not eligible for managed care.

vii. Managed care error 2

Eligible for managed care but improperly enrolled—Beneficiary is eligible for both the program and for managed care but not enrolled in the correct managed care plan as of the month eligibility is being verified.

viii. Improper denial

An application for program benefits was denied by the State for not meeting a categorical and/or financial eligibility requirement but upon review is found to be eligible for the tested category or a different category under the program in accordance with the State's documented policies and procedures.

ix. Improper termination

Based on a completed redetermination, the State determines an existing beneficiary no longer meets the program's categorical and/or financial eligibility requirements and is terminated but upon review is found to still be eligible for the tested category or a different category under the program in accordance with the State's documented policies and procedures.

2. Definitions

We proposed to add the following definitions for "provider error" and "State error" to § 431.958.

Provider error includes, but is not limited to, an improper payment made due to lack of or insufficient documentation, incorrect coding, improper billing (for example, unbundling, incorrect number of units), a payment that is in error due to lack of medical necessity, or evidence that the service was not provided in compliance with documented State or Federal policy.

State error includes, but is not limited to the following:

• A payment that is in error due to incorrect processing (for example, duplicate of an earlier payment, payment for a non-covered service, payment for an ineligible beneficiary).

• Incorrect payment amount (for example, incorrect fee schedule or capitation rate applied, incorrect third-party liability applied).

• A payment error resulting from services being provided to an individual who—

++ Was ineligible when authorized or when he or she received services;

++ Was eligible for the program but was ineligible for certain services he or she received;

++ Had not met applicable beneficiary liability requirements when authorized eligible or overpaid toward actual liability; or

++ Had a lack of or insufficient documentation to make a definitive eligibility review decision for the tested category or a different category under the program in accordance with the State's documented policies and procedures.

To avoid any confusion that may have been caused by listing some types of provider and State errors in the definitions of "provider error" and "State error," while at the same time listing overlapping errors in § 431.960, "types of payment errors," we are revising § 431.958 and § 431.960 to clarify the relationship between provider errors, State errors, and types of payment errors. These revisions do not modify the substance of our proposed rule. Accordingly, we are adding § 431.960(b)(3) to specify that data processing errors include, but are not limited to, payment for duplicate items, payment for non-covered services, payment for FFS claims for managed care services, payment for services that should have been paid by a third party but were inappropriately paid by Medicaid or CHIP, pricing errors, logic edit errors, data entry errors, managed care rate cell errors, and managed care payment errors.

We are adding § 431.960(c)(3) to specify that medical review errors include, but are not limited to, lack of documentation, insufficient documentation, procedure coding errors, diagnosis coding errors, unbundling, number of unit errors, medically unnecessary services, policy violations, and administrative errors.

We are also revising § 431.960(d)(1), to specify that eligibility errors include, but are not limited to, benefits being provided to ineligible beneficiaries, benefits provided to eligible beneficiaries but for ineligible services, cases where the case record lacks or contains insufficient documentation to determine eligibility, cases where the beneficiary's liability is understated, cases where the beneficiary's liability is overstated, cases where the beneficiary received managed care benefits but is ineligible for managed care, cases where the beneficiary is eligible for managed care but is improperly enrolled in the correct managed care plan, improper denials of eligibility, and improper termination of eligibility.

The error criteria listed under § 431.960, "types of payment errors," can be generally categorized into provider errors and State errors. Therefore, we are revising the definitions of "provider errors" and State errors" in § 431.958 to reference the errors as provided in § 431.960.

We received the following comments regarding our proposed revisions to the error criteria.

Comment: Several commenters stated that "no documentation" errors are not errors, that they are actually undetermined, and should not be included as errors for purposes of error rate calculation. In addition, the commenters requested that error rates reported by CMS include breakouts to show errors attributed to data processing versus medical review.

Response: We disagree with the comments that "no documentation" errors are not errors. We consider cases in which no documentation is received to be errors based on Medicaid statute and OMB guidance. Providers are required to support their claims for payment, when requested, with records and documentation demonstrating the medical context and medical necessity of the service or good provided. It is only through the assessment of this documentation that the claim can be reviewed for its accuracy. In the PERM program, when providers fail to respond to a request for documentation, or the documentation provided is insufficient to support the validity of medical service or good provided, the claim is counted as an error in payment. Title XIX, section 1902(a)(27)(A) of the Act, requires providers to maintain documentation necessary to fully disclose the extent of the services provided to Medicaid and CHIP beneficiaries, and authorizes the individual State or the Secretary of Health and Human Services to request that that documentation from the provider to support the claim for payment:

> A State plan for medical assistance must * * * provide for agreements with every person or institution providing services under the State plan under which such person or institution agrees (A) to keep such records as are necessary fully to disclose the extent of the services provided to individuals receiving assistance under the State plan, and (B) to furnish the State agency or the Secretary with such information, regarding any payments claimed by such person or institution for providing services under the State plan, as the State agency or the Secretary may from time to time request. (42 U.S.C. 1396a(a)(27)).

Section 2107(b)(1) of the Act requires States to collect data, maintain records, and furnish reports that the Secretary determines necessary to monitor the administration, compliance and evaluation of the CHIP program. Section 2107(b)(3) of the Act requires the State to afford the Secretary access to any records or information relating to the CHIP program for purposes of review or audit.

In addition, OMB's guidance on implementing the IPIA specifies that, "* * * when an agency's review is unable to discern whether a payment was proper as a result of insufficient or lack of documentation, this payment must also be considered an error." (OMB M–06–23, Appendix C to OMB Circular A–123, August 10, 2006). For these reasons, we will continue to consider claims for which no documentation is received as errors for purposes of error rate calculation and recoveries.

We do agree that it is important to provide as much information as possible about the different types of errors comprising the overall error rate. Therefore, we will continue to provide States with more detail on the number of errors and dollars in error by error type, aggregated nationally and by State in reports following the measurement cycle for corrective action purposes. In addition, we will continue to publish our error rate report on our Web site at *http://www.cms.gov/PERM.* This report contains detailed breakouts of the error rates including errors found during the medical review, errors found in the data processing review, and eligibility review

errors. Finally, starting with the FY 2010 cycle, we intend to perform additional analysis on the error rate data, including categorizing errors by service type and error type as recommended by the Office of Inspector General (OIG). We intend to publish the results in the annual PERM report and also incorporate the findings into the corrective action reports provided to States.

Comment: Some commenters suggested that the proposed rule does not amend the administrative criteria into State and provider errors as required by the CHIPRA. Additionally, some commenters questioned what would be done with the definitions and requested that two State error rates be provided to States-the State error rate and the provider error rate.

Response: The IPIA requires Federal agencies to measure "improper payments" and does not distinguish between different types of improper payments (for example, unintentional errors vs. fraud) or different types of errors (for example, State-caused errors vs. provider-caused errors). The CHIPRA requires CMS to define the criteria for State and provider errors but does not exclude either from the error rate. Therefore, for purposes of calculating the error rate, any error found (whether State-caused or provider-caused) must be included.

The PERM criteria for the three types of errors are described in § 431.960(a) through (d). More specific criteria will be, to a certain extent, State-specific depending on local policies. We will consider publishing more details on the process for reviewing payments and determining errors in a program manual. We do not intend to use the definitions to calculate a separate State and provider error rate at the national level; we believe the overall benefit of classifying errors as "State" and "provider" will be seen in the corrective action phase of PERM. For this reason, we are adopting the commenter's recommendation, and will provide individual States with three State error rates for corrective action purposes—a State error rate, a provider error rate, and an overall program error rate which combines the State and provider error rates into one. The official error rates recognized by CMS will continue to be the overall error rates which take into account all errors found during the PERM review.

Comment: Some commenters asked that the timeframe for providers to submit documentation should be extended from the current 60 days to 90 days, which was allowed in earlier versions of the PERM regulations.

Response: Based on an analysis of data from the past three PERM measurement cycles, providers generally submit documentation well in advance of the 60 days allowed. In FY 2007, the average number of days providers took to respond to a request for documentation was 35; in FY 2008, the average was 32 days; and in FY 2009, the average number of days has been 32 thus far. In addition, PERM accepts late documentation in certain instances and recommends that States encourage providers to submit documentation to the PERM contractor even if it is late. However, in view of the commenters' concerns, as well as to be consistent with the Comprehensive Error Rate Testing (CERT) program which measures the Medicare FFS error rate, we are extending the timeframe for documentation submission from 60 days to 75 days, or the final cut-off date for error rate calculation purposes (generally July 15th of the second year of a measurement cycle), whichever occurs first.

In cases where the PERM contractor receives no documentation from the provider once 75 days has passed since the initial request, the PERM contractor will consider the case to be a no documentation error. The PERM contractor will consider any documentation received after the 75th day "late documentation". If the PERM contractor receives late documentation prior to the documentation cut-off date for error rate calculation and reporting purposes (generally the second July 15 of a measurement cycle), they will review the records and, if justified, revise the error finding. Claims that complete the review process are included in the report. Claims for which the PERM contractor receives no documentation are counted as no documentation errors. Additionally, in accordance with established PERM process, if we determine that the documentation submitted by the provider is insufficient to make a determination about whether or not the claim should have been paid, we will request additional documentation from the provider. Providers have 14 calendar days to submit the additional documentation to CMS. We maintain that this policy will allow providers sufficient time to submit required documentation.

We revised § 431.970(b) to reflect the timeframes described previously.

Comment: A commenter questioned the data processing error category "FFS claim for a managed care service", stating that the procedure followed by CMS with regard to this criterion should be to ensure that MMIS system edits related to the types of services to deny are working properly, rather than comparing FFS claims to encounter data.

Response: Under PERM, we not only need to check that edits used to deny claims are working properly, but also need to ensure that all claims paid in the sample are paid correctly. When conducting a managed care review, we do not compare FFS claims to encounter data, but rather check for program, recipient and provider eligibility. We also determine if the beneficiary was enrolled or should have been enrolled in managed care. If a FFS claim was paid for a managed care recipient, we also have to determine whether the FFS claim was for a service carved out of the managed care contract or whether the claim was paid because the beneficiary was still in a FFS window prior to enrollment.

Comment: One commenter stated that their State policy does not allow a provider to bill for higher codes or units of service than what was provided; however, it does not preclude the provider from billing for a lesser code or fewer units of service than was provided. The commenter recommended that a payment error not be automatically assessed whenever lesser codes or fewer units of service are billed.

Response: In 2007, we established a policy in guidance (the Review Contractor's medical review manual), which, for PERM purposes, allows for under-billing for number of units-type claims by providers. Under that policy, these cases are not automatically determined errors. For wrong procedure code errors, wrong diagnosis code errors, or DRG errors, we identify those instances where a provider billed using an incorrect procedure code based on the medical record documentation and we request repricing by the State. It is up to the State to determine (in accordance with their written policies and payment schedules) under repricing and/or difference resolution if the original payment was correct or if the use of the corrected procedure code/diagnosis code/DRG resulted in wrong claim payment. States are required to reprice the claim by providing the correct payment that should have been made for the correct code identified during the medical review.

We are clarifying that the term "number of unit(s) error" excludes underpayment errors that occur when a provider bills for a lesser code or fewer units of service than was provided, as provided for in written State policy.

Comment: We received a comment about situations in which payment may

not correspond with the pricing schedule. The commenter stated that their State's policies support reimbursement based on the lesser of the provider charge amount or the fee schedule. The commenter stated it is inappropriate to assess an error if the payment for service does not correspond with the pricing schedule on file and in effect for the date of service and recommends that errors not be assessed based solely on payment corresponding to the fee schedule.

Response: We do not assess errors solely based on payment/fee schedules. We inquire about each State's payment policies at orientation meetings and in data processing questionnaires. We document each State's policies regarding whether any types of claims are paid when the billed amount is less than that allowed by the State's fee schedules. If it is the State's policy to pay the allowed amount up to the amount billed by the provider then we would not consider the claim an error. Decisions about errors are based on each State's policies.

Comment: We received comments regarding third-party liability (TPL) errors determined during the data processing review. One commenter stated that the procedure followed by CMS with regard to this criterion should be to ensure that MMIS TPL system edits are working properly, rather than verifying the amount paid by the other insurer. Another commenter stated that both State policies and Federal regulations support methodologies to seek reimbursement of a claim if TPL is discovered after the claim was paid. The commenter recommends not assessing an error based on TPL discovered after the claim was paid.

Response: We ascertain whether the TPL edits are working appropriately. However, if TPL should have been applied to the claim and was not, then we would need to know the amount paid by the liable third party in order to determine how much of the payment was in error. Even when edits are working appropriately, human intervention often allows a claim to pay even though the system suspended the payment.

We make our determination based on what information was known or should have been known at the time of payment. For instance, if TPL was indicated on a paper claim but that information was not entered into the MMIS and the full claim was paid by Medicaid, it would be determined as an error.

Comment: Regarding the process for determining medical necessity, one commenter questioned whether or not the PERM review is based solely on InterQual Criteria, as some States not only utilize InterQual Criteria but also a utilization review that includes a nurse and physician review in certain instances for determination of medical necessity. The commenter stated that through this process, the physician may override the nurse's finding based on experience and clinical judgment. The commenter recommended that physician findings for inpatient hospital stays not be overridden by CMS for States that utilize medical experts to augment their determination of medical necessity.

Response: The purpose of the PERM review is to conduct an independent review of the sampled claims to identify improper payments. During the PERM medical review orientation conducted with each State prior to the beginning of the medical review process, the State-specific criteria and guidelines used to determine medical necessity are requested as States use various methods (for example, Milliman's, InterQual, the Quality Improvement Organization (QIOs)). Our contractor takes into consideration the medical necessity criteria used by the individual State for screening purposes, and, if a medical necessity error is identified, the record is reviewed by a second level reviewer with greater expertise than the first reviewer. Where there are co-morbidities or complications documented in the record, clinical review judgment is applied before any error is reported to the State. In no case does clinical review judgment override statutory, regulatory, ruling, or policy provisions. All documentation and policy requirements are met before clinical review judgment applies.

For example, if the State uses InterQual Criteria to determine medical necessity, our contractor screens the medical record using InterQual Criteria at the first level of review. When an improper payment is identified, the case is referred to a second level review for verification that the InterQual Criteria are applied accurately and that State policy, rulings, statute and Federal statute, regulatory, ruling, and policy provisions are applied with accuracy. Clinical review judgment is applied only if needed after all other review is completed. It may be needed when the medical decision requires clinical judgment based on the patient's condition, co-morbidities or complications documented in the medical record submitted. If an error is found and the State disagrees with the finding, the State has the opportunity to request difference resolution with the contractor. For errors disputed by the State, the difference resolution review is conducted by review supervisors or managers and if the medical necessity error is upheld, the record is reviewed by a review panel consisting of review managers, directors and a board certified physician. During the difference resolution process, the State can provide to the PERM contractor any relevant utilization review findings that will be given full consideration when the claim is re-reviewed and a final determination is made.

Comment: Several commenters requested that we reconsider the 60-day adjustment period policy at § 431.970(a)(8), which requires that, for claims reviews, States submit adjustments within 60 days of the adjudication dates for the original claims or line items with sufficient information to indicate the nature of the adjustments and to match the adjustments to the original claims or line items. Commenters stated that the State timeframe for allowing adjustments is often greater than 60 days, in some case up to 12 months. Some commenters noted that this policy has resulted in inappropriate errors when States have adjusted after 60 days.

Response: While we understand the commenters' concerns and have carefully reconsidered this requirement, we are not modifying the adjustment rule in regulation at this time. The purpose of the rule is to maintain consistency across States in the time they have to submit adjustments, as well as to ensure that the measurement is completed on time. As States have varying timeframes in which claims are adjusted, we cannot extend the timeframe in a manner that would accommodate all States' practices. The 60-day timeframe allows for claims adjustments while maintaining a timeline that also allows for completing the reviews and computing and reporting the error rates in time for inclusion in the Agency Financial Report (AFR). If we extend the timeframe to a point beyond 60 days, we cannot be assured that the error rate measurement process will be completed in time to report the error rate.

However, if an error is cited and it would not have been in error had the adjustment been considered, the State may document in writing to CMS on what Form CMS–64 or Form CMS–21 report this claim's adjustment was included on. In these instances, the State will not be required to return the FFP to CMS.

Eligibility Errors

Comment: One commenter requested clarification for what constitutes an

eligibility improper payment if an error must affect payment to be an improper payment.

Response: An improper payment for eligibility is cited when the services received by the beneficiary in the sample month were improperly paid based on the State's documented policies and procedures, in whole or in part, due to the ineligibility of the beneficiary, the beneficiary receiving uncovered services, the beneficiary being eligible for the program but ineligible for the services he or she received, an eligibility review decision that cannot be completed, the beneficiary's liability being understated or overstated, or the beneficiary being improperly enrolled in the correct managed care plan. Eligibility errors will not result in improper payments if no services were received in the sample month or, based on State findings, services were not received in error. Accordingly, we proposed to specify in the new § 431.960 that the dollars paid in error due to the eligibility error is the measure of the payment error.

Comment: A few commenters requested CMS clarify how Liability Overstated and Liability Understated errors should be computed.

Response: Liability Overstated and Liability Understated are error categories addressed in the eligibility instructions found at *http://www.cms.gov/PERM.* The States should verify that any liability, co-payment, or premium amounts were calculated correctly to determine if State and Federal dollars were paid correctly. The PERM reviews only apply State and Federal dollars to the amounts of improper payments. Beneficiary dollars are not inclusive to the payment error rate. Based on State feedback during a cycle, we have introduced other situations that could result in these types of errors and have added it to the definitions of these errors in the eligibility instructions.

Comment: A commenter requested that we increase the tolerance level for cost share liability error to more than $25 to factor in caseload growth and inflation over the past 30 years.

Response: While we understand that other quality control programs have adopted a threshold for certain components of the measurement, PERM is subject to IPIA requirements and there is no allowance for a minimum dollar in error threshold. Therefore, we are not implementing this recommendation.

Undetermined Eligibility Errors

Comment: A commenter requested clarification on the newly designated § 431.980(e)(1)(vii)(A), which states the following: "If eligibility or ineligibility cannot be verified, cite a case as undetermined." The commenter asked if the text applies to all eligibility elements or just the client's self-declared or self-certified eligibility elements only.

Response: The requirements are the same for all elements of the review. We have provided the information for cases cited as undetermined in two places: First, we are redesignating § 431.980(e)(1)(viii) as § 431.980(vii)(A) to clarify that the new (e)(1)(vi) of this section specifically relates to review of self-declaration and second, paragraph (e)(1)(ix)(B) of this section relates to all elements of the eligibility review.

Comment: Several comments received were in reference to cases where the sampled beneficiary is incarcerated, and therefore, cannot cooperate in the eligibility review conducted, often resulting in a finding of "undetermined." It was recommended that CMS add a provision to the regulation that in instances where a sampled beneficiary is incarcerated, the State should be allowed to drop and replace this case. Another commenter references MEQC and dropping cases in which the sampled beneficiary does not cooperate. Additional commenters also cited the existence of a threshold in other quality control programs, such as the measurement for the Supplemental Nutrition Assistance Program, to allow for a certain percentage of cases that cannot be completed and recommended that a threshold be developed.

Response: The purpose of the "undetermined" review findings is to address cases such as those described by the commenter where the eligibility review cannot be completed and/or eligibility cannot be verified for the PERM review. Therefore, we are not adopting this recommendation.

Beneficiary cooperation is not required to complete the PERM review and other reasonable evidence may be used to verify eligibility if the beneficiary cannot be contacted.

Furthermore, the charge of PERM is to calculate a statistically valid error rate, which is a different outcome than the goals of other quality control programs that might employ a threshold. Dropping cases that cannot be determined lessens the validity of the State error rate and introduces risk to not meeting IPIA precision requirements. Dropping cases would also introduce bias into the error rate measurement in that universe totals cannot be adjusted to account for what percentage of the universe, which is used to weight the sample each month, is comprised of undetermined cases.

Comment: Several commenters recommend that "undetermined" cases be excluded from the eligibility payment error rate. The commenter states that not all "undetermined" cases represent dollars in error.

Response: "Undetermined" cases must not be excluded as payment errors as they are cases in which there is insufficient documentation to verify whether, or not, payments made on behalf of the sampled case were appropriately paid. Under OMB's IPIA guidance, such cases must be included as errors. However, as we proposed, we will allow States to have their State-specific error rates calculated with undetermined cases included as errors, and with undetermined cases excluded as errors. We will also post this information with the final State-specific program and component error rates on the medical review contractor's tracking Web site.

Comment: A few commenters expressed concern about excluding undetermined cases from State-specific error rates, but including them in the national payment error rate. Although a positive step, the commenters would rather exclude undetermined cases completely.

Response: Under the OMB guidance, undetermined cases must be included in the national error rate. Therefore, we cannot exclude those cases completely. After some consideration, operationally there is no way that we can exclude undetermined cases from State errors but include them in the national error rate. The number and amount of undetermined cases will still be weighted according to States' sizes and may still be associated with each State. CMS' official error rate for Medicaid and/or CHIP includes undetermined cases as errors, the States' error rates for future operations must be the State-specific error rate with undetermined cases included as errors.

As a result, we are removing the proposed § 431.960(f)(2) that excludes undetermined cases from State specific error rates.

Comment: One commenter asked whether or not a missing eligibility case record would be considered an improper payment as this would constitute insufficient or lack of documentation and whether or not an electronic case record could be used if a physical case record cannot be obtained.

Response: For eligibility, a missing case record could be classified as a technical error and does not affect the eligibility of a sampled beneficiary. An

eligibility review must still be completed for this case using other reasonable evidence. Furthermore, we define case record at § 431.958 as either a hardcopy or electronic file that contains information on a beneficiary regarding program eligibility.

Comment: One commenter suggests that we exclude undetermined cases from the error counts and that if CMS is concerned about States placing cases in the undetermined category to avoid citing them as errors it should hire a Federal contractor to conduct re-reviews to ensure the accuracy and integrity of States' findings.

Response: We appreciate the recommendation for procuring a contractor to complete re-reviews of States' eligibility findings. We continue to consider this recommendation as a possibility in future operations.

C. Self-Declaration for Eligibility Reviews

Section 601(c)(2) of the CHIPRA requires that the payment error rate determined for a State shall not take into account payment errors resulting from the State's verification of an applicant's self-declaration or self-certification of eligibility for, and the correct amount of, medical assistance or child health assistance, if the State process for verifying an applicant's self-declaration or self-certification satisfies the requirements for such process. We have interpreted the CHIPRA to mean that CMS must revise its eligibility review procedures to be consistent with State self-declaration policies, to the extent they conform to Federal requirements for self-declaration.

Currently, States are required to review the case record and independently verify eligibility criteria where evidence is missing, or outdated and likely to change, or otherwise as needed. We proposed that an applicant's self-declaration statement for Medicaid or CHIP would be acceptable verification for eligibility where State policy allows for self-declaration, so long as the following requirements are met. The self-declaration statement must be:

- Present in the record;
- Not outdated (more than 12 months old);
- In a valid, State approved format; and
- Consistent with other facts in the case record.

Additionally, we proposed that if the above requirements are not met, a State may verify eligibility through a new self-declaration statement if permitted under State law or policy, and, if a new self-declaration cannot be obtained, the State may verify eligibility using third party sources, for example, documentation listed in section 7269 of the State Medicaid Manual. We proposed that if none of these efforts to verify the self-declaration are successful, then the case should be cited as "Undetermined." We proposed that these undetermined cases would not be included in the State-specific payment error rate. However, we proposed to specify in the new § 431.960 that these errors be tracked nationally by including these Undetermined cases in the national program payment error rates.

We proposed to modify § 431.980 to provide these review requirements for self-declaration in accordance with States' documented policies and procedures. We also proposed to modify the PERM eligibility instructions, found at *http://www.cms.gov/perm/downloads/PERM_Eligibility_Review_Guidance.pdf.* These instructions, which clarify and provide additional guidance in implementing the regulations, reflect the new review procedures for self-declaration.

We received the following comments regarding our proposed revisions to the Self-Declaration for Eligibility Reviews.

Comment: One commenter recommended that we clarify the regulation to say that States do not have to obtain a new self-declaration statement for the PERM review and that the existing statement meets the necessary review criteria.

Response: The regulation will allow a self-declaration that is present in the case record to be used to verify eligibility for the PERM reviews if it meets the requirements of § 431.980(e)(1)(vi). If it does not meet these requirements, States may obtain a new self-declaration statement, or verify the applicant's eligibility using third party sources, including applicable caseworker notes, information obtained by the PERM reviewer, and documentation listed in section 7269 of the State Medicaid Manual.

Comment: One commenter recommended that we clarify that statements obtained online or over the telephone as part of an initial application or redetermination are acceptable as self-declaration for the PERM review.

Response: For the PERM review, these statements qualify as acceptable self-declaration if they meet the requirements of § 431.980(e)(1)(vi). If the self-declaration from the most recent case action in the case record does not meet these requirements, the eligibility of the applicant must be verified in accordance with the requirements of § 431.980(e)(1)(vii) and the State's documented policies and procedures.

Comment: A commenter believes that verifying household composition that is self-declared, as required by the eligibility review instructions, is difficult to verify and many times not questionable.

Response: We agree with the commenter that verifying household composition is difficult and will revise the eligibility review guidance to say that self-declaration for PERM is an acceptable form of verification for the PERM review, including household composition, as long as the self-declared information meets the criteria of § 431.980(e)(1)(vi).

Comment: Several commenters requested clarification for what is acceptable self-declaration for the PERM review.

Response: After considering comments, we will consider revising the eligibility review guidance for verifying self-declaration statements for the PERM review. The guidance will include acceptable forms of self-declaration to include information taken over the telephone, or information obtained by the PERM reviewer, case worker notes, information accessed from other beneficiary records (for example, the Supplemental Nutrition Assistance Program), as well as the current guidance for obtaining a new self-declaration statement in a State-approved format.

Comment: One commenter recommended that we reissue eligibility review guidance consistent with the provisions of the new regulation. Another commenter suggested that we clarify that the PERM eligibility reviews should be conducted consistent with State eligibility policies and procedures.

Response: We plan to release new eligibility review guidance based on the provisions of the new regulation, as well as feedback received from States from prior cycles. The purpose of the eligibility review is to verify the eligibility of sampled cases using State eligibility policies and criteria in effect in the review month (so long as the policies and criteria comply with the State plan or if the plan is silent, Federal laws and regulations).

Comment: One commenter agreed with our proposed change to allow States additional opportunities to reduce the number of undetermined cases by verifying eligibility using third party sources if a new self-declaration statement cannot be obtained.

Response: Although some commenters interpret this as a new policy, this is not a change from current

policy. The eligibility review guidance states that other reasonable evidence can be used to verify eligibility. We will add to this regulation and will consider further clarifying in the eligibility review instructions that States may use other reasonable evidence to verify eligibility if a self-declaration statement in the case record does not meet the requirements of § 431.980(e)(1)(vi) and a new self-declaration statement cannot be obtained.

Comment: Several commenters wanted to know the rationale behind determining two different error rates based on whether or not undetermined cases are due to self-declaration or other reasons. The commenters question the purpose of including any undetermined cases in the national error rate if they are to be excluded from the State-specific error rates.

Response: Although we proposed to exclude undetermined cases from State-specific error rates and only include them in the national error rate, we have discovered that there is no true way to exclude undetermined cases and not associate them with each State. State error rates will continue to be calculated with and without the undetermined cases. Also, the self-declaration review procedures are being revised to reduce the number of undetermined cases based on conflicts between PERM review procedures and State and Federal policy.

Comment: Several commenters are concerned that the proposed rule contradicts both State self-declaration policies and the eligibility review procedures from previous years and puts CMS at risk of not being compliant with the CHIPRA legislation and of calculating inconsistent error rates from year to year.

Response: We agree with the concern that the proposed rule contradicts State self-declaration policies and are revising our self-declaration policy to ensure that it is not contradictory to States' self-declaration policies and procedures. The self-declaration statement for the PERM review must be in a valid, State-approved format.

Also, all changes we are making to the eligibility review procedures comply with the CHIPRA and implement process improvements recommended by States that have participated in the measurements. The goal of PERM is to have a consistent measurement process. We believe that the new self-declaration regulations provide for a consistent measurement process while at the same time providing CMS with flexibility to take into consideration different State's self-declaration policies. We will be revising our eligibility review procedures in guidance to ensure that we obtain more accurate eligibility error findings based on current practices for State Medicaid and CHIP eligibility determinations.

Comment: A commenter recommended clarification in the regulation that certain eligibility criteria are not always considered outdated if verified correctly, but are older than 12 months, for example, citizenship or alien status, birth date, and social security number.

Response: We agree that there may be certain eligibility criteria like those identified by the commenter that are not likely to change, and therefore, are not always considered outdated if verified correctly, but are older than 12 months. Section 431.980(e)(1)(iv) provides that States must independently verify information that is missing, outdated and likely to change, or otherwise as needed, to verify eligibility. We will add in guidance that in addition to verifying outdated information more than 12 months old, information that is not required to be verified every 12 months (citizenship is never outdated if verified correctly) does not have to be re-verified for the PERM review.

Birth date and social security number are examples of eligibility criteria that are unlikely to change and the rules on outdated information do not apply. We will consider making the necessary clarifications in guidance that some eligibility criteria are unlikely to change or are not required to be verified every 12 months. We will also consider the commenter's suggestion to add alien status as a criterion to be verified when we issue new eligibility review instructions.

It should also be noted that for the PERM review, if applicable verification is present in the record, meets the State's documented policies and procedures, and is current (for example, a paystub to verify income for the State's last action on the case) no further verification is required.

Comment: Several commenters believe that PERM's requirement for a new self-declaration statement results in an increase of undetermined cases and undermines simplification efforts for eligibility determinations promoted by the CHIPRA legislation.

Response: The CHIPRA gives the Secretary authority to promulgate regulations governing the State process for verifying an applicant's self-declaration. In accordance with this authority, we have determined that a new self-declaration statement is only required if one does not exist in the case record, or, if one does exist in the case record, it is outdated; the self-declaration statement is not in a valid State approved format; or the self-declaration statement is inconsistent with other facts in the case record. Therefore, we do not believe that a new self-declaration statement from the sampled beneficiary, when required, will result in an increase of undetermined cases. Additionally, we are adding to the regulation that if the last case action occurred for the sampled case more than 12 months prior to the sample month, the self-declaration statement must either be verified or a new one requested. We are also adding to the self-declaration criteria in regulation that the self-declared information must originate from the last action on a case in which that last action was no more than 12 months prior to the sample month. We are making this addition to the regulation because all eligibility criteria that are likely to change must be verified as of the sample month for the PERM review. States may use other reasonable evidence, including information from other beneficiary records, before contacting the beneficiary for verification or a new self-declaration statement. Further, conflicting information can be resolved by the PERM reviewer through other reasonable evidence, and an eligibility review decision can be made based on the most accurate information received. Additionally, we believe the self-declaration validation requirements, including that of a new self-declaration, conform to the CHIPRA and are reasonable methods of verifying eligibility based on self-declarations.

We would also like to clarify that PERM reviewers do not make eligibility determinations, but review cases to verify eligibility. We will change the section heading at § 431.980(e) from Eligibility Review Determinations to Eligibility Review Decisions.

Comment: A commenter suggests suspending counting undetermined cases as errors until the measurement to review Express Lane Eligibility is developed since both are products of the effort to simplify eligibility processes, that is, self-declaration and Express Lane Eligibility.

Response: We are unable to suspend how we measure undetermined cases. Children enrolled in Medicaid or CHIP through the Express Lane Eligibility option are excluded from MEQC and PERM reviews per the CHIPRA. PERM will continue to review all other cases not enrolled via Express Lane Eligibility. When issuing future guidance, we will consider how Express Lane Eligibility determinations interact with PERM.

Comment: A commenter requested clarification on whether or not citizenship can be verified through self-declaration.

Response: States must document citizenship based on the Medicaid and CHIP regulations and the applicable documentation must be present in the case record to be verified for PERM. Our intent is not to use PERM guidelines to change current citizenship verification requirements. If citizenship has been documented correctly, new verification of citizenship (due to verification being more than 12 months old) is not required because citizenship is not likely to change.

Comment: A commenter requested clarification on prior communications from CMS to the State regarding whether or not a new self-declaration statement was required for States with continuous eligibility policies, in which a recipient is eligible at application or redetermination and is eligible for 12 months, regardless of changes in income.

Response: Previously in guidance a new self-declaration statement was always required for continuous eligibility cases in which a child is determined eligible at application or redetermination and remains eligible for the length of the continuous eligibility period specified by the State in its State plan (no longer than 12 months), regardless of any changes in circumstances, for example, income. States needed to verify the information on the self-declaration statement concerning applicant's eligibility at the time of the last case action, which was either the initial application for eligibility or the State's most recent redetermination of the applicant's eligibility.

Under the new regulations, a new self-declaration statement is only required when it does not meet the requirements of § 431.980(d)(1)(vi).

Comment: A commenter suggested we revise the proposed § 431.960(d)(3) to state, "A State eligibility error does not result from the State's verification of an applicant's self-declaration or self-certification of eligibility for, and correct amount of, medical assistance or child health assistance, if the State process for verifying an applicant's self-declaration or self-certification satisfies the requirements in Federal law, Secretary guidance, or if applicable, Secretary approval."

Response: We agree and are revising § 431.960(d)(3) accordingly. We believe this revision appropriately describes the self-declaration verification requirements.

Comment: One commenter believes that the ability to exclude unwanted cases (for example, a case belongs in a different stratum than the one in which it was sampled) and to drop unreviewable cases, such as cases where the client does not respond to requests for information, is essential to ensuring that error rates reflect meaningful definitive conclusions. The commenter stated that to include sampling mistakes and undetermined findings in the error rates contaminates corrective actions derived from those error rates. The commenter also noted that CMS Regional Office staff in the past has conducted Federal re-reviews for MEQC and reviewed cases dropped from the MEQC reviews to deter and eliminate abuse and that this practice should be resumed.

Response: States are allowed to drop cases that were sampled by mistake. These cases are not included in the error rate. However, undetermined cases are included in the error rate due to the inability to determine if services paid on behalf of a beneficiary were properly paid. We appreciate the commenter's suggestion to re-implement Federal re-reviews for MEQC, and, although the majority of States conduct pilot reviews and are under section 1115 waivers and therefore exempt from several of the "traditional" MEQC provisions, we will consider this and other options for future operations.

Eligibility Review Procedures

Comment: A commenter noted that the proposed rule should clarify if States only look at information available at the time of client application/eligibility review/last action processing vs. information discovered during the IPIA review that was being withheld by the client.

Response: We disagree with this clarification. The eligibility review requirements tell the agency that it must review the documentation in the case record, and independently verify eligibility criteria where information is missing, outdated and likely to change, or otherwise as needed. If there is inconsistent information in the case record, the PERM reviewer is responsible for resolving any inconsistencies by using case record documentation or other reasonable evidence.

Comment: One commenter recommended clarifying the timeframe for submitting eligibility reports as written in the eligibility guidelines. The commenter noted that the language indicates that 100 percent of case review findings must be completed within 150 days and payment review findings within 210 days. However, the commenter stated that in practice CMS allowed States to submit and adjust a report beyond these timeframes in previous cycles, as long as findings were complete by July 1. The commenter recommended that the guidance should be revised to indicate that these timeframes are for "initial" reporting.

Response: We appreciate the commenter's concern and we will consider this recommendation when we revise our guidance.

Comment: One commenter requested that we add language to the regulations to allow States to impose Medicaid and CHIP sanctions for noncompliance with PERM eligibility reviews.

Response: A client's noncompliance with a PERM review is not specified as a reason in Federal statute or regulation for denial or termination of Medicaid or CHIP participation or benefits or for imposition of sanctions. There is no authority under Federal statute or regulation that allows a State to treat a beneficiary's cooperation or lack of cooperation with PERM reviews as a condition of eligibility for Medicaid or CHIP. The appropriate action for cases where a client does not cooperate in any audit process is to send the case back to the responsible agency for an official redetermination.

D. Difference Resolution and Appeals Process

Section 601(c)(1)(B) of the CHIPRA requires CMS to include in the new final rule for PERM a clearly defined process for appealing error determinations by review contractors or State agency and personnel responsible for the development, direction, implementation, and evaluation of eligibility reviews and associated activities.

1. Medical and Data Processing Review

The October 5, 2005 IFC established the difference resolution process, which is codified at § 431.998. Medical reviews and data processing reviews for FFS and managed care payments are conducted by an independent Federal contractor. States supply relevant policies but do not participate in the review; States are notified of all error findings. The difference resolution process is the mechanism by which a State may try to resolve with the Federal contractor differences in the Federal contractor's error findings; the State may appeal to CMS if it cannot resolve the difference in findings with the Federal contractor.

In accordance with the CHIPRA, we proposed a timeline associated with the difference resolution and CMS appeals processes. We also proposed to revise

the heading of § 431.998 to read, "Difference resolution and appeal process," which more accurately describes the regulation.

We proposed to revise § 431.998 to explain that the State may file, in writing, a request with the Federal contractor to resolve differences in the Federal contractor's findings based on medical or data processing reviews of FFS and managed care claims in Medicaid or CHIP within 10 business days after the disposition report of claims review findings is posted on the contractor's Web site. Additionally, the State may appeal to CMS for a final resolution within 5 business days from the date the contractor's finding as a result of the difference resolution is posted on its Web site.

In addition to establishing the timeline for the difference resolution and appeal processes, we proposed to eliminate the dollar threshold for engaging in the CMS appeals process. Section 431.998 currently provides that States may apply to the Federal contractor to resolve differences in findings and may appeal to CMS for final resolution for any claims in which the State and Federal contractor cannot resolve the difference in findings, as long as the difference in findings is in the amount of $100 or more. We established the $100 threshold in order to prevent *de minimis* disputes and to ensure that appeals to CMS were substantial enough to warrant reconsideration. We were also concerned that a large volume of small-dollar appeals would prevent the States from receiving timely decisions on their appeals.

Information from the FY 2006 and FY 2007 PERM cycles on the number of total claims (including those with errors less than $100) submitted to the Federal contractor for difference resolution and on the number appealed to CMS for final resolution suggests that the volume of appeals will not substantially increase if CMS allows appeals of errors of less than $100. Because all errors regardless of their dollar amount ultimately contribute to a State's error rate and hence the national error rate, we proposed to remove the $100 threshold set forth in § 431.998(b)(1).

2. Eligibility

As stated in the current PERM regulations at § 431.974(a)(2), personnel responsible for PERM eligibility sampling and review "must be functionally and physically separate from the State agencies and personnel that are responsible for Medicaid and CHIP policy and operations, including eligibility determinations." The intent of this provision was to ensure the independence of the review in order to achieve an unbiased error rate. We provided further clarification in the preamble of the August 2007 final rule, indicating that the agency responsible for PERM could be under the same umbrella agency that oversees policy, operations and determinations but the two agencies cannot report to the same supervisor.

In the preamble to the proposed rule, we further clarified that qualified staff with knowledge of State eligibility policies may be used to conduct the eligibility reviews, but the staff that is chosen must be independent from the staff that oversees policy and operations.

We would further like to clarify that we consider staff to be independent if they temporarily work on PERM eligibility reviews even though they usually work under eligibility policy and operations, so long as the staff does not discuss PERM eligibility reviews with the staff that oversees policy and operations during the time the staff is working on PERM eligibility reviews.

Furthermore, the PERM eligibility instructions ask States to provide assurance that the agency or contracting entity responsible for the PERM eligibility reviews ("Agency") is independent of the State Medicaid or CHIP agency responsible for eligibility determination and enrollment. The State is responsible for ensuring the integrity of the PERM eligibility reviews, but we do not preclude the agency from sharing or reporting the PERM eligibility review findings to the State Medicaid or CHIP agencies.

Provided that agency independence could cause a difference in findings between the agency and the State Medicaid and CHIP agencies, we proposed that appeals for eligibility review findings should be conducted in accordance with the State's appeal process, as eligibility reviews are conducted at the State level.

In consideration of States that may not have a State appeals process in place, we proposed to make State findings available to each respective State's Medicaid and CHIP agencies for the period between the final monthly payment findings submission and eligibility error rate calculation, for example, April 15th through June 15th after the fiscal year being measured or according to the eligibility timeline. We proposed facilitating documentation exchange between the State Medicaid or CHIP agency and the agency conducting the PERM eligibility reviews to resolve differences. If any eligibility appeals issues involve Federal policy, States can appeal to CMS for resolution. If our decision causes an erroneous payment finding to be made, any resulting recoveries will be governed by § 431.1002.

We proposed that the State Medicaid or CHIP agencies may document their differences in writing to the agency for consideration. If resolutions of differences occur during the PERM cycle, eligibility findings can be updated to reflect the resolution. If differences are not resolved by the deadline for eligibility findings to be submitted to CMS (July 1), the documentation of the difference can be submitted to CMS for consideration no sooner than 60 days and no later than 90 days after the deadline for eligibility findings.

We also solicited comments on other ways that we can implement an eligibility appeals process for which we can provide consistent oversight.

We received the following comments regarding our proposed revisions to the Difference Resolution and Appeals Process.

Fee-for-Service and Managed Care Appeals Process

Comment: Several commenters requested that the timeline for a State to request difference resolution with the review contractor be extended. Many commenters suggested extending the timeframe from 10 business days to 15 business days, while others requested an extension to 20 business days. In addition, the commenters asked that the timeframe to request an appeal to CMS be extended from 5 business days. The majority of commenters suggested allowing 10 business days to request an appeal, while others suggested 15 business days.

Response: We agree that more time to file a difference resolution and appeal would be beneficial for States, and are adopting the recommendation to allow States 20 business days to request a difference resolution and 10 business days to request an appeal to CMS. We are revising the language at § 431.998 accordingly.

Eligibility Appeals Process

Comment: A few commenters believe that a new process would have to be developed to implement an eligibility review appeals process and that this will create a workload that will impact the timely submission of monthly findings when errors are identified.

Response: States may develop an appeals process if one does not exist at the State level. States do not have to implement a new process for eligibility appeals if there is already a process in

place or no error findings are in dispute. The agency should submit all findings according to the deadlines and have until the designated deadline after the fiscal year being measured to resubmit findings based on the State level appeals process.

Comment: One commenter endorses the proposed eligibility appeals process but cautions CMS that it must ensure consistency during the resolution process if its assistance is needed by States.

Response: We appreciate the comment. In addition to CMS intervention for Federal policy issues, we are considering developing guidance for a standard process for States to exchange documentation to ensure consistency between States. As this is a new policy, changes to the procedure may need to be updated to best meet the needs of States. Any procedural changes will be communicated to States as necessary.

Comment: Some commenters needed clarification on who renders a final decision on eligibility appeal findings.

Response: If States have a functioning appeals process at the State level, this must be used to resolve eligibility issues of State policy. The purpose for allowing for an existing State level appeals process to be used to resolve differences on eligibility review findings is to have a third party settle disputed review decisions between the agency and the State Medicaid and CHIP agencies. Review findings would be revised or unchanged based on the findings of the third party and not the agency or State Medicaid or CHIP agency. States must use an appeals process at the State level to resolve State-level policy issues. If the State does not have a State level appeals process in place (for example, an appeals process set up to dispute MEQC findings could be used for PERM purposes) documentation exchange can take place between the two parties, with CMS as facilitator and based on new information or policy clarifications provided by the policy branch. The agency will make a final review decision. The agency's final review decision may be appealed to CMS for consideration no sooner than 60 days and no later than 90 days after the final deadline for eligibility findings. If any eligibility appeals issues involve Federal policy, States can appeal directly to CMS for resolution. CMS' decisions will be final.

E. Harmonization of Medicaid Eligibility Quality Control (MEQC) and PERM Programs

1. Options for Applying PERM and MEQC Data

Section 601(e)(2) of the CHIPRA requires that, once this final rule is effective for all States, States will be given the option to elect, for purposes of determining the erroneous excess payments for medical assistance ratio applicable to the State for a fiscal year under section 1903(u) of the Act, to substitute data resulting from the application of the PERM requirements to the State for data obtained from the application of the MEQC requirements to the State with respect to a fiscal year. We had proposed that this substitution option would not be effective until 6 months after the final rule is in effect based on the CHIPRA's requirement under section 601(b) that there shall be no calculation or publication of any national or State specific CHIP error rate until 6 months after the final rule is effective. However, because the MEQC program does not measure all CHIP eligibility errors, we believe that a more accurate interpretation of the CHIPRA is to not require the 6-month delay. Nevertheless, because section 601(e)(2) permits the PERM data substitution for MEQC data only after the final rule is in effect, States will not have this substitution option until after the final rule is effective.

We considered several interpretations of the CHIPRA requirements that would allow States the option to substitute PERM data for MEQC data for purposes of the MEQC reviews, but would also retain two separate, independent processes (MEQC and PERM), which are governed by separate statutes and regulations. As PERM is required to meet specific statistical precision requirements and the MEQC error rate is not, we do not believe it is feasible to incorporate the PERM error rate into a State's overall MEQC error rate. Therefore, we proposed to interpret "data" as the sample, eligibility review findings, and payment findings as measured under MEQC or PERM. We also proposed to calculate separate rates for each program.

We proposed to amend § 431.806 and § 431.812 of the MEQC regulations. These proposed amendments would provide for the State's option in its PERM year to use their samples, eligibility findings, and payment findings as measured using PERM sampling and review requirements to meet their MEQC review requirement. After further consideration, we are adding the exception that PERM cases cited as undetermined errors may be dropped from the MEQC error rate calculation so long as the reasons for the dropped cases are in accordance with section 7230 of the State Medicaid Manual. The PERM data and results will be used to meet the statutory and regulatory ("traditional") MEQC requirements. All provisions for "traditional" MEQC will apply, including the 3 percent national standard and disallowance provisions.

We proposed that States that choose to substitute PERM data for MEQC data, would still have two eligibility error rates calculated—one for MEQC using MEQC measurement requirements and one for PERM using PERM requirements. We proposed to revise § 431.806 of the MEQC regulations to require that a State plan be amended for States opting to use PERM for MEQC in a State's PERM cycle.

We proposed to amend § 431.812 of the MEQC regulation to provide that States substituting PERM data for MEQC data must use a sampling plan that meets the requirements of § 431.978 of the PERM regulation and perform active case reviews in accordance with § 431.980 of the PERM regulation.

We proposed that States with CHIP stand alone programs will only have the option to substitute PERM Medicaid data to meet MEQC requirements under § 431.812(a) through (e) since CHIP stand alone programs are not reviewed under MEQC.

We also proposed that States with Medicaid and Title XXI Medicaid expansion programs may use Medicaid and CHIP PERM reviews to meet the MEQC requirements described under § 431.812(a) through (e), as both Medicaid and Title XXI Medicaid expansion programs are reviewed under MEQC. States with Title XXI Medicaid expansion programs must combine their Medicaid and CHIP PERM findings to calculate one MEQC error rate. The data must be kept separate for purposes of calculating the PERM error rates.

In addition, we proposed that States with combination CHIP programs, in which a portion of their CHIP cases are under a stand-alone program and a portion of their CHIP cases are under a Title XXI Medicaid expansion program, may use the PERM Medicaid eligibility reviews and the portion of the PERM CHIP eligibility reviews under Title XXI Medicaid expansion programs to meet their MEQC requirement. The Federal contractor will combine the CHIP case findings under the Title XXI Medicaid expansion program and CHIP stand alone findings to calculate one PERM CHIP error rate. The Title XXI Medicaid expansion portion of the PERM data

must be included with the Medicaid PERM data to calculate the MEQC error rate.

Section 601(e)(3) of the CHIPRA provides that for purposes of satisfying the requirements of the PERM regulation relating to Medicaid eligibility reviews, a State may elect to substitute data obtained through MEQC reviews conducted in accordance with section 1903(u) of the Act for data required for purposes of PERM requirements, but only if the State MEQC reviews are based on a broad, representative sample of Medicaid applicants or enrollees in the States. The CHIPRA's general effective date of April 1, 2009 applies to this provision. Therefore, as of April 1, 2009, States have the option to substitute MEQC data for PERM data so long as the MEQC reviews are based on a broad, representative sample of Medicaid applicants or enrollees in the States.

We considered several interpretations of the CHIPRA requirements that would allow States the option to substitute MEQC data for PERM data for purposes of the PERM reviews, but would also retain two separate, independent processes (MEQC and PERM), which are governed by separate statutes and regulations. As PERM is required to meet specific statistical precision requirements and the MEQC error rate is not, we do not believe it is feasible to incorporate the MEQC error rate into a State's PERM error rate. Therefore, we proposed to interpret "data" as the sample, eligibility review findings, and payment findings as measured under MEQC or PERM. We will calculate separate rates for each program. States operating under MEQC waivers and pilot programs cannot use this option because the CHIPRA only permits substitution of MEQC data for PERM reviews where the MEQC review is conducted under section 1903(u) of the Act, and the MEQC waivers and pilot programs are not conducted under the requirements of section 1903(u) of the Act. Additionally, the CHIPRA only permits substitution of MEQC data if the reviews are based on a "broad, representative sample" of Medicaid applicants and beneficiaries. MEQC section 1115 waivers and pilot programs are special studies or conducted on focused populations of Medicaid beneficiaries and are not considered a representative sample of all Medicaid beneficiaries.

We proposed to interpret "broad, representative sample of Medicaid applicants or enrollees" to mean that States must develop the MEQC universe according to requirements at § 431.814 in order to consider the option to use one program's findings to meet the requirements for the other. Under § 431.814, States must sample from a universe of all Medicaid and Title XXI Medicaid expansion beneficiaries (except for the exclusions provided in § 431.814(c)(4)). States operating MEQC pilots or waivers will need to continue operating PERM separately from MEQC. Additionally, we proposed that the MEQC samples must meet the PERM confidence and precision requirements. We are clarifying here that this means that the MEQC sample size may need to be adjusted to meet the PERM confidence and precision requirements if the State elects to substitute MEQC data for PERM data.

We proposed that States with CHIP stand alone programs only have the option to substitute Medicaid MEQC data to meet the PERM Medicaid eligibility review requirement, as CHIP stand alone is not reviewed under the MEQC review.

We also proposed that States with Title XXI Medicaid expansion programs may use their MEQC reviews described in § 431.812(a) through (e) to meet both the PERM Medicaid and CHIP eligibility review requirements, as both Medicaid and Title XXI Medicaid expansion are reviewed under MEQC. Title XXI Medicaid expansion data must be separated from the MEQC Medicaid data to calculate a PERM CHIP error rate.

We also proposed that States with combination programs in which a portion of their CHIP cases are under a stand-alone program and a portion of their CHIP cases are under a Title XXI Medicaid expansion program may use the MEQC reviews described under § 431.812(a) through (e) to meet the PERM Medicaid eligibility review requirement and the portion of the PERM CHIP eligibility review requirement under Title XXI Medicaid expansion. However, the stand alone portion of the CHIP universe must remain separate and either stratified or not stratified, as described in § 431.978(d)(3), as CHIP stand alone is not measured under the MEQC program. The Federal contractor, who we proposed will calculate State eligibility error rates, will combine the Title XXI Medicaid expansion and CHIP stand alone findings to calculate one PERM CHIP error rate.

In addition, we proposed to amend § 431.980 to allow for States in their PERM year the option to use their MEQC samples, eligibility findings, and payment findings to meet their PERM eligibility review requirement. We proposed that MEQC reporting requirements to the CMS Regional Offices remain the same, including reporting the error findings for the two 6-month review periods, but States will also be required to comply with the PERM eligibility reporting deadlines by posting error findings to the PERM Error Rate Tracking (PERT) Web site or other electronic eligibility findings repository specified by CMS. We proposed that States that choose to substitute MEQC data for PERM data, will still have two eligibility error rates calculated—one for MEQC using MEQC measurement requirements and one for PERM using PERM requirements.

We also proposed that States that choose to substitute MEQC or PERM data should note that although two error rates are calculated, only the MEQC error rate will be subject to disallowances under section 1903(u) of the Act. PERM does not have a threshold for eligibility errors and any improper payments identified during the eligibility measurement are subject to recovery according to § 431.1002 of the regulations.

We proposed that if a State chooses to substitute PERM or MEQC data, the State may not dispute error findings or the eligibility error rate based on the possibility that findings would not have been in error had the other review methodology been used.

We solicited comments on the following alternative process for the substitution of MEQC and PERM data: States would select one annual sample that meets MEQC minimum sample requirements and PERM confidence and precision requirements. The State would conduct both an MEQC review and a PERM review on each applicable case. This would ensure a clear distinction between an MEQC error and a PERM eligibility error, and would be the basis for the MEQC error rate and the PERM eligibility error rate. We also solicited comments on other possible methods for substitution of data.

States that choose to substitute MEQC data may only claim the regular administrative matching rate for performing the MEQC procedures for Medicaid and Title XXI Medicaid expansion cases. The 90 percent PERM enhanced administrative matching rate will only be applicable to States conducting PERM reviews for CHIP cases.

2. Definition of a Case

Section 431.958 currently defines a case as an "individual beneficiary." States are required to sample and conduct eligibility and payment reviews for an individual beneficiary even if the State grants eligibility at the family level. However, sampling at the individual beneficiary level has proven

to be difficult for States from a programming perspective.

Many States receive, review, and grant eligibility based on an application for an entire family, which could be for one person or multiple people. Dividing the family unit for PERM eligibility sampling has been difficult for States to achieve.

The MEQC regulation, at § 431.804, defines an active case, in pertinent part, as an "individual [beneficiary] or family." Changing the definition of a case for PERM eligibility to include both individual beneficiaries and families will support the harmonization process and reduce redundancies in the MEQC and PERM programs as required by section 601(e)(1) of the CHIPRA, by making it easier for States to utilize their new option of substituting PERM data for MEQC data, and vice versa.

Therefore, we proposed to revise the definition of a case in § 431.958 to mean an individual or family, at a State's option.

3. Error Rate Calculation: State Responsibility for Calculating Error Rates

Section 431.988 requires, as part of the PERM eligibility review process, for States to calculate and report case and payment error rates for active cases and case error rates for negative cases. As originally envisioned, States retained responsibility for sampling cases, conducting eligibility reviews, collecting payment information for errors, and calculating eligibility error rates. States were to report final eligibility error rates to CMS, which will forward the information to the Federal contractor for inclusion in the overall State and national error rates.

In practice, States have found it difficult to calculate the eligibility error rates. In most cases, States lack the necessary statistical or technical expertise to execute the error rate calculation formulas provided in the PERM eligibility instructions. During the FY 2007 cycle, the Federal contractor provided substantial technical assistance to the States to assist them in conducting these calculations including developing a spreadsheet that States could use to perform the required calculations. Several States requested that, rather than have the Federal contractor provide a spreadsheet that the States merely populate and return to CMS, the Federal contractor perform the required calculations.

Initially, we did not consider it feasible for the Federal contractor to conduct the PERM eligibility error rate calculations because the States conduct the reviews and maintain the case and payment error data. However, during FY 2007, we developed a centralized reporting system for monthly case and payment error data. The Federal contractor can access the centralized system to conduct the eligibility error rate calculations.

Given the difficulties States have experienced in calculating the PERM eligibility error rates and that there are now mechanisms and processes for the Federal contractor to calculate these error rates, we proposed to revise § 431.988(b)(1) and (b)(2) by replacing "rates" with "data" to read as follows: "The agency must report by July 1 following the review year, information as follows: (1) Case and payment error *data* for active cases; and (2) Case error *data* for negative cases."

We maintain that this approach will reduce the burden on the States, reduce redundancies in the MEQC and PERM programs, and more accurately reflect current practice, which is that the Federal contractor calculates the eligibility error rates used in the generation of the PERM error rate, as well as the State and national-level error rates. We will continue to require States to report data, including the total number of cases in the universe, to the centralized reporting system and will provide States with a spreadsheet or similar calculator that can be used to estimate their own eligibility error rates, but will not require States to submit these estimates to CMS.

We received the following comments regarding our proposed revisions to the harmonization of MEQC and PERM programs.

PERM & MEQC Data Substitution

Comment: One commenter requested clarification on the relationship between PERM and the claims processing assessment system (CPAS) in § 431.806.

Response: There is no direct relationship between PERM and CPAS. The end of redesignated paragraph (c) was changed from referring to "assessment that meets the requirements of § 431.830 through § 431.836 of this subpart" to "assessment that meets the requirements of § 431.836 of this subpart" by mistake and will be revised to show the original range "§ 431.830 through § 431.836". Section 431.806 was revised to add paragraph (b), and redesignate paragraph (b) as (c). Paragraph (b) was added, which requires that a State's "State Plan provide a State Plan Amendment for States opting to use PERM for MEQC in a State's PERM cycle."

Comment: One commenter questioned whether the Medicaid eligibility sampling plan would need to be submitted separately from the CHIP plan due to the PERM for Medicaid MEQC substitution.

Response: Section 431.978(a) of the regulation already requires States to submit separate Medicaid and CHIP sampling plans and States will need to continue to do so.

Comment: One commenter believes that harmonization does not reduce the burden on States that are required to generate PERM and MEQC eligibility review data by conducting a PERM and an MEQC review on each sampled case.

Response: We appreciate the comment regarding the proposed alternative substitution process. Based on public comments, we are finalizing that States would not be required to separately sample and review if substituting PERM for MEQC or vice versa. States substituting MEQC data for the PERM review will use MEQC review requirements. States substituting PERM data for the MEQC review use PERM review requirements. However, while MEQC allows cases to be dropped from review under certain circumstances, as discussed in the proposed rule, undetermined cases must be included in the PERM error rate. Accordingly, we are revising § 431.980(f) to clarify that all MEQC cases must be included in the PERM error rate. States must either apply a PERM eligibility review findings to dropped MEQC cases, or cite the cases as an undetermined errors.

We intend to calculate two error rates. For the MEQC error rate measured using PERM data, we are using the lower limit of the confidence interval, that is typically used for MEQC and allowing drops for MEQC that are allowable in the MEQC manual. For the PERM error rate measured using MEQC data, we will use the midpoint estimate typically used for PERM and any MEQC drops will be considered part of the PERM error rate.

Comment: One commenter suggested that PERM precision requirements be used when sampling for eligibility under both the MEQC and PERM programs, and that traditional MEQC reviews should be conducted on each sampled case when substituting MEQC data for PERM. The commenter stated that this would produce an MEQC error rate using the lower limit and a PERM error rate using the midpoint. The commenter believes that corrective action plans would have more meaningful findings using MEQC review methodology. Another commenter stated that its State conducts traditional MEQC reviews and appreciates this proposal.

Response: We appreciate the alternatives that commenters provided for us to consider in the future as viable operational changes to reduce redundancies between the two programs. As discussed previously, we are finalizing that when substituting MEQC data for PERM data, the MEQC sample, MEQC eligibility review findings, and MEQC payment review findings, which must include any dropped cases and sufficient cases to meet the PERM precision requirements, will be used in calculating the PERM error rate. When substituting PERM data for MEQC data, the PERM sample, PERM eligibility review findings, and PERM payment review findings will be used in calculating the MEQC error rate. PERM cases cited as undetermined may be dropped from the MEQC error rate calculation so long as the reasons for the dropped cases are in accordance with section 7230 of the State Medicaid Manual.

Comment: One commenter believes that it was proposed that States with approved MEQC pilots have no options and must continue the pilots and also do PERM reviews.

Response: We do not agree. States with approved MEQC pilots have the option to return to a "traditional" MEQC review and substitute the MEQC data for PERM, or discontinue the MEQC pilot and use the PERM reviews to substitute the data for "traditional" MEQC.

Comment: Some commenters do not believe we are complying with the CHIPRA which clearly requires the harmonization of MEQC and PERM and that we should modify the rule to truly harmonize the two programs. Among the commenters' concerns are that PERM and MEQC continue to have differences in sample size, sampling methodologies (including stratification), review procedures, error rate calculations and other significant differences.

Response: We disagree with the commenter that we are not in compliance with the CHIPRA and the harmonization provisions. The substitution options do reduce redundancies as required by the CHIPRA in that only one sample will be drawn and one review process will be used, which is where many of the redundancies between PERM and MEQC lay. But the underlying statutory requirements keep us from changing other places where PERM and MEQC overlap, such as the error rate calculation. Two separate error rates, one for PERM and one for MEQC, must still be calculated. We appreciate the commenter's concerns and may address them in future rulemaking.

Comment: A few commenters do not believe that many States will opt to substitute data because substitution will require States to return to traditional MEQC reviews and leave them subject to disallowances that they otherwise would not have been subjected to, if they experience error rates over the 3 percent national standard. Commenters stated that at the same time States would be subject to PERM recoveries.

Response: We understand that States may not conduct traditional MEQC reviews for a variety of reasons. The intent of offering both options of substituting PERM or MEQC data is for States, at their option, to choose what is most beneficial for their State and to comply with the CHIPRA.

Comment: Some commenters believe that since pilot States and traditional MEQC States will be allowed to substitute PERM negative case reviews to meet the negative MEQC requirements for Medicaid, States may have a semblance of savings.

Response: The August 2007 PERM final rule made effective the option for States to use PERM negative case reviews to meet the negative MEQC requirement and some States have already realized these savings.

Comment: One commenter agrees with the stipulation that error findings and error rates cannot be disputed based upon any realization that the error findings would have been different or error rates would have been lower had the other programs' review methodology been used. The commenter stated that once an eligibility review methodology is selected, all rules pertinent to the selected eligibility review methodology must prevail.

Response: We appreciate this comment.

Comment: One commenter expresses that there are fundamental differences in the MEQC and PERM review methodology mostly centering on consideration of the administrative period. Simply substituting MEQC findings for PERM reporting purposes would yield potentially higher error rates for MEQC due to the exclusion of the administrative period under MEQC regulations.

Response: We agree that there are fundamental differences between PERM and MEQC, but if States choose to substitute MEQC data for the PERM data, the MEQC administrative period will be applied. States are not required to substitute data if there are concerns of a potentially higher error rate for either program.

Comment: One commenter stated that pilots are a valuable option to be able to focus on targeted error prone areas to reduce errors and improve program administration. Another commenter disagrees with not allowing pilot MEQC States to use the pilot findings to meet PERM eligibility requirements. Both commenters agree that in order to reduce the duplication of effort and take advantage of the harmonization effort, States would have to give up the pilot option and revert back to traditional MEQC with the possibility of sanction liability. The commenters suggested that we consider allowing PERM data to be substituted for data used in MEQC pilots, and allow MEQC pilot data to be substituted for PERM data for purposes of meeting the PERM requirements.

Response: We do not agree with this recommendation. To comply with the IPIA, the PERM program must sample from the entire Title XIX and Title XXI eligibility case universe, subject to the enumerated regulatory exceptions. The universe of a MEQC pilot would not meet the broad PERM eligibility universe requirements because MEQC pilot programs have narrower eligibility universes that use focused reviews or special studies.

For the same reason, MEQC pilot programs do not meet the CHIPRA's requirement that MEQC data substituted for PERM data to meet the PERM requirements must be based on a broad, representative sample of all Medicaid beneficiaries.

Additionally, the CHIPRA only permits substitution of MEQC and PERM data where the MEQC review is conducted under section 1903(u) of the Act.

Definition of a Case

Comment: Some commenters expressed concern regarding our proposal to revise the definition of a PERM "case" from an "individual beneficiary" to an "individual beneficiary or family." Some commenters had concerns about the potential for increased workloads, noting that changing the PERM definition of "case" to an "individual beneficiary or family," would require changes to universe development programs and require more time to review a family rather than an individual. Other commenters questioned what a payment error would be comprised of if one family member were ineligible but not the others and whether the definition change would lead to more errors and a higher State and national error rate. Some commenters supported this definition change, noting that in their States eligibility is based on a family application and the revised definition

would simplify programming and review.

Response: This new definition parallels the definition of a case used in MEQC in support of PERM–MEQC harmonization. We are finalizing the definition of a case as proposed. However, we offer the following clarifications. For States where sampling at the individual beneficiary level is easier from a programming and/or review perspective, no changes to a State's process need to be made. States that opt to sample at the family level will need to update their sampling plans accordingly. Some State programs have both individual and family applications and can choose to sample either at the individual beneficiary level or at the application level (that is, with a combination of both individuals and families in the universe).

The change in the definition of a case will not impact State error rates or the national error rate, as the case and payment error rates are weighted by the universe totals submitted by States. States that sample at the individual beneficiary level will continue to submit the total number of individual beneficiaries in the universe each month. States that opt to sample at the family level will submit the total number of families in the universe each month. States that have a mix of individual and family applications will submit the total number of applications in each sample month.

For family applications, if one individual in the family unit is identified as ineligible, then the case will be considered not eligible. However, the dollars in error will be identified as only those dollars associated with the individual in the family who is ineligible. We understand that this case review finding differs from MEQC, which would consider this case "eligible with an ineligible member." As the PERM eligibility review is focused on the eligibility decision rather than the beneficiary's eligibility at the time the case is sampled (for MEQC), we believe that it is appropriate to call a case "not eligible" for the purpose of calculating the case error rate.

Eligibility Stratification

Comment: We received numerous comments regarding eligibility stratification. Commenters identified multiple issues with programming and accuracy relating to aligning the eligibility universe with the appropriate PERM eligibility strata. Several commenters noted that the stratification process was burdensome on staff, financial, and IT resources. For some commenters, information on new application and redetermination effective dates are located in a system outside of the State's eligibility system or, for other commenters, information required for stratification is not maintained in a manner that is consistent with the PERM eligibility strata definitions, increasing the programming effort required. Other commenters stated that stratification is unnecessary because all PERM eligibility reviews are completed as of the State's last action, effectively meaning that all cases are reviewed as new applications or redeterminations. Commenters recommended that CMS give States the option to stratify and also the option not to stratify, since there is no statistical significance to stratification and all States are reviewing cases as of the last case action. Commenters also observed that current stratification requirements greatly decrease the accuracy of the sample and require States to drop and replace numerous cases to ensure that the sample for each stratum is properly defined.

Response: Based on comments and a review of eligibility issues over the past several PERM cycles, we have reexamined the eligibility stratification requirements for PERM at § 431.978(d)(3), and will make stratification optional for States. Therefore, based on the commenter's concerns, we are modifying § 431.978 of the PERM regulations.

States will have the option to either maintain stratification (if the elimination of stratification would cause additional State burden) as currently required under § 431.978(d)(3), or sample from an unstratified universe. States will be required to report, for all sampled cases, whether the universe was stratified or not, whether the last action was a new application or a redetermination. We are modifying § 431.988 to reflect this requirement. States will continue to report the total number of cases in the case universe for each month (either the total universe number or the universe totals for each stratum, as appropriate). We have placed this requirement in regulatory text at § 431.988(a).

Eligibility Error Rate Calculation

Comment: One commenter questioned whether States that wished to continue calculating their own eligibility error rates would be given the methodology and means to do so.

Response: Yes, States may still calculate their own eligibility error rates. We expect some type of calculator and the error rate formulas to be available for States to use, as well as assistance from the statistical contractor to explain State specific error rates. However, it should be noted that the PERM contractor will calculate official error rates for the State.

F. Corrective Action Plans

Section 601(c)(1)(C) of the CHIPRA requires CMS to provide defined responsibilities and deadlines for States in implementing corrective action plans.

1. Corrective Action Plan Due Dates

We proposed to revise § 431.992 to provide that States would be required to submit to CMS and implement the corrective action plan for the fiscal year it was reviewed no later than 60 calendar days from the date the State's error rate is posted to the CMS Contractor's Web site. State error rates will be posted to the Web site no later than November 15 of each calendar year.

2. Types of Plans

In addition to measuring programs at risk for significant improper payments, the IPIA also requires a report on Federal agency actions taken to reduce improper payments. Since States administer Medicaid and CHIP and make payments for services rendered under these programs, it is necessary that States take corrective actions to reduce improper payments at the State level. We issued a State Health Official letter in October 2007 to all States detailing the corrective action process under PERM, which can be found on the CMS PERM Web site at *http://www.cms.gov/PERM/Downloads/Corrective_Action_Plan.pdf*.

The corrective action process is the means by which States take administrative actions to reduce errors which cause misspent Medicaid and CHIP dollars. The corrective action process involves analyzing findings from the PERM measurement, identifying root causes of errors and developing corrective actions designed to reduce major error causes, and trends in errors or other factors for purposes of reducing improper payments.

Development, implementation, and monitoring of the corrective action plan are the responsibility of the States. In order to develop an effective corrective action plan, States must perform data and program analysis, as well as plan, implement, monitor, and evaluate corrective actions. We proposed to revise § 431.992 to define States' responsibilities for these activities as explained below.

(1) *Data Analysis*—States must conduct data analysis such as reviewing clusters of errors, general error causes,

characteristics, and frequency of errors that are associated with improper payments. Data analysis may sort the predominant payment errors and number of errors as follows:

- *Type*—general classification (for example, FFS, managed care, eligibility).
- *Element*—specific type of classification (for example, no documentation or insufficient documentation, duplicate claims, ineligible cases due to excess income).
- *Nature*—cause of error (for example, providers not submitting medical records, lack of systems edits, unreported changes in income that caused ineligibility). For the eligibility component, States must analyze both active and negative case errors and also causes for undetermined case findings.

(2) *Program Analysis*—States must review the findings of the data analysis to determine the specific programmatic causes to which errors are attributed (for example, a provider's lack of understanding of section 1902(a)(27) of the Act and § 431.107 of the regulations requiring providers under their provider agreements, to submit information regarding payments and claims as requested by the Secretary, State agency, or both) and to identify root error causes. The States may need to analyze the agency's operational policies and procedures and identify those policies or procedures that contribute to errors, for example, policies that are unclear, or there is a lack of operational oversight at the local level.

(3) *Corrective Action Planning*—States must determine the corrective actions to be implemented that address the root error causes.

(4) *Implementation and Monitoring*—States must implement the corrective actions in accordance with an implementation schedule. States must develop an implementation schedule for each corrective action initiative and implement those actions. The implementation schedule must identify major tasks and key personnel responsible for each activity, and must include a timeline for each action including target implementation dates, milestones, and monitoring.

(5) *Evaluation*—States must evaluate the effectiveness of the corrective action by assessing improvements in operations, efficiencies, and the incidence of payment errors or number of errors. Subsequent corrective action plans that are submitted as a result of the State's next measurement must include updates on the following previous actions: (1) Effectiveness of implemented corrective actions using concrete data; (2) discontinued or ineffective actions, and actions not implemented and what actions were used as replacements; (3) findings on short-term corrective actions; and (4) the status of the long-term corrective actions.

In addition, we proposed that CMS would review and approve the corrective action plans submitted by States, and may request regular updates on the approved corrective actions. We solicited public comments on the timeline and process associated with this review and approval.

We received the following comments regarding our proposed revisions to the corrective action plans.

Comment: Several commenters stated that to submit and implement corrective action plans for the fiscal year under review no later than 60 days from the date the error is posted on the CMS contractor's Web site is too short of a timeframe for States to successfully review the error rate, and develop and submit a meaningful plan. Commenters recommended that States be given either a 90-day or 120-day submission and implementation deadline.

Response: We understand the States' concern regarding the need for adequate time to submit and implement a meaningful corrective action plan. Therefore, we will revise § 431.992 to require that States submit to CMS and implement the corrective action plan for the fiscal year it was reviewed no later than 90 calendar days from the date the State's error rate is posted to the CMS Contractor's Web site. Adopting the 90-calendar day timeframe will still allow CMS to utilize the States' corrective action plans in the IPIA-required Error Rate Reduction Plan (ERRP) due to OMB annually. For example, if States submit their corrective action plan reports 90 days from the posting of the error rate on November 15th, reports will be due to us on February 15th, leaving us approximately 45 days to finalize the ERRP for submission to the Department.

Comment: Several comments received were on our proposal to review and approve the corrective action plans submitted by States as well as request regular updates on the approved corrective actions. Commenters stated that the States should have an equal role with CMS in reviewing and approving State corrective action plans. Commenters also stated that the proposed rule does not allow CMS approval time for the plan and that it is not clear if CMS would want States to implement a plan that CMS has not approved. Some commenters suggested that while the proposed rule indicates that States would submit and implement the corrective action plan at the same time, it would be more prudent for feedback to be provided by CMS to assure the corrective action plan meets CMS guidelines prior to implementation. Additionally, some commenters believed that while it may be prudent for CMS to review and approve corrective action plans, the commenters are concerned that the level of reporting would prove draining on State staff and border on micro-managing. The commenters also stated that it is not reasonable to expect States to report at this level when there are no Federal funds to support the PERM project.

Response: Based on comments received, we are not adopting an approval process at this time. States should be able to move forward by the required deadline to submit and implement corrective actions plans within the specified timeframe. However, we will continue to provide guidelines and examples to aid in the development of the corrective action plan and will be available to provide States with technical assistance as needed or requested.

During prior measurement cycles, we have worked closely with the States as they develop their corrective action plans and States have demonstrated that they have the ability to submit a corrective action plan and implement corrective actions at the same time. We will consider commenters' recommendations concerning additional corrective action plan guidance when we publish the PERM manual.

Finally, in response to the comment regarding lack of funding to support the PERM project, we note that States are reimbursed at the applicable administrative Federal match under Medicaid and CHIP for PERM related activities. We also provide States significant technical assistance throughout the corrective action process including facilitating State-specific calls after error rate findings are released and hosting State forum calls which provide States the opportunity to share best practices.

Comment: Several commenters requested that a tolerance be established when overpayments are pennies and the State's error rate is low, it is not productive to develop a corrective action plan. Another commenter noted that States should be required to document corrective action plans only if there are material error rates or significant trends in types of errors. The commenter stated that in such instances, corrective action plans are needed to document necessary remedial action and/or process improvements. The commenter further stated that if

errors are neither material, nor trend-based, corrective action plans do not produce meaningful results nor do they justify the administrative burden in completing them. The commenter felt that the corrective action plan documentation requirements are more intensive than necessary given the low error rate in some states. The commenter recommended that we establish an error rate threshold, perhaps of an error rate between 2 and 3 percent, below which States would not be required to complete a corrective action plan.

Response: We do not agree and, therefore, we will not exempt any State from submitting a corrective action plan regardless of their error rate. IPIA requires that we submit an ERRP to OMB annually and State corrective action plans are an integral part to this process. We plan to release a PERM manual which will provide States with additional information on how the ERRP incorporates the individual State corrective action plan reports such as trends in correction action processes across States. However, we expect that if most of the errors are from no documentation or undetermined cases, the State's corrective action plan will address how to correct that problem in future PERM reviews, rather than how to correct material problems in eligibility determinations and claims payments.

Comment: Several commenters said that the corrective action plan is too prescriptive and a burden on State resources. One commenter stated that it was onerous.

Response: Section 601(c)(1)(C)of the CHIPRA requires CMS to clearly define responsibilities and deadlines for States in implementing corrective action plans. We have considered the States' concern that the proposed rule is too prescriptive and a burden on State resources. For this reason, we have reevaluated the proposed regulatory text and made edits to condense and consolidate the regulatory text to only state the corrective action plan requirements. The proposed regulatory text contained suggestions on how to sort and analyze errors, and these have been removed. We will also consider the commenter's concerns when we publish the forthcoming PERM manual. Additionally, we have taken several steps to assist States with the CAP process, including providing States with a corrective action plan example during their corrective action plan orientation call with CMS and conducting all-State calls where States can share best practices.

Comment: Several commenters stated that in order for States to develop the level of analysis required in the proposed rules it would be necessary to utilize a model that can be detailed or abstract, complex or simple, accurate or misleading. The commenters stated that models of this type are used extensively in root cause analysis. The commenters explained that some models used are "causation" and "fish bone analysis" models, which are based on manipulability, probability and counterfactual logic. The commenter explained that these models are extremely complex and no single model can address all possible situations. The commenters recommended that if CMS is requiring the State to perform this level of analysis, additional guidance and recommendation must be provided in order to achieve conformity across all State corrective action plans. Another commenter stated that thorough data and program analysis is time intensive and a drain on staff resources and that the main difficulty with this comprehensive process being added to the Rule is that it does not give the States flexibility to tailor the extent of the program and system analysis based on staffing and other resources. Another commenter questioned whether CMS will share in the development of automated systems to provide necessary support to perform meaningful data analysis.

Response: We are not requiring that States use complex data analysis models. The corrective action plan requirement is to conduct data analysis, such as reviewing clusters of errors, general error causes, characteristics, and frequency of errors that are associated with improper payments as well as error causes associated with number of errors and States should determine the corrective actions to be implemented that address the root error causes. Using error prone profiles, trend analyses, causation, fish bone and other such analyses are at the State's discretion.

Comment: Several commenters expressed concern on the feasibility for States to measure updates of previous corrective actions utilizing "concrete data". Another commenter requested that CMS clarify the expectation for "concrete data".

Response: We believe that in order to determine whether a corrective action is successful, States may need to utilize additional State studies or other reports such as State assessment reports, internal audits and special studies which can demonstrate the progress of implemented corrective action processes. Progress can also be demonstrated through a State's next PERM measurement. However, we understand that the use of the word "concrete" is unclear. Therefore, we are revising § 431.992(d)(1) to replace the term "concrete" with the term "objective data sources."

Comment: One commenter recommended CMS consider developing a baseline plan that all States could implement and States could add to or individualize as needed based on their PERM experience from their measurement.

Response: We believe that States should have some flexibility in developing their corrective action plans. However, we are available to assist States with the development of the corrective action plans and have already taken steps to provide States with additional information including an example corrective action plan and the all-State call on corrective action plans where States shared their experiences, challenges, and best practices.

Comment: Several commenters requested clarity on whether separate corrective action plans needed to be submitted for Medicaid and CHIP.

Response: If a State has been cited with errors under each of these programs, a corrective action plan would be expected for each, but could be substantively the same for both as appropriate. We are revising § 431.992(a) to require separate Medicaid and CHIP plans.

We received a number of comments on PERM-related issues that, while not included in regulatory text, are issues related to PERM policies and procedures. Below, we address these issues to provide further clarification to States as well as to share current initiatives CMS is engaging in order to improve the PERM measurement overall and ensure an accurate error rate measurement.

Claims

Comment: We received a number of comments and questions related to the work of our contractors. Some commenters questioned what quality assurance processes are in place to ensure that the work completed by PERM contractors is accurate. Other commenters questioned if contractors will be required to persistently attempt to secure information needed to complete review from providers. Commenters also questioned whether the contractor should request medical records on the same day for each State, quarter, and program to allow the States to more easily track provider compliance and monitor the due dates for documentation. Commenters also questioned if the contractor should

include the State claim ID on the record request sent to providers and on the status charts made available to States to allow States to more efficiently track progress and answer provider questions. The commenters questioned whether the review contractor's Web site should not only provide sampling unit disposition repots by program (that is, Medicaid and CHIP) but also be FFS and managed care, as that is how the States are required to provide the universe data. Finally, commenters questioned whether CMS and our contractors will consider allowing providers to submit medical records electronically, given our push to move toward electronic health records in order to: reduce the amount of hard copy material for both providers and the contract agency; speed up the process for submitting medical records; and further the intent of Federal and State paper work reduction rules and regulations.

Response: We appreciate the comments and will consider these operational issues. As appropriate, we will issue guidance to our contractors to make changes as necessary and practical. In utilizing the national contractor model, our goal is to operate a consistent measurement across States that minimizes State burden to the extent possible. We will review our internal quality control policies and the procedures of our contractors and communicate any changes with States accordingly.

Comment: We received several comments requesting enhanced FFP for Medicaid to match the enhanced FFP that the CHIPRA provides for CHIP.

Response: We are unable to adopt this recommendation. We do not have the statutory authority to provide enhanced FFP for Medicaid activities.

Comment: We received several comments related to the current measurement model and meeting IPIA requirements. Commenters stated that because IPIA requires a national error rate and not State-specific error rates, PERM should be a national measurement model where all States are measured each year by selecting a random sample of records from each State, which would decrease the sample size, incorporate PERM as an ongoing program integrity activity and reduce State burden.

Another commenter suggested CMS reconsider the multiple contractor model and allow States to conduct, in whole or in part, their own sampling, data processing reviews and medical reviews, similar to eligibility, to reduce the burden on the State to bring the Federal contractors up to speed.

One commenter recommended that CMS allow States to establish their own protocol for eligibility and claims review by submitting to CMS plans that provide details on the State's universe development, sampling plans, and protocol for performing medical record collection, data processing reviews and medical reviews where States could optionally request assistance from CMS' contractors, as with the eligibility component of PERM.

Another commenter stated that given the high cost of conducting PERM versus the cost recoveries and efficiencies identified, CMS should consider allowing States that achieve a determined payment accuracy and can prove that they are not susceptible to overpayments to receive a waiver from CMS to discontinue measuring PERM.

One commenter stated that CMS should provide States information on how national error rates will be compared over time. Another commenter asked that CMS provide States additional information on the national erroneous payment level targets which are required by IPIA. Finally, a commenter recommended CMS allow more State engagement and involvement in meeting needs of IPIA and the target rate setting process.

Response: We do not believe a national sample is the best method to achieve IPIA compliance. The Medicaid and CHIP programs are State administered and, as such, we think it is necessary for States to participate and have State-level error rates calculated, as well as the national error rate. The current contractor model of PERM minimizes the cycles in which each State has to participate to once every 3 years, therefore reducing the burden on States to provide data each year. Furthermore, PERM is constructed in order to best achieve an unbiased statistically valid error rate by sampling each State once every 3 years for a total of 17 States each cycle, which, is meant to reduce the burden on States from participating each year. A statistically valid error rate that meets IPIA precision requirements is predicated on all 17 States in each cycle participating in the measurement. Allowing some States to "sit out" for a cycle would mean that a national error rate could not be calculated with the required precision.

We recognize that changes in how States operate their Medicaid programs and how the PERM program evolves can impact the State and national error rates from year to year. In the FY 2008 final PERM report, we calculated a weighted 2-year average based on the calculations in FY 2007 and FY 2008. (FY 2006 was not included because managed care, CHIP, and eligibility were not included in that cycle.)

We meet IPIA reporting requirements through the publication of the Department of Health and Human Services' annual Agency Financial Report. This report includes information on all IPIA required error rates for HHS governed programs, as well as corrective action plans and the required targets. The FY 2007, 2008, and 2009 reports are available at *http://www.hhs.gov/afr/index.html*.

Finally, we are continually looking for ways to engage States on improving the PERM process. We appreciate the offers of assistance and will continue to work with States to meet the requirements of IPIA.

Comment: We received numerous comments inquiring as to the status of the FY 2009 CHIP measurement and requesting that we discontinue the CHIP measurement for this cycle. Commenters expressed concern over the difficulty that States would have if the measurement was restarted at this point. Commenters explained that if the CHIP measurement restarts, States will need to go back to cases that could have been acted on over a year ago, making the completion of the reviews more difficult, requiring additional State staff time and dollars, increasing the opportunity for undetermined cases and having a negative impact on the FY 2009 States' error rates compared to previous cycles. If we choose to continue with the FY 2009 Medicaid and CHIP measurements, commenters requested that we consider extending the original deadlines for completion and provide detailed guidance regarding how States are to proceed with the reviews, what the new timeline will be and what regulation guidance States should follow, particularly given that States have been conducting Medicaid and CHIP reviews up until the stop-work on CHIP based on the August 2007 regulation. The commenters also suggested that CMS take time to convene a State workgroup to address the PERM regulation, guidelines, and standards, as well as examine overlaps between PERM and other oversight programs in order to reduce the burden and duplication of effort on States.

Response: We understand State's concerns related to the multitude of issues related to restarting the CHIP measurement for FY 2009 and FY 2010. For this reason, we will not measure CHIP error rates for FY 2009 or FY 2010, and will instead begin the PERM review process for CHIP starting with the first fiscal year that begins after the date of the publication of this rule.

Due to IPIA requirements, we are proceeding with the Medicaid error rate reviews and calculations under existing rules, and will begin reviews according to the provisions of this final rule once it is effective.

We have also reconvened the PERM TAG and continue to hold cycle calls to keep States involved and updated as information becomes available.

Comment: We received several comments about State-specific issues related to PERM.

Response: We will work with these States directly to discuss their concerns and encourage States to contact us directly to discuss specific issues.

III. Provisions of the Final Regulations

With the exception of the following provisions, this final rule incorporates the provisions of the proposed rule. Those provisions of this final rule that differ from the proposed rule are as follows:

In § 431.806(b), we are revising this paragraph to state that State plans must provide for operating a Medicaid eligibility quality control program that is in accordance with § 431.978 through § 431.988.

In § 431.812(a)(2)(iv), we are adding individuals whose eligibility was determined under a State's option under section 1902(e)(13) of the Act to the list of those cases for which the agency is not required to conduct reviews.

In § 431.812(f), we are revising this paragraph to state that the substitution of PERM data must be in accordance with § 431.980 through § 431.988 and that PERM undetermined cases may be dropped from the MEQC error rate calculation if the reasons for drops are acceptable reasons listed in the State Medicaid Manual.

In § 431.958, we are revising the proposed definition of "Provider error" and "State error". In addition, we are revising the definitions of "Active fraud investigation," "Agency," and "Case," as a result of issues raised by commenters.

In § 431.960, we are adding paragraph (b)(3) to the proposed provisions to include examples of data processing errors. In § 431.960(c)(3), we are adding a list of medical review error examples to the proposed provisions. In § 431.960(d), we are revising this paragraph in response to concerns raised by commenters. In § 431.960, we are removing paragraph (f)(2) from the proposed provisions.

In § 431.978(d)(3), we are revising the regulations text to provide states with the option of stratifying the eligibility universe.

In § 431.980(d), we are amending the proposed provisions by adding this paragraph to state that the agency must identify erroneous payments resulting from ineligibility for services or for the program as determined in accordance with the State's documented policies and procedures.

In § 431.980(e) (proposed as paragraph (d)), we are revising the heading of this paragraph from "eligibility review determination," to "eligibility review decision."

In § 431.980(f) we are adding a paragraph (2) to require MEQC samples to meet PERM confidence and precision requirements.

In § 431.980(f) we are adding a paragraph (3) to require States to include all MEQC cases in the PERM calculation.

In § 431.988(a), we are revising an eligibility reporting requirement for States to report the total number of cases in the eligibility universe.

In § 431.988(b)(3) for States that do not stratify the eligibility universe in accordance with § 431.978(d)(3) to report the last action on a case, either application or redetermination.

In § 431.992(a), after reviewing the public comments, we are amending the proposed provisions to not require CMS approval of the corrective action plan.

In § 431.992(b), we are amending the proposed provisions to remove all suggested steps in the corrective action process and only state the required elements for corrective action plans.

In § 431.992(c), we are revising the proposed language of "no later than 60 days" to read "no later than 90 days" as requested by the commenters.

In § 431.998(b), after reviewing public comments, we are revising the proposed timeframe for States to file a difference resolution with the contractor from 10 business days to 20 business days after the disposition report of claims review findings is posted on the contractor's Web site. Additionally, we are revising the proposed language of "filing the appeal within 5 business days" to read "filing the appeal within 10 business days" as requested by the commenters.

In § 431.998(c), we are adding an appeals process for the eligibility component in which State agencies can appeal eligibility review decisions to the agency conducting PERM eligibility reviews and file appeal requests for Federal eligibility policy to CMS.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We solicited public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

A. ICRs Regarding Review Procedure (§ 431.812)

Section 431.812(a)(1) states that except as provided in paragraph (a)(2) of this section, the agency must review all active cases selected from the State agency's lists of cases authorized eligible for the review month, to determine if the cases were eligible for services during all or part of the month under review, and, if appropriate, whether the proper amount of recipient liability was computed. In § 431.812, paragraph (f) states that a State in its PERM year may elect to substitute the random sample of selected cases, eligibility review findings, and payment review findings obtained through PERM reviews conducted in accordance with § 431.980 through § 431.988 of the regulations for data required in this section, where the only exclusions are those set forth in § 431.978(d)(1) of this regulation. The burden associated with this requirement is the time and effort necessary to complete the review of active cases. The burden associated with this requirement is currently approved under OMB control number 0938–0147 with a December 31, 2012, expiration date.

States in their PERM year that elect to substitute PERM data to meet the requirements of § 431.812 would significantly reduce the burden associated with reviewing active cases for MEQC. The burden associated with the information collection requirements contained in § 431.812(f) is the time and effort necessary for a State to substitute the random sample of selected cases, eligibility review findings, and payment review findings obtained through PERM reviews conducted in accordance with § 431.980 through § 431.988. Currently,

we believe 19 States (12 Medicaid States and 7 CHIP States) can elect the data substitution and comply with this requirement. We estimate that it would take each agency 10,055 hours to comply with the information collection requirements. In subsequent years, we expect that more States will elect to substitute data from section § 431.980 to meet this requirement so we are estimating the maximum burden for 34 States (17 Medicaid States and 17 CHIP States). The total burden associated with the requirements in § 431.812(f) is 341,870 hours.

Although the review burden would be significantly reduced, States would still be required to report PERM and MEQC findings separately. The additional burden is explained in the section below for § 431.980. We will submit a revised information collection request for 0938–0147 to account for the increased burden as a result of the requirements in § 431.812(f).

B. ICRs Regarding MEQC Sampling Plan and Procedures (§ 431.814)

Section 431.814 states that an agency must submit a basic MEQC sampling plan (or revisions to a current plan) that meets the requirements of this section to the appropriate CMS Regional Office for approval at least 60 days before the beginning of the review period in which it is to be implemented. The burden associated with this requirement is the time and effort necessary to draft and submit a new sampling plan or to draft and submit a revised sampling plan to the appropriate CMS Regional Office. While this requirement is subject to the PRA, it is currently approved under OMB control number 0938–0146 with a December 31, 2012, expiration date.

C. ICRs Regarding PERM Eligibility Sampling Plan and Procedures (§ 431.978)

In § 431.978, the revisions to paragraph (a) discuss the requirements for sampling plan approval. Specifically, the revision to § 431.978(a)(1) and (2) states that for each review year, the agency must submit a State-specific Medicaid or CHIP sampling plan (or revisions to a current plan) for both active and negative cases to CMS for approval by the August 1 before the review year and must receive approval of the plan before implementation. The revision to § 431.978(b)(2) further explains that the agency must notify CMS that it would be using the same plan from the previous review year if the plan is unchanged.

Section 431.978(c)(3) sets a maximum sample size of 1,000 active and negative cases, respectively in subsequent PERM review years after the base year. The burden associated with the requirements to review the maximum number of cases in the active and negative case sample sizes set forward in § 431.978(c) will be adjusted and submitted for OMB approval.

The burden associated with the information collection requirements contained in § 431.978(a) and (b) is the time and effort necessary for State agencies to draft and submit the aforementioned information to CMS. While this requirement is subject to the PRA, the associated burden is approved under OMB control number 0938–1012 with an April 30, 2013, expiration date.

D. ICRs Regarding Eligibility Review Procedures (§ 431.980)

Section 431.980(e) states that unless the State has elected to substitute MEQC data for PERM data under paragraph (f) of this section, the agency must complete the following. Specifically, § 431.980(e)(iv) requires a State to examine the evidence in the case file that supports categorical and financial eligibility for the category of coverage in which the case is assigned, and independently verify information that is missing, older than 12 months and likely to change, or otherwise as needed, to verify eligibility. Section 431.980(e)(vi) states that the elements of eligibility in which State policy allows for self-declaration can be verified with a new self-declaration statement. Section 431.980(e)(vi) also contains the requirements for a self-declaration statement.

The burden associated with the requirements contained in § 431.980 is the time and effort necessary for a State agency to complete the aforementioned requirements. While this requirement is subject to the PRA, the associated burden is currently approved under OMB control number 0938–1012.

Section 431.980(f)(1) allows for a State in its PERM year to elect to substitute the random sample of selected cases, eligibility review findings, and payment reviews findings obtained through MEQC reviews conducted in accordance with section 1903(u) of the Act to meet its PERM eligibility review requirement. MEQC dropped cases will be classified as undetermined in order to calculate the PERM error rate, unless the State attempts to complete these cases. The substitution of the MEQC data is allowed as long as the State MEQC reviews are based on a broad, representative sample of Medicaid applicants or enrollees in the State. In addition, as stated in § 431.980(f)(2), the MEQC samples must also meet PERM confidence and precision requirements.

The burden associated with the information collection requirements contained in § 431.980(f) is the time and effort necessary for a State to collect, review, and submit the MEQC data as part of meeting its PERM eligibility review requirement. States that elect to substitute MEQC data to complete the requirements of § 431.980 would significantly reduce the burden associated with reviewing active cases for PERM. Although the review burden would be eliminated, States would still be required to report PERM and MEQC findings separately. Currently we believe 19 States (12 Medicaid States and 7 CHIP States) can elect the data substitution and comply with this requirement. We estimate that it would take each agency 10,500 hours to comply with the information collection requirements. In subsequent years, we expect that more States will elect to substitute data from section § 431.812 to meet this requirement so we are estimating the maximum burden for 34 States (17 Medicaid States and 17 CHIP States). The total burden associated with the requirements in § 431.980(f) is 357,000 hours.

We also propose adding additional burden as stated previously. States must report PERM and MEQC findings separately and will use an estimated 2 hours per required form to reformat PERM or MEQC data into the appropriate forms. We are adding an additional 98 hours for each State to reformat MEQC data into the appropriate PERM eligibility forms and 98 hours for each State to compile PERM eligibility data to submit on the appropriate MEQC forms. We will submit a revised information collection request for 0938–1012 to account for the increased burden as a result of the requirements in § 431.980(f).

E. ICRs Regarding Corrective Action Plan (§ 431.992)

The revisions to § 431.992(a) specify that State agencies must develop a corrective action plan to reduce improper payments in its Medicaid and CHIP programs based on its analysis of the error causes in the FFS, managed care, and eligibility components. In § 431.992(c), we require States to submit to CMS and implement the corrective action plan for the fiscal year it was reviewed no later than 90 days from the date the State's error rate is posted to the CMS Contractor's Web site. As detailed in § 431.992(c), States are required to implement corrective actions in accordance with their corrective action plans as submitted to

CMS. Section 431.992(b) details the required components of a corrective action plan.

The burden associated with the information collection requirements in revisions to § 431.992 is the time and effort necessary for States to develop corrective action plans, submit the plans to CMS, and implement corrective actions as dictated by their corrective plans. While these requirements are subject to the PRA, the burden is approved under the OMB control numbers shown in Table 1.

TABLE 1—OMB CONTROL NUMBERS

Program component	OMB Control No.	Expiration date
Fee-for-Service	0938–0974	02/29/2012
Managed Care	0938–0994	11/30/2012
Eligibility	0938–1012	04/30/2013

F. ICRs Regarding Difference Resolution and Appeal Process (§ 431.998)

As described in § 431.998(a), a State may file, in writing, a request with the Federal contractor to resolve differences in the Federal contractor's findings based on medical or data processing reviews on FFS and managed care claims in Medicaid and CHIP within 20 business days after the disposition report of claims review findings is posted on the contractor's Web site. The written request must include a factual basis for filing the difference and it must provide the Federal contractor with valid evidence directly related to the error finding to support the State's position that the claim was properly paid.

Section 431.998(b) states that for a claim in which the State and the Federal contractor cannot resolve the difference in findings, the State may appeal to CMS for final resolution within 10 business days from the date the contractor's finding as a result of the difference resolution is posted on its Web site.

Section 431.998(c) states that for eligibility error determinations made by the agency with personnel functionally and physically separate from the State Medicaid and CHIP agencies and personnel that are responsible for Medicaid and CHIP policy and operations, the State may appeal error determinations by filing an appeal request with the appropriate State agency. If no appeals process is in place at the State level, differences in findings must be documented in writing and submitted directly to the agency responsible for the PERM eligibility review for their consideration, or differences in findings may be resolved through document exchange facilitated by CMS between the State agency appealing the error and the agency responsible for the PERM eligibility review. Any unresolved differences may be addressed by CMS between the final month of payment data submission and error rate calculation. Any changes in error findings must be reported to CMS by the deadline for submitting final eligibility review findings. Any appeals of determinations based on interpretations of Federal policy may be referred to CMS.

The burden associated with the information collection requirements contained in § 431.998(a) through (c) is the time and effort necessary to draft and submit requests for difference resolution proceedings and determination appeals. We believe the burden associated with these requirements is exempt from the PRA under 5 CFR 1320.4. Information collected subsequent to an administrative action is not subject to the PRA.

G. OMB Control Number(s) for Reporting and Recordkeeping Burden

The burden is approved under the OMB control numbers stated in Table 2.

TABLE 2—ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Regulation section(s)	OMB control No.	Respondents	Responses	Burden per response (hours)	Total annual burden (hours)
§ 431.812	0938–0147	10	120	8	[1]960
§ 431.814	0938–0146	10	20	24	480
§ 431.978	0938–1012	34	1,360	393.875	535,670
§ 431.980	0938–1012	34	1,360	393.875	[1]535,670
§ 431.992	0938–0974	34	34	840	28,560
	0938–0994	36	[2]18,000	1	23,400
	0938–1012	34	1,360	393.875	[3]535,670
Total					589,070

[1] We are submitting a revision of the currently approved ICR for the information collection requirements in this section of the regulation.
[2] The currently approved number of responses is 23,400; however, the value is incorrect due to an arithmetic error. We have already submitted an 83–C Change Worksheet to OMB to correct the error.
[3] For the purpose of totaling the burden associated with the ICRs in this regulation, the annual burden associated with OMB control number 0938–1012 is counted only once.

V. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993, as further amended), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 (as amended by Executive Order 13258) directs

agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). For the reasons discussed below, we have determined that this final rule is not a major rule.

1. Federal Contracting Cost Estimate

We have estimated that it will cost $14.7 million annually for engaging Federal contractors to review FFS and managed care claims and calculate error rates in 34 State programs (17 States for Medicaid and 17 States for CHIP). We estimated these costs as follows:

In the August 31, 2007 final rule, we estimated the Federal cost for use of Federal contractors conducting the FFS and managed care measurements to be $19.8 million annually. Due to more recent data acquired through our experience with Federal contractors in the FY 2007, FY 2008, and FY 2009 PERM cycles, we were able to produce a more accurate estimate by taking the average of Federal contracting costs for the three cycles and including anticipated future PERM cycle costs. The error rate measurements for 34 State programs (17 States for Medicaid and 17 States for CHIP) would cost approximately $14,682,777 in Federal funds for the Federal contracting cost.

2. State Cost Estimate for Fee-for-Service and Managed Care Reviews

We estimated that total State cost for FFS and managed care reviews for 34 State programs is $6.2 million ($4,309,490 in Federal cost and $1,846,924 in State cost). This cost estimate is based on the cost for States to prepare and submit claims universe information for both FFS and managed care payments, prepare and submit claims details and provider information for sampled records, submit State program policies and updates on a quarterly basis, cooperate with Federal contractors during data processing review, participate in the difference resolution and appeals process, and prepare and submit a corrective action plan for claims errors. These costs are estimated as follows:

We estimated that the annualized number of hours required to respond to requests for required claims information for FFS and managed care review for 34 State programs will be 112,200 hours (3,300 hours per State per program). At the 2009 general schedule GS–12–01 rate of pay that includes fringe and overhead costs ($54.87/hour), we calculated a cost of $6,156,414 ($4,309,490 in Federal cost and $1,846,924 in State cost). This cost estimate includes the following estimated annualized hours: (1) Up to 1,800 hours required for States to develop and submit required claims and capitation payments information; (2) up to 500 hours for the collection and submission of policies; and (3) up to 1,000 hours for States to cooperate with CMS and the Federal contractors on other aspects of the claims review and corrective action process.

Therefore, the total annual estimate of the State cost for 34 State programs to submit information for FFS and managed care reviews and participate with CMS and Federal contractors is $6,156,414 ($4,309,490 in Federal cost and $1,846,924 in State cost).

3. Cost Estimate for Eligibility Reviews

Beginning in FY 2007, States review eligibility in the same year they are selected for FFS and managed care reviews in Medicaid and CHIP. We estimated that total cost for eligibility review for 34 State programs is $24,588,344 ($17,211,841 in Federal cost and $7,376,503 in State cost). This cost estimate is based on the cost for States to submit information to CMS and the cost for States to conduct eligibility reviews and report data to CMS. These costs are estimated as follows:

We estimated in the information collection section, that the annualized number of hours required to respond to requests for information for the eligibility review (for example, sampling plan, monthly sample lists, the eligibility corrective action report) for 34 State programs will be 108,800 hours (3,200 hours per State per program). At the 2009 general schedule GS–12–01 rate of pay that includes fringe and overhead costs ($54.87/hour), we calculated a cost of $5,969,856 ($4,178,899 in Federal cost and $1,790,957 in State cost). This cost estimate includes the following estimated annualized hours: (1) Up to 1,000 hours required for States to develop and submit a sampling plan; (2) up to 1,200 hours for States to submit 12 monthly sample lists detailing the cases selected for review; and (3) up to 1,000 hours for States to submit a corrective action plan for purposes of reducing the eligibility payment error rate. For the eligibility review and reporting of the findings, we estimated that each State would need to review an annual sample size of 504 active cases to achieve a 3 percent margin of error at a 95 percent confidence interval level in the State-specific error rates. We also estimated that States would need to review 204 negative cases to produce a case error rate that met similar standards for statistical significance. We estimated that for 34 State programs the annualized number of hours required to complete the eligibility case reviews and report the eligibility-based error data to CMS would be 339,320 hours (9,980 hours per State, per program). At the 2009 general schedule GS–12–01 rate of pay that includes fringe and overhead costs ($54.87/hour), we calculated a cost of $18,618,488 ($13,032,942 in Federal cost and $5,585,547 in State cost).

Therefore, the total annual estimate of the cost for 34 State programs to submit information and to conduct the eligibility reviews and report the error data to CMS is $24,588,344 ($17,211,841 in Federal cost and $7,376,503 in State cost). However, these cost and burden estimates must be revised based on the maximum eligibility sample sizes of 1,000 active and negative cases, respectively, set forth in § 431.978(c).

The CHIPRA requires CMS to provide States in their PERM year the option to use PERM data to meet the MEQC requirements described in section 1903(u) of the Act, and the option to use MEQC data described in § 431.812 to meet the PERM eligibility review requirement. While the intent is to reduce redundancies and cost burden between the two programs and their review requirements, States that substitute findings may incur more costs to implement changes to their PERM or MEQC sampling and review procedures.

4. Cost Estimate for Total PERM Costs

Based on our estimates of the costs for the FFS, managed care and eligibility reviews for both the Medicaid and CHIP programs at approximately $45.4 million ($36,204,108 in Federal cost and $9,223,428 in State cost), this rule does not exceed the $100 million or more in any 1 year criterion for a major rule, and a regulatory impact analysis is not required.

The RFA requires agencies to analyze options for regulatory relief of small businesses, if a rule has a significant impact on a substantial number of small entities. The great majority of hospitals and most other health care providers and suppliers are small entities, either by being nonprofit organizations or by meeting the SBA definition of a small business (having revenues of less than $7.0 million to $34.5 million in any 1 year). Individuals and States are not

included in the definition of a small entity.

Providers could be required to supply medical records or other similar documentation that verified the provision of Medicaid or CHIP services to beneficiaries as part of the PERM reviews, but we anticipate this action would not have a significant cost impact on providers. Providers would only need to provide medical records for the FFS component of this program. A request for medical documentation to substantiate a claim for payment would not be a burden to providers nor would it be outside the customary and usual business practices of Medicaid or CHIP providers. Not all States would be reviewed every year and medical records would only be requested for FFS claims, so it is unlikely for a provider to be selected more than once per program per measurement cycle to provide supporting documentation, particularly in States with a large Medicaid or CHIP managed care population. If a provider is, in fact, selected more than once per program to provide supporting documentation it would not be outside customary and usual business practices.

In addition, the information should be readily available and the response should take minimal time and cost since the response would merely require gathering the documents and either copying and mailing them or sending them by facsimile. The request for medical documentation from providers is within the customary and usual business practice of a provider who accepts payment from an insurance provider, whether it is a private organization, Medicare, Medicaid, or CHIP and should not have a significant impact on the provider's operations. Therefore, the Secretary has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds.

These entities may incur costs due to collecting and submitting medical records to the contractor to support medical reviews; but, like any other Medicaid or CHIP provider, we estimate these costs would not be outside the limit of usual and customary business practices. Also, since the sample is randomly selected and only FFS claims are subject to medical review, we do not anticipate that a great number of small rural hospitals would be asked for an unreasonable number of medical records. As stated before, a State will be reviewed only once, per program, every 3 years and it is unlikely for a provider to be selected more than once per program to provide supporting documentation. Therefore, the Secretary has determined that this final rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2009, that threshold is approximately $133 million. This final rule does not impose costs on States to produce the error rates for FFS and managed care payments, but requires States and providers to submit claims information and medical records and cooperate with Federal contractors during the review so that error rates can be calculated.

Based on our estimates of State participation burden for both Medicaid and CHIP, for 34 States (17 States per Medicaid and 17 States for CHIP), we calculated that the annual burden for these States for the PERM program is approximately $9,223,428 in State costs for both Medicaid and CHIP. The combined costs of both programs total approximately $542,555 for each of the 17 States. Thus, we do not anticipate State costs to exceed $133 million.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule requires States to prepare and submit claims universe information for both FFS and managed care payments, prepare and submit claims details and provider information for sampled records, submit State program policies and updates on a quarterly basis, cooperate with Federal contractors during data processing reviews, participate in the difference resolution and appeals process, and prepare and submit a corrective action plan for claims errors. We estimated that the burden to respond to requests for claims information for the FFS and managed care measurement for Medicaid and CHIP for 34 State programs (17 States for Medicaid and 17 States for CHIP) will be $6,156,414 ($4,309,490 in Federal cost and $1,846,924 in State cost).

This final rule also requires States selected for review to submit an eligibility sampling plan, monthly sample selection information, summary review findings, State error rate data, and other information in order for CMS to calculate the eligibility State-specific and national error rates. We estimated that the burden to conduct the eligibility measurement for Medicaid and CHIP for 34 State programs (17 States for Medicaid and 17 States for CHIP) will be approximately $24,588,344 ($17,211,841 in Federal cost and $7,376,503 in State cost). As a result, we assert that this regulation will not have a substantial impact on State or local governments.

B. Anticipated Effects

This final rule is intended to measure improper payments in Medicaid and CHIP. States would implement corrective actions to reduce the error rate, thereby producing savings over time. These savings cannot be estimated until after the corrective actions have been monitored and determined to be effective, which can take several years.

C. Alternatives Considered

This final rule reflects changes required by the CHIPRA. Therefore, we considered only applying additional changes to the CHIP component of PERM (except in instances where the CHIPRA specifically requires the provision to apply to Medicaid and CHIP). However, in order to maintain a consistent measurement process for the Medicaid and CHIP programs, we did not choose this alternative. No other alternatives were considered since the modifications were required by Federal statute.

D. Conclusion

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

List of Subjects

42 CFR Part 431

Grant programs-health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and

recordkeeping requirements, Rural areas.

42 CFR Part 457

Administrative practice and procedure, Grant programs-health, Health insurance, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

■ 1. The authority for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

Subpart P—Quality Control

■ 2. In § 431.636, amend the heading by removing the reference to "State Children's Health Insurance Program" an by inserting "Children's Health Insurance Program" in its place.

■ 3. Section 431.806 is amended by—

■ A. Redesignating paragraph (b) as paragraph (c).

■ B. Adding new paragraph (b).

The addition reads as follows:

§ 431.806 State plan requirements.

* * * * *

(b) *Use of PERM data.* A State plan must provide for operating a Medicaid eligibility quality control program that is in accordance with § 431.978 through § 431.988 of this part to meet the requirements of § 431.810 through § 431.822 of this subpart when a State is in their PERM year.

* * * * *

■ 4. Section 431.812 is amended by—

■ A. In paragraph (a)(2)(i), removing the ";" and adding a "." in its place and in paragraph(a)(2)(ii), removing the "; and" and adding a "." in its place.

■ B. Adding new paragraphs (a)(2)(iv) and (f).

The additions read as follows:

§ 431.812 Review procedures.

(a) * * *

(2) * * *

(iv) Individuals whose eligibility was determined under a State's option under section 1902(e)(13) of the Act.

* * * * *

(f) *Substitution of PERM data.*

(1) A State in its Payment Error Rate Measurement (PERM) year may elect to substitute the random sample of selected cases, eligibility review findings, and payment review findings obtained through PERM reviews conducted in accordance with § 431.978 through § 431.988 of this part for data required in this section, if the only exclusions are those set forth in § 431.978(d)(1) of this part.

(2) PERM cases cited as undetermined may be dropped when calculating MEQC error rates if reasons for drops are acceptable reasons listed in the State Medicaid Manual.

■ 5. Section 431.814 is amended by revising paragraph (c)(4) to read as follows:

§ 431.814 Sampling plan and procedures.

* * * * *

(c) * * *

(4) States must exclude from the MEQC universe all of the following:

(i) SSI beneficiaries whose eligibility determinations were made exclusively by the Social Security Administration under an agreement under section 1634 of the Act.

(ii) Individuals in foster care or receiving adoption assistance whose eligibility is determined under Title IV–E of the Act.

(iii) Individuals receiving Medicaid under programs that are 100 percent Federally-funded.

(iv) Individuals whose eligibility was determined under a State's option for Express Lane Eligibility under section 1902(e)(13) of the Act.

* * * * *

Subpart Q—Requirements for Estimating Improper Payments in Medicaid and CHIP

§ 431.950 [Amended]

■ 6. Amend § 431.950 by revising the reference to "State Children's Health Insurance Program" to read "Children's Health Insurance Program."

■ 7. Section § 431.954 is amended by revising paragraph (a) to read as follows:

§ 431.954 Basis and scope.

(a) *Basis.* The statutory bases for this subpart are as follows:

(1) Sections 1102, 1902(a)(6), and 2107(b)(1) of the Act, which contain the Secretary's general rulemaking authority and obligate States to provide information, as the Secretary may require, to monitor program performance.

(2) The Improper Payments Information Act of 2002 (Pub. L. 107–300), which requires Federal agencies to review and identify annually those programs and activities that may be susceptible to significant erroneous payments, estimate the amount of improper payments, report such estimates to the Congress, and submit a report on actions the agency is taking to reduce erroneous payments.

(3) Section 1902(a)(27)(B) of the Act requires States to require providers to agree to furnish the State Medicaid agencies and the Secretary with information regarding payments claimed by Medicaid providers for furnishing Medicaid services.

(4) Section 601 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) (Pub. L. 111–3) which requires that the new PERM regulations include the following: Clearly defined criteria for errors for both States and providers; Clearly defined processes for appealing error determinations; clearly defined responsibilities and deadlines for States in implementing any corrective action plans; requirements for State verification of an applicant's self-declaration or self-certification of eligibility for, and correct amount of, medical assistance under Medicaid or child health assistance under CHIP; and State-specific sample sizes for application of the PERM requirements.

* * * * *

■ 8. Section 431.958 is amended by—

■ A. Revising the definitions of the terms "Active fraud investigation," "Agency," and "Case."

■ B. Adding definitions of the terms "Annual sample size," "Children's Health Insurance Program (CHIP)", "Provider error," and "State error" in alphabetical order.

■ C. Removing the definition of "State Children's Health Insurance Program (SCHIP)".

The additions and revisions read as follows:

§ 431.958 Definitions and use of terms.

* * * * *

Active fraud investigation means a beneficiary or a provider has been referred to the State Medicaid Fraud Control Unit or similar Federal or State investigative entity including a Federal oversight agency and the unit is currently actively pursuing an investigation to determine whether the beneficiary or the provider committed health care fraud. This definition applies to both the claims and eligibility review for PERM.

Agency means, for purposes of the PERM eligibility reviews under this part, the entity that performs the Medicaid and CHIP eligibility reviews under PERM and excludes the State Medicaid or CHIP agency as defined in the regulation.

* * * * *

Annual sample size means the number of fee-for-service claims, managed care payments, or eligibility

cases necessary to meet precision requirements in a given PERM cycle.

* * * * *

Case means an individual beneficiary or family enrolled in Medicaid or CHIP or who has been denied enrollment or has been terminated from Medicaid or CHIP. The case as a sampling unit only applies to the eligibility component.

* * * * *

Children's Health Insurance Program (CHIP) means the program authorized and funded under Title XXI of the Act.

* * * * *

Provider error includes, but is not limited to, medical review errors as described in § 431.960(c) of this subpart, as determined in accordance with documented State or Federal policies or both.

* * * * *

State error includes, but is not limited to, data processing errors and eligibility errors as described in § 431.960(b) and (d) of this subpart, as determined in accordance with documented State or Federal policies or both.

* * * * *

■ 9. Section 431.960 is added to read as follows:

§ 431.960 Types of payment errors.

(a) *General rule.* State or provider errors identified for the Medicaid and CHIP improper payments measurement under the Improper Payments Information Act of 2002 must affect payment under applicable Federal policy or State policy or both.

(b) *Data processing errors.*

(1) A data processing error is an error resulting in an overpayment or underpayment that is determined from a review of the claim and other information available in the State's Medicaid Management Information System, related systems, or outside sources of provider verification.

(2) The difference in payment between what the State paid (as adjusted within improper payment measurement guidelines) and what the State should have paid, in accordance with the State's documented policies, is the dollar measure of the payment error.

(3) Data processing errors include, but are not limited to the following:

(i) Payment for duplicate items.

(ii) Payment for non-covered services.

(iii) Payment for fee-for-service claims for managed care services.

(iv) Payment for services that should have been paid by a third party but were inappropriately paid by Medicaid or CHIP.

(v) Pricing errors.

(vi) Logic edit errors.

(vii) Data entry errors.

(viii) Managed care rate cell errors.

(ix) Managed care payment errors.

(c) *Medical review errors.* (1) A medical review error is an error resulting in an overpayment or underpayment that is determined from a review of the provider's medical record or other documentation supporting the service(s) claimed, Code of Federal Regulations that are applicable to conditions of payment, the State's written policies, and a comparison between the documentation and written policies and the information presented on the claim.

(2) The difference in payment between what the State paid (as adjusted within improper payment measurement guidelines) and what the State should have paid, in accordance with 42 CFR 440 to 484.55 of the Code of Federal Regulations that are applicable to conditions of payment and the State's documented policies, is the dollar measure of the payment error.

(3) Medical review errors include, but are not limited to the following:

(i) Lack of documentation.

(ii) Insufficient documentation.

(iii) Procedure coding errors.

(iv) Diagnosis coding errors.

(v) Unbundling.

(vi) Number of unit errors.

(vii) Medically unnecessary services.

(viii) Policy violations.

(ix) Administrative errors.

(d) *Eligibility errors.*

(1) An eligibility error includes, but is not limited to, errors determined by applying Federal rules and the State's documented policies and procedures, resulting from services being provided to an individual who meets at least one of the following provisions:

(i) Was ineligible when authorized as eligible or when he or she received services.

(ii) Was eligible for the program but was ineligible for certain services he or she received.

(iii) Lacked or had insufficient documentation in his or her case record, in accordance with the State's documented policies and procedures, to make a definitive review decision of eligibility or ineligibility.

(iv) Overpaid the assigned liability due to the individual's liability being understated.

(v) Underpaid toward assigned liability due to the individual's liability being overstated.

(vi) Was ineligible for managed care but enrolled in managed care.

(vii) Was eligible for managed care but improperly enrolled in the incorrect managed care plan.

(2) The dollars paid in error due to the eligibility error is the measure of the payment error.

(3) A State eligibility error does not result from the State's verification of an applicant's self-declaration or self-certification of eligibility for, and the correct amount of, medical assistance or child health assistance, if the State process for verifying an applicant's self-declaration or self-certification satisfies the requirements in Federal law, guidance, or if applicable, Secretary approval.

(4) Negative case errors are errors, based on the State's documented policies and procedures, resulting from either of the following:

(i) Applications for Medicaid or CHIP that are improperly denied by the State.

(ii) Existing cases that are improperly terminated from Medicaid or CHIP by the State.

(5) No payment errors are associated with negative cases.

(e) *Errors for purposes of determining the national error rates.* The Medicaid and CHIP national error rates include but are not limited to the errors described in paragraphs (b) through (d) of this section, with the exception of negative case errors described in paragraph (d)(4) of this section.

(f) *Errors for purposes of determining the State error rates.* The Medicaid and CHIP State error rates include but are not limited to, the errors described in paragraphs (b) through (d)(1)(vii) of this section, with the exception of negative case errors as described in paragraph (d)(4) of this section.

(g) *Error codes.* CMS may define different types of errors within the above categories for analysis and reporting purposes. Only dollars in error will factor into a State's PERM error rate.

10. Section 431.970 is amended by revising paragraphs (a)(1) and (b) to read as follows:

§ 431.970 Information submission requirements.

(a) * * *

(1) Adjudicated fee-for-service (FFS) or managed care claims information or both, on a quarterly basis, from the review year;

* * * * *

(b) Providers must submit information to the Secretary for, among other purposes estimating improper payments in Medicaid and CHIP, which include but are not limited to, Medicaid and CHIP beneficiary medical records within 75 calendar days of the date the request is made by CMS. If CMS determines that the documentation is insufficient, providers must respond to the request for additional documentation within 14 calendar days of the date the request is made by CMS.

■ 11. Section 431.972 is added to read as follows:

§ 431.972 Claims sampling procedures.

(a) *Claims universe.*

(1) The PERM claims universe includes payments that were originally paid (paid claims) and for which payment was requested but denied (denied claims) during the FFY, and for which there is FFP (or would have been if the claim had not been denied) through Title XIX (Medicaid) or Title XXI (CHIP).

(2) The State must establish controls to ensure FFS and managed care universes are accurate and complete, including comparing the FFS and managed care universes to the Form CMS–64 and Form CMS–21 as appropriate.

(b) *Sample size.* CMS estimates a State's annual sample size for claims review at the beginning of the PERM cycle.

(1) *Precision and confidence levels.* The annual sample size should be estimated to achieve a State-level error rate within a 3 percent precision level at 95 percent confidence interval for the claims component of the PERM program, unless the precision requirement is waived by CMS on its own initiative.

(2) *Base year sample size.* The annual sample size in a State's first PERM cycle (the "base year") is—

(i) Five hundred fee-for-service claims and 250 managed care payments drawn from the claims universe; or

(ii) If the claims universe of fee-for-service claims or managed care capitation payments from which the annual sample is drawn is less than 10,000, the State may request to reduce its sample size by the finite population correction factor for the relevant PERM cycle.

(3) *Subsequent year sample size.* In PERM cycles following the base year:

(i) CMS considers the error rate from the State's previous PERM cycle to determine the State's annual sample size for the current PERM cycle.

(ii) The maximum sample size is 1,000 fee-for-service or managed care payments, respectively.

(iii) If a State measured in the FY 2007 or FY 2008 cycle elects to reject its State-specific CHIP PERM rate determined during those cycles, information from those cycles will not be used to calculate its annual sample size in subsequent PERM cycles and the State's annual sample size in its base year is 500 fee-for-service and 250 managed care payments.

■ 12. Section 431.978 is amended by—

■ A. Revising paragraphs (a), (b) and (c).

■ B. Revising paragraphs (d)(1)(i), (d)(1)(ii), (d)(3), and (d)(4).

The revisions read as follows:

§ 431.978 Eligibility sampling plan and procedures.

(a) *Plan approval.* For each review year, the agency must—

(1) Submit its Medicaid or CHIP sampling plan (or revisions to a current plan) for both active and negative cases to CMS for approval by the August 1 before the review year; and

(2) Have its sampling plan approved by CMS before the plan is implemented.

(b) *Maintain current plan.* The agency must do both of the following:

(1) Keep its plan current, for example, by making adjustments to the plan when necessary due to fluctuations in the universe.

(2) Review its plan each review year. If it is determined that the approved plan is—

(i) Unchanged from the previous review year, the agency must notify CMS that it is using the plan from the previous review year; or

(ii) Changed from the previous review year, the agency must submit a revised plan for CMS approval.

(c) *Sample size.*

(1) *Precision and confidence levels.* Annual sample size for eligibility reviews should be estimated to achieve within a 3 percent precision level at 95 percent confidence interval for the eligibility component of the program.

(2) *Base year sample size.* Annual sample size for each State's base year of PERM is—

(i) Five hundred four active cases and 204 negative cases drawn from the active and negative universes; or

(ii) If the active case universe or negative case universe of Medicaid or CHIP beneficiaries from which the annual sample is drawn is less than 10,000, the State may request to reduce its sample size by the finite population correction factor for the relevant PERM cycle.

(3) *Subsequent year sample size.* In PERM cycles following the base year the annual sample size may increase or decrease based on the State's prior results of the previous cycle PERM error rate information. The State may provide information to CMS in the eligibility sampling plan due to CMS by the August 1 prior to the start of the review year to support the calculation of a reduced annual sample size for the next PERM cycle.

(i) CMS considers the error rate from the State's previous PERM cycle to determine the State's annual sample size for the current PERM cycle.

(ii) The maximum sample size is 1,000 for the active cases and negative cases, respectively.

(iii) If the active case universe or negative case universe of Medicaid or CHIP beneficiaries from which the annual sample is drawn is less than 10,000, the State may request to reduce its sample size by the finite population correction factor for the relevant PERM cycle.

(iv) If a State measured in the FY 2007 or FY 2008 cycle elects to reject its PERM CHIP rate as determined during those cycles, information from those cycles is not used to calculate the State's sample size in subsequent PERM cycles and the State's sample size in its base year is 504 active cases and 204 negative cases.

(d) * * *

(1) * * *

(i) *Medicaid.* (A) The Medicaid active universe consists of all active Medicaid cases funded through Title XIX for the sample month.

(B) The following types of cases are excluded from the Medicaid active universe:

(*1*) Cases for which the Social Security Administration, under section 1634 of the Act agreement with a State, determines Medicaid eligibility for Supplemental Security Income recipients.

(*2*) All foster care and adoption assistance cases under Title IV–E of the Act are excluded from the universe in all States.

(*3*) Cases under active fraud investigation.

(*4*) Cases in which eligibility was determined under section 1902(e)(13) of the Act for States' Express Lane Eligibility option.

(C) If the State cannot identify cases that meet the exclusion criteria specified in paragraph (d)(1)(i)(B) of this section before sample selection, the State must drop these cases from review if they are selected in the sample and are later determined to meet the exclusion criteria specified in paragraph (d)(1)(i)(B) of this section.

(ii) *CHIP.* (A) The CHIP active universe consists of all active case CHIP and Title XXI Medicaid expansion cases that are funded through Title XXI for the sample month.

(B) The following types of cases are excluded from the CHIP active universe:

(*1*) Cases under active fraud investigation.

(*2*) Cases in which eligibility was determined under section 2107(e)(1) of the Act for States' Express Lane Eligibility option.

(C) If the State cannot identify cases that meet the exclusion criteria

specified in paragraph (d)(1)(ii)(B) of this section before sample selection, the State must drop these cases from review if it is later determined that the cases meet the exclusion criteria specified in paragraph (d)(1)(ii)(B) of this section.

* * * * *

(3) *Stratifying the universe.* States have the option to stratify the active case universe.

(i) Each month, the State may stratify the Medicaid and CHIP active case universe into three strata:

(A) Program applications completed by the beneficiaries in which the State took action in the sample month to approve such beneficiaries for Medicaid or CHIP based on the eligibility determination.

(B) Redeterminations of eligibility in which the State took action in the sample month to approve the beneficiaries for Medicaid or CHIP based on information obtained through a completed redetermination.

(C) All other cases.

(ii) States that do not stratify the universe will sample from the entire active case universe each month.

(4) *Sample selection.* Each month, an equal number of cases are selected for review from one of the following:

(i) Each stratum as described in paragraph (d)(3)(i) of this section.

(ii) The entire active case universe if opting not to stratify cases under paragraph (d)(2)(ii) of this section.

(iii) Otherwise provided for in the State's sampling plan approved by CMS.

■ 13. Section 431.980 is amended by—

■ A. Revising paragraph (d).

■ B. Adding paragraph (f).

The revision and addition read as follows:

§ 431.980 Eligibility review procedures.

* * * * *

(d) *Eligibility review decision.*

(1) *Active cases—Medicaid.* Unless the State has selected to substitute MEQC data for PERM data under paragraph (f) of this section, the agency must complete all of the following:

(i) Review the cases specified at § 431.978(d)(3)(i)(A) and § 431.978(d)(3)(i)(B) of this subpart in accordance with the State's categorical and financial eligibility criteria and documented policies and procedures as of the review month and identify payments made on behalf of such beneficiary or family for services received in the first 30 days of eligibility.

(ii) For cases specified in § 431.978(d)(3)(i)(C) of this subpart, review the last action as follows:

(A) If the last action was not more than 12 months prior to the sample month, review in accordance with the State's categorical and financial eligibility criteria and documented policies and procedures as of the last action and identify payments made on behalf of such beneficiary or family in the first 30 days of eligibility.

(B) If the last action occurred more than 12 months prior to the sample month, review in accordance with the State's categorical and financial eligibility criteria and documented policies and procedures as of the sample month and identify payments made on behalf of the beneficiary or family for services received in the sample month.

(iii) For cases in States that do not stratify the universe, as specified in § 431.978(d)(3)(ii) of this subpart, review the last action as follows:

(A) If the last action was no more than 12 months prior to the sample month, review in accordance with the State's categorical and financial eligibility criteria and documented policies and procedures as of the last action and identify payments made on behalf of such beneficiary or family for services received in the sample month.

(B) If the last action occurred more than 12 months prior to the sample month, review in accordance with the State's categorical and financial eligibility criteria, and documented policies and procedures, as of the sample month and identify payments made on behalf of the beneficiary or family for services received in the sample month.

(C) Cases that are not stratified must have the last action identified as either falling under the criteria of § 431.978(d)(3)(i)(A) or § 431.978(d)(3)(i)(B) of this subpart after the sample is selected.

(iv) Examine the evidence in the case file that supports categorical and financial eligibility for the category of coverage in which the case is assigned, and independently verify information that is missing, outdated (older than 12 months) and likely to change, or otherwise as needed, to verify eligibility.

(v) For managed care cases, also verify residency and eligibility for and actual enrollment in the managed care plan during the month under review.

(vi) Elements of eligibility in which State policy allows for self-declaration or self-certification are considered to be verified with a self-declaration or self-certification statement. The self-declaration or self-certification must be—

(A) Present in the record;

(B) Not outdated (more than 12 months old);

(C) Originating from the last case action that was not more than 12 months prior to the sample month;

(D) In a valid, State-approved format; and

(E) Consistent with other facts in the case record.

(vii) If a self-declaration or self-certification statement does not meet the provisions of paragraphs (e)(1)(vi)(A) through (D) of this section, eligibility may be verified through a new self-declaration or self-certification statement or other third party sources.

(A) If eligibility or ineligibility cannot be verified, cite a case as undetermined.

(ix) As a result of paragraphs (e)(1)(i) through (e)(1)(vii) of this section—

(A) Cite the case as eligible or ineligible based on the review findings and identify with the particular beneficiary the payments made on behalf of the particular beneficiary for services received in the first 30 days of eligibility, the review month, or sample month, as appropriate; or

(B) Cite the case as undetermined if after due diligence an eligibility determination could not be made and identify with the particular beneficiary the payments made on behalf of the particular beneficiary for services received in the first 30 days of eligibility, the review month or sample month, as appropriate.

(2) *Active cases—CHIP.* In addition to the procedures for active cases as set forth in paragraphs (e)(1)(i) through (e)(1)(vii) of this section, the agency must verify that the case is not eligible for Medicaid by determining that the child has income above the Medicaid levels in accordance with the requirements in § 457.350 of this chapter. Upon verification, the agency must—

* * * * *

(f) *Substitution of MEQC data.* (1) A State in their PERM year may elect to substitute the random sample of selected cases, eligibility review findings, and payment review findings, as qualified by paragraphs (d)(2) and (d)(3) of this section, which are obtained through MEQC reviews conducted in accordance with section 1903(u) of the Act for data required in this section, as long as the State MEQC reviews meet the requirements of the MEQC Sampling Plan and Procedures at § 431.814 of this part, and if the only exclusions are those set forth in section 1902(e)(13) of the Act, § 431.814(c)(4), and § 431.978(d)(1) of this part.

(2) MEQC samples must also meet PERM confidence and precision requirements.

(3) MEQC cases that are dropped due to the acceptable reasons listed in the

State Medicaid Manual are included in the PERM error rate calculation.

■ 14. Section 431.988 is amended by—
■ A. Revising paragraphs (a), (b)(1), and (b)(2).
■ B. Redesignating paragraphs (b)(3) and (b)(4) as paragraphs (b)(4) and (b)(5), respectively.
■ C. Adding new paragraph (b)(3).

The revisions and addition read as follows:

§ 431.988 Eligibility case review completion deadlines and submittal of reports.

(a)(1) States must complete and report to CMS the findings, including total number of cases in the eligibility universe, the error causes for all case reviews listed on the monthly sample selection lists, including cases dropped from review due to active fraud investigations, and cases for which eligibility could not be determined.

(2) States must submit a summary report of the active case eligibility and payment review findings to CMS by July 1 following the review year.

(b) * * *

(1) Case and payment error data for active cases.

(2) Case error data for negative cases.

(3) Identify the last action on a case, either application or redetermination for States that do not stratify the eligibility sample in accordance with § 431.978(d)(3)(i) of this subpart.

* * * * *

■ 15. Section 431.992 is revised to read as follows:

§ 431.992 Corrective action plan.

(a) The State agency must develop a separate corrective action plan for Medicaid and CHIP, which is not required to be approved by CMS, designed to reduce improper payments in each program based on its analysis of the error causes in the FFS, managed care, and eligibility components.

(b) In developing a corrective action plan, the State must take the following actions:

(1) *Data analysis.* States must conduct data analysis such as reviewing clusters of errors, general error causes, characteristics, and frequency of errors that are associated with improper payments.

(2) *Program analysis.* States must review the findings of the data analysis to determine the specific programmatic causes to which errors are attributed (for example, provider lack of understanding of the requirement to provide documentation) and to identify root error causes.

(3) *Corrective action planning.* States must determine the corrective actions to be implemented that address the root error causes.

(4) *Implementation and monitoring.*

(i) States must develop an implementation schedule for each corrective action initiative and implement those actions in accordance with the schedule.

(ii) The implementation schedule must identify all of the following:

(A) Major tasks.

(B) Key personnel responsible for each activity.

(C) A timeline for each action including target implementation dates, milestones, and monitoring.

(5) *Evaluation.* States must evaluate the effectiveness of the corrective action by assessing all of the following:

(i) Improvements in operations.

(ii) Efficiencies.

(iii) Number of errors.

(iv) Improper payments.

(c) The State agency must submit to CMS and implement the corrective action plan for the fiscal year it was reviewed no later than 90 calendar days after the date on which the State's Medicaid or CHIP error rates are posted on the CMS contractor's Web site.

(d) The State must submit to CMS a new corrective action plan for each subsequent error rate measurement that contains an update on the status of a previous corrective action plan. Items to address in the new corrective action plan include, but are not limited to the following:

(1) Effectiveness of implemented corrective actions, as assessed using objective data sources.

(2) Discontinued or ineffective actions, actions not implemented, and those actions, if any, that were substituted for such discontinued, ineffective, or abandoned actions.

(3) Findings on short-term corrective actions.

(4) The status of the long-term corrective actions.

■ 16. Section 431.998 is amended by—
■ A. Revising the section heading.
■ B. Revising paragraphs (a) and (b).
■ C. Redesignating paragraph (c) as (d).
■ D. Adding new paragraph (c).

The revisions and addition read as follows:

§ 431.998 Difference resolution and appeal process.

(a) The State may file, in writing, a request with the Federal contractor to resolve differences in the Federal contractor's findings based on medical or data processing reviews on FFS and managed care claims in Medicaid or CHIP within 20 business days after the disposition report of claims review findings is posted on the contractor's Web site. The State must complete all of the following:

(1) Have a factual basis for filing the difference.

(2) Provide the Federal contractor with valid evidence directly related to the error finding to support the State's position that the claim was properly paid.

(b) For a claim in which the State and the Federal contractor cannot resolve the difference in findings, the State may appeal to CMS for final resolution, filing the appeal within 10 business days from the date the contractor's finding as a result of the difference resolution is posted on the contractor's Web site. There is no minimum dollar threshold required to appeal a difference in findings.

(c) For eligibility error determinations made by the agency with personnel functionally and physically separate from the State Medicaid and CHIP agencies with personnel that are responsible for Medicaid and CHIP policy and operations, the State may appeal error determinations by filing an appeal request.

(1) *Filing an appeal request.* The State may—

(i) File its appeal request with the appropriate State agency or entity; or

(ii) If no appeals process is in place at the State level, differences in findings—

(A) Must be documented in writing and submitted directly to the agency responsible for the PERM eligibility review for its consideration;

(B) May be resolved through document exchange facilitated by CMS, whereby CMS will act as intermediary by receiving the written documentation supporting the State's appeal from the State agency and submitting that documentation to the agency responsible for the PERM eligibility review; or

(C) Any unresolved differences may be addressed by CMS between the final month of payment data submission and error rate calculation.

(2) *After the filing of an appeals request.* (i) Any changes in error findings must be reported to CMS by the deadline for submitting final eligibility review findings.

(ii) Any appeals of determinations based on interpretations of Federal policy may be referred to CMS.

(iii) CMS's eligibility error resolution decision is final.

(iv) If CMS's or the State-level appeal board's decision causes an erroneous payment finding to be made, if the final adjudicated claim is actually a payment error in accordance with documented State policies and procedures, any

resulting recoveries are governed by § 431.1002 of this subchapter.

* * * * *

■ 17. In 42 CFR part 431, revise all references to "SCHIP" to read "CHIP".

PART 447—PAYMENTS FOR SERVICES

■ 18. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 447.504 [Amended]

■ 19. In § 447.504, amend paragraph (g)(15) by removing the reference "State Children's Health Insurance Program (SCHIP)" and by adding the reference "Children's Health Insurance Program (CHIP)" in its place and amend paragraph (h)(23) by removing the reference "(SCHIP)" and by adding the reference "(CHIP)" in its place.

PART 457—ALLOTMENTS AND GRANTS TO STATES

■ 20. The authority citation for part 457 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

■ 21. Section 457.10 is amended by—

■ A. Adding the definition of "Children's Health Insurance Program (CHIP)" in alphabetical order.

■ B. Removing the definition of "State Children's Health Insurance Program (SCHIP)".

The addition reads as follows:

§ 457.10 Definitions and use of terms.

* * * * *

Children's Health Insurance Program (CHIP) means a program established and administered by a State, jointly funded with the Federal government, to provide child health assistance to uninsured, low-income children through a separate child health program, a Medicaid expansion program, or a combination program.

* * * * *

■ 22. In 42 CFR part 457, revise all references to "SCHIP" to read "CHIP".

§ 457.10 [Amended]

■ 23. In § 457.10, in the definition of "Applicant" remove the reference to "State Children's Health Insurance Program" and add the reference "Children's Health Insurance Program", in its place.

§ 457.301 [Amended]

■ 24. In § 457.301, paragraph (5) of the definition "Qualified entity" remove the reference to "State Children's Health Insurance Program" and add the reference "Children's Health Insurance Program", in its place.

§ 457.606 [Amended]

■ 25. In § 457.606 paragraph (b) remove the reference to "State's Children's Health Insurance Program" and add the reference "Children's Health Insurance Program" in its place.

§ 457.614 [Amended]

■ 26. In § 457.614 paragraph (b)(1) remove the reference to "State Children's Health Insurance Program" and add the reference "Children's Health Insurance Program", in its place.

§ 457.618 [Amended]

■ 27. In § 457.618 in the section heading remove the reference to "State Children's Health Insurance Program" and add the reference "Children's Health Insurance Program", in its place.

§ 457.622 [Amended]

■ 28. In § 457.622 paragraph (e)(5) remove the reference to "State Children's Health Insurance Program" and add the reference "Children's Health Insurance Program", in its place.

§ 457.630 [Amended]

■ 29. In § 457.630 paragraphs (b) and (c)(1) remove the reference to "State Children's Health Insurance Program" and add the reference "Children's Health Insurance Program", in its place each time it appears.

Authority: (Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program) (Section 601 of the Children's Health Insurance Program Reauthorization Act of 2009 (Pub. L. 111–3))

Dated: March 16, 2010.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: April 23, 2010.

Kathleen Sebelius,

Secretary.

[FR Doc. 2010–18582 Filed 8–10–10; 8:45 am]

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Wednesday,
August 11, 2010

Part IV

The President

Proclamation 8545—National Health Center Week, 2010

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Presidential Documents

Title 3—

The President

Proclamation 8545 of August 5, 2010

National Health Center Week, 2010

By the President of the United States of America

A Proclamation

America's community health centers are a vital component of our health care system, providing underserved communities access to coordinated primary and preventive care. During National Health Center Week, we recognize the important work of community health centers for their role in providing quality, accessible, and affordable patient care as we strive to build a health care system equipped for the 21st century.

Today, community health centers serve nearly 19 million patients across our Nation, and they are essential for underserved communities and vulnerable populations. They provide care to those who need it most, including millions of Americans with no medical insurance and whose illnesses might otherwise result in an unmet medical need or emergency room visit. As comprehensive wellness hubs, community health centers diagnose and treat illness and injury, and emphasize preventive care and wellness practices. Rooted in community-based and patient-centered care, they also respond to the unique needs of their local communities by conducting outreach and education, ensuring patients can communicate with their providers, and linking patients with social services.

My Administration has made significant investments in community health centers. Serving as an economic anchor in many low-income and economically struggling communities, community health centers are an integral source of local employment and economic growth. The American Recovery and Reinvestment Act has already provided unprecedented investments in the construction and renovation of community health centers so they can expand their staff and facilities, adopt health information technology systems, and meet their critical care needs.

The reforms in the landmark new health care law, the Affordable Care Act, also strengthen and build upon our existing system of health care centers. This law invests $11 billion in funding over the next 5 years, enabling community health centers to serve nearly double the number of patients currently receiving care, regardless of their insurance status or ability to pay. It also finances the construction of hundreds of new community health centers, bringing high quality health care, jobs, and economic benefits to countless individuals and communities.

Community health centers are at the heart of a modern, reformed health care system in America. We must continue to invest in these centers and ensure that comprehensive, culturally competent, and quality primary health care services are accessible in every community across our Nation.

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 the week of August 8 through August 14, 2010, as National Health Center Week. I encourage all Americans to celebrate this week by visiting their local community health center, meeting local health center providers, and exploring the programs they offer to keep their families healthy.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of August, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fifth.

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