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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, February 24, 2009
9:00 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Presidential Documents

Title 3—

The President

Executive Order 13503 of February 19, 2009

Establishment of the White House Office of Urban Affairs

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to take a coordinated and comprehensive approach to developing and implementing an effective strategy concerning urban America, it is hereby ordered as follows:

Section 1. *Policy.* About 80 percent of Americans live in urban areas, and the economic health and social vitality of our urban communities are critically important to the prosperity and quality of life for Americans. Vibrant cities spawn innovation, economic growth, and cultural enrichment through the businesses, universities, and civic, cultural, religious, and nonprofit institutions they attract. Forward-looking policies that encourage wise investment and development in our urban areas will create employment and housing opportunities and make our country more competitive, prosperous, and strong. In the past, insufficient attention has been paid to the problems faced by urban areas and to coordinating the many Federal programs that affect our cities. A more comprehensive approach is needed, both to develop an effective strategy for urban America and to coordinate the actions of the many executive departments and agencies whose actions impact urban life.

Sec. 2. *Establishment.* There is established within the Executive Office of the President the White House Office of Urban Affairs (the ''Office'').

Sec. 3. *Functions.* The principal functions of the Office are, to the extent permitted by law:

(a) to provide leadership for and coordinate the development of the policy agenda for urban America across executive departments and agencies;

(b) to coordinate all aspects of urban policy;

(c) to work with executive departments and agencies to ensure that appropriate consideration is given by such departments and agencies to the potential impact of their actions on urban areas;

(d) to work with executive departments and agencies, including the Office of Management and Budget, to ensure that Federal Government dollars targeted to urban areas are effectively spent on the highest-impact programs; and

(e) to engage in outreach and work closely with State and local officials, with nonprofit organizations, and with the private sector, both in seeking input regarding the development of a comprehensive urban policy and in ensuring that the implementation of Federal programs advances the objectives of that policy.

Sec. 4. *Coordination.* In performing its functions, the Office shall work closely with all relevant executive departments and agencies, and offices and councils within the Executive Office of the President, including but not limited to:

(a) the Department of the Treasury;

(b) the Department of Justice;

(c) the Department of Commerce;

(d) the Department of Labor;

(e) the Department of Health and Human Services;

(f) the Department of Housing and Urban Development;

(g) the Department of Transportation;

(h) the Department of Energy;

(i) the Department of Education; and

(j) the Environmental Protection Agency.

Sec. 5. *Administration.* (a) The Office may work with established or ad hoc committees, task forces, and interagency groups.

(b) The Office shall have a staff headed by the Deputy Assistant to the President and Director of Urban Affairs (Director). The Director shall report jointly to the Assistant to the President for Intergovernmental Affairs and Public Liaison and to the Assistant to the President for Domestic Policy. The Office shall have such staff and other assistance as may be necessary to carry out the provisions of this order.

(c) All executive departments and agencies shall cooperate with the Office and provide such information, support, and assistance to the Office as the Director may request, to the extent permitted by law.

Sec. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department, agency, or the head thereof; or

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

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

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

THE WHITE HOUSE,
February 19, 2009.

[FR Doc. E9–4068
Filed 2–23–09; 8:45 am]
Billing code 3195–W9–P

Rules and Regulations

Federal Register
Vol. 74, No. 35
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Doc. No. AMS–FV–08–0107; FV09–925–2 IFR]

Grapes Grown in a Designated Area of Southeastern California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the California Desert Grape Administrative Committee (Committee) for the 2009 and subsequent fiscal periods from $0.02 to $0.01 per 18-pound lug of grapes handled. The Committee locally administers the marketing order which regulates the handling of grapes grown in a designated area of southeastern California. Assessments upon desert grape handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective February 25, 2009. Comments received by April 27, 2009, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov*. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

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

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 925, as amended (7 CFR part 925), regulating the handling of grapes grown in a designated area of southeastern California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California grape handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable grapes beginning on January 1, 2009, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule decreases the assessment rate established for the Committee for the 2009 and subsequent fiscal periods from $0.02 to $0.01 per 18-pound lug of grapes.

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

For the 2007 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on November 14, 2008, and unanimously recommended 2009 expenditures of $77,692 and an assessment rate of $0.01 per 18-pound lug of grapes. In comparison, last year's budgeted expenditures were $133,254. The assessment rate of $0.01 is one-half of the rate currently in effect. The

Committee recommended a lower assessment rate due to a significant decrease in management and administrative expenses for 2009.

The major expenditures recommended by the Committee for the 2009 fiscal period include $10,500 for compliance activities, $53,000 for salaries and payroll expenses, and $14,192 for other administrative expenses. In comparison, budgeted expenses for these items in 2008 were $5,000 for compliance activities, $61,000 for salaries, $18,000 for research, and $49,254 for other administrative expenses. The assessment rate recommended by the Committee was derived by the following formula: Anticipated 2009 expenses ($77,692) plus the desired 2009 ending reserve ($88,534), minus the 2009 beginning reserve ($100,226) plus anticipated interest income ($1,000), divided by the estimated 2009 shipments (6.5 million 18-pound lugs).

Income generated through the $.01 assessment rate ($65,000) plus interest income ($1,000) and reserve funds ($11,692) should be sufficient to meet anticipated expenses of ($77,692). Reserve funds by the end of 2009 are projected at $88,534 or about $10,800 over the Committee's 2009 expenses. Section 925.41 of the order permits the Committee to maintain approximately one fiscal period's expenses in reserve. The Committee plans to continue using reserve funds to help meet its expenses and bring the reserve to a level lower than its expenses.

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

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

Initial Regulatory Flexibility Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 14 handlers of southeastern California grapes who are subject to regulation under the order and about 50 grape producers in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000. Nine of the 14 handlers subject to regulation have annual grape sales of less than $7 million. Based on data from the National Agricultural Statistics Service (NASS) and the Committee, the average crop value for 2008 is about $53,040,000. Dividing this figure by the number of producers (50) yields an average annual producer revenue estimate of about $1,060,800, which is above the SBA threshold of $750,000. Based on the foregoing, it may be concluded that a majority of grape handlers and none of the producers may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2009 and subsequent fiscal periods from $0.02 to $0.01 per 18-pound lug of grapes. The Committee unanimously recommended expenditures of $77,692 and an assessment rate of $0.01 per 18-pound lug of grapes for the 2009 fiscal period. The assessment rate of $0.01 is one-half of the rate currently in effect. The number of assessable grapes is estimated at 6.5 million 18-pound lug of grapes. Thus, the $0.01 rate should provide $65,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2009 fiscal period include $10,500 for compliance activities, $53,000 for salaries and payroll expenses, and $14,192 for other administrative expenses. In comparison, budgeted expenses for these items in 2008 were $5,000 for compliance activities, $61,000 for salaries, $18,000 for research, and $49,254 for other administrative expenses.

Decreases in management and administrative expenses are the result of management services, office rental fees and utilities being shared by the Committee and the California Date Administrative Committee (CDAC). In 2008, the Committee and the CDAC agreed to share management and administrative costs in order to streamline expenses for both programs. Additionally, the Committee recommended not renewing its budget for research in 2009 given that there were no pending research proposals at the time the budget was reviewed.

Prior to arriving at this budget, the Committee considered alternative expenditure and assessment rate levels, but ultimately decided that the recommended levels were reasonable to properly administer the order.

The assessment rate recommended by the Committee was derived by the following formula: anticipated 2009 expenses ($77,692) plus the desired 2009 ending reserve ($88,534), minus the 2009 beginning reserve ($100,226) plus anticipated interest income ($1,000), divided by the estimated 2009 shipments (6.5 million 18-pound lugs).

This rate should provide sufficient funds in combination with interest and reserve funds to meet the anticipated expenses of $77,692 and result in a December 2009 ending reserve of $88,534. This figure is about $10,800 over the Committee's 2009 expenses. Section 925.41 of the order permits the Committee to maintain approximately one fiscal period's expenses in reserve. The Committee plans to continue using reserve funds to help meet its expenses and bring the reserve to a level lower than its expenses.

To calculate the percentage of grower revenue represented by the assessment rate for 2008, the assessment rate of $0.02 per 18-pound lug is divided by the estimated average grower price (according to the NASS). This results in estimated assessment revenue for the 2008 season as a percentage of grower revenue of .245 percent ($0.02 divided by $8.16 per 18-pound lug). NASS data for 2009 is not yet available. However, applying the same calculations above using the average grower price for 2006–08 would result in estimated assessment revenue as a percentage of total grower revenue of .13 percent for the 2009

season ($0.01 divided by $7.77 per 18-pound lug). Thus, the assessment revenue should be well below 1 percent of estimated grower revenue in 2009.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the grape production area and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 14, 2008, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this interim final rule, including the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large California grape handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

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

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2009 fiscal period began on January 1, 2009, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable grapes handled during such period; (2) the action decreases the assessment rate for assessable grapes beginning with the 2009 fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 925

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 925 is amended as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

■ 1. The authority citation for 7 CFR part 925 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 925.215 is revised to read as follows:

§ 925.215 Assessment rate.

On and after January 1, 2009, an assessment rate of $0.01 per 18-pound lug is established for grapes grown in a designated area of southeastern California.

Dated: February 18, 2009.

Robert C. Keeney,

Acting Associate Administrator.

[FR Doc. E9–3850 Filed 2–23–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Doc. No. AMS–FV–08–0089; FV09–930–1 FR]

Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 2008–2009 Crop Year for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes final free and restricted percentages for the 2008–2009 crop year tart cherries covered under the Federal marketing order regulating tart cherries grown in seven States (order). The percentages are 73 percent free and 27 percent restricted and will establish the proportion of cherries from the 2008 crop which may be handled in commercial outlets. The percentages are intended to stabilize supplies and prices, and strengthen market conditions. The percentages were recommended by the Cherry Industry Administrative Board (Board), the body that locally administers the marketing order. The order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

DATES: *Effective Date:* February 25, 2009.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, MD 20737; telephone: (301) 734–5243, Fax: (301) 734–5275; E-mail *Patricia.Petrella@usda.gov* or *Kenneth.Johnson@usda.gov.*

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

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the

''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, final free and restricted percentages may be established for tart cherries handled by handlers during the crop year. This rule establishes final free and restricted percentages for tart cherries for the 2008–2009 crop year, beginning July 1, 2008, through June 30, 2009. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

The order prescribes procedures for computing an optimum supply and preliminary and final percentages that establish the amount of tart cherries that can be marketed throughout the season. The regulations apply to all handlers of tart cherries that are in the regulated districts. Tart cherries in the free percentage category may be shipped immediately to any market, while restricted percentage tart cherries must be held by handlers in a primary or secondary reserve, or be diverted in accordance with § 930.59 of the order and § 930.159 of the regulations, or used for exempt purposes (to obtain diversion credit) under § 930.62 of the order and § 930.162 of the regulations. The regulated Districts for this season are: District one-Northern Michigan; District two-Central Michigan; District three-Southern Michigan; District four-New York; District seven-Utah; and District eight-Washington. Districts five, six and nine (Oregon, Pennsylvania, and Wisconsin, respectively) will not be regulated for the 2008–2009 season.

The order prescribes under § 930.52 that those districts to be regulated shall be those districts in which the average annual production of cherries over the prior three years has exceeded six million pounds. A district not meeting the six million-pound requirement shall not be regulated in such crop year. Because this requirement was not met in the Districts of Oregon, Pennsylvania, and Wisconsin handlers in those districts would not be subject to volume regulation during the 2008–2009 crop year.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. Demand for tart cherries and tart cherry products tend to be relatively stable from year to year. The supply of tart cherries, by contrast, varies greatly from crop year to crop year. The magnitude of annual fluctuations in tart cherry supplies is one of the most pronounced for any agricultural commodity in the United States. In addition, since tart cherries are processed either into cans or frozen, they can be stored and carried over from crop year to crop year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely balanced. The primary purpose of setting free and restricted percentages is to balance supply with demand and reduce large surpluses that may occur.

Section 930.50(a) of the order prescribes procedures for computing an optimum supply for each crop year. The Board must meet on or about July 1 of each crop year, to review sales data, inventory data, current crop forecasts and market conditions. The optimum supply volume shall be calculated as 100 percent of the average sales of the prior three years to which is added a desirable carryout inventory not to exceed 20 million pounds or such other amount as may be established with the approval of the Secretary. The optimum supply represents the desirable volume of tart cherries that should be available for sale in the coming crop year.

The order also provides that on or about July 1 of each crop year, the Board is required to establish preliminary free and restricted percentages. These percentages are computed by deducting the actual carryin inventory from the optimum supply figure (adjusted to raw product equivalent—the actual weight of cherries handled to process into cherry products) and subtracting that figure from the current year's USDA crop forecast. If the resulting number is positive, this represents the estimated over-production, which would be the restricted tonnage. The restricted tonnage is then divided by the sum of the USDA crop forecast(s) for the regulated districts to obtain percentages for the regulated districts. The Board is required to establish a preliminary restricted percentage equal to the quotient, rounded to the nearest whole number, with the complement being the preliminary free tonnage percentage. If the tonnage requirements for the year are more than the USDA crop forecast, the Board is required to establish a preliminary free tonnage percentage of 100 percent and a preliminary restricted percentage of zero. The Board is required to announce the preliminary percentages in accordance with paragraph (h) of § 930.50.

The Board met on June 19, 2008, and computed, for the 2008–2009 crop year, an optimum supply of 183 million pounds. The Board recommended that the desirable carryout figure be zero pounds. Desirable carryout is the amount of fruit required to be carried into the succeeding crop year and is set by the Board after considering market circumstances and needs. This figure can range from zero to a maximum of 20 million pounds.

The Board calculated preliminary free and restricted percentages as follows: The USDA estimate of the crop for the entire production area was 177 million pounds; a 31 million pound carryin (based on Board estimates) was subtracted from the optimum supply of 183 million pounds which resulted in the 2008–2009 poundage requirements (adjusted optimum supply) of 152 million pounds. The carryin figure reflects the amount of cherries that handlers actually have in inventory at the beginning of the 2007–2008 crop year. Subtracting the adjusted optimum supply of 152 million pounds from the USDA crop estimate (177 million pounds) and subtracting 8 million pounds for USDA committed sales results in a surplus of 17 million pounds of tart cherries. The surplus was divided by the production in the regulated districts (161 million pounds) and resulted in a restricted percentage of 10 percent for the 2008–2009 crop year. The free percentage was 90 percent (100 percent minus 10 percent). The Board established these percentages and announced them to the industry as required by the order.

The preliminary percentages were based on the USDA production estimate and the following supply and demand information available at the June meeting for the 2008–2009 year:

	Millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three years	183
(2) Plus desirable carryout	0
(3) Optimum supply calculated by the Board at the June meeting	183
Preliminary Percentages:	
(4) USDA crop estimate	177
(5) Carryin held by handlers as of July 1, 2008	31
(6) Subtract pounds designated for USDA	8
(7) Adjusted optimum supply for current crop year	152
(8) Surplus	17
(9) USDA crop estimate for regulated districts	161

	Percentages	
	Free	Restricted
(10) Preliminary percentages (item 8 divided by item 9 × 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	90	10

Between July 1 and September 15 of each crop year, the Board may modify the preliminary free and restricted percentages by announcing interim free and restricted percentages to adjust to the actual pack occurring in the industry.

The Secretary establishes final free and restricted percentages through the informal rulemaking process. These percentages would make available the tart cherries necessary to achieve the optimum supply figure calculated by the Board. The difference between any final free percentage designated by the Secretary and 100 percent is the final restricted percentage. The Board met on September 12, 2008, to recommend final free and restricted percentages.

The actual production reported by the Board was 210 million pounds, which is a 33 million pound increase from the USDA crop estimate of 177 million pounds.

A 35 million pound carryin (based on handler reports estimates) was subtracted from the optimum supply of 183 million pounds which resulted in the 2008–2009 poundage requirements (adjusted optimum supply) of 148 million pounds. Subtracting the adjusted optimum supply of 148 million pounds from the USDA crop estimate (210 million pounds) and subtracting 8 million pounds for USDA committed sales results in a surplus of 54 million pounds of tart cherries. The surplus was divided by the production in the regulated districts (203 million pounds) and resulted in a restricted percentage of 27 percent for the 2008–2009 crop year. The free percentage was 73 percent (100 percent minus 27 percent).

The final percentages are based on the Board's reported production figures and the following supply and demand information available in September for the 2008–2009 crop year:

	Millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three years	183
(2) Plus desirable carryout	0
(3) Optimum supply calculated by the Board	183
Final Percentages:	
(4) Board reported production	210
(5) Plus carryin held by handlers as of July 1, 2008	35
(6) Subtract USDA committed sales	8
(7) Tonnage available for current crop year	237
(8) Surplus (item 7 minus item 3)	54
(9) Production in regulated districts	203

	Percentages	
	Free	Restricted
(10) Final Percentages (item 8 divided by item 9 × 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	73	27

The USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' (Guidelines) specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal would be met by the establishment of a preliminary percentage which releases 100 percent of the optimum supply and the additional release of tart cherries provided under § 930.50(g). This release of tonnage, equal to 10 percent of the average sales of the prior three years' sales, is made available to handlers each season. The Board recommended that such release should be made available to handlers the first week of December and the first week of May. Handlers can decide how much of the 10 percent release they would like to receive on the December and May release dates. Once released, such cherries are released for free use by such handler.

Approximately 18 million pounds would be made available to handlers

this season in accordance with the Guidelines. This release would be made available to every handler and released to such handler in proportion to the handler's percentage of the total regulated crop handled. If a handler does not take his/her proportionate amount, such amount remains in the inventory reserve.

Final Regulatory Flexibility Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 40 handlers of tart cherries who are subject to regulation under the tart cherry marketing order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. A majority of the producers and handlers are considered small entities under SBA's standards.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. During the period 1997/98 through 2007/08, approximately 96 percent of the U.S. tart cherry crop, or 247.3 million pounds, was processed annually. Of the 247.3 million pounds of tart cherries processed, 61 percent was frozen, 27 percent was canned, and 12 percent was utilized for juice and other products.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. Bearing acreage has declined from a high of 50,050 acres in 1987/88 to 34,700 acres in 2007/08. This represents a 31 percent decrease in total bearing acres. Michigan leads the nation in tart cherry acreage with 70 percent of the total and produces about 75 percent of the U.S. tart cherry crop each year.

The 2008/09 crop is moderate in size at 210 million pounds. The largest crop occurred in 1995 with production in the regulated districts reaching a record 395.6 million pounds. The price per pound received by tart cherry growers ranged from a low of 7.3 cents in 1987 to a high of 46.4 cents in 1991. These problems of wide supply and price fluctuations in the tart cherry industry are national in scope and impact. Growers testified during the order promulgation process that the prices they received often did not come close to covering the costs of production.

The industry demonstrated a need for an order during the promulgation process of the marketing order because large variations in annual tart cherry supplies tend to lead to fluctuations in prices and disorderly marketing. As a result of these fluctuations in supply and price, growers realize less income. The industry chose a volume control marketing order to even out these wide variations in supply and improve returns to growers. During the promulgation process, proponents testified that small growers and processors would have the most to gain from implementation of a marketing order because many such growers and handlers had been going out of business due to low tart cherry prices. They also testified that, since an order would help increase grower returns, this should increase the buffer between business success and failure because small growers and handlers tend to be less capitalized than larger growers and handlers.

Aggregate demand for tart cherries and tart cherry products tends to be relatively stable from year-to-year. Similarly, prices at the retail level show minimal variation. Consumer prices in grocery stores, and particularly in food service markets, largely do not reflect fluctuations in cherry supplies. Retail demand is assumed to be highly inelastic which indicates that price reductions do not result in large increases in the quantity demanded. Most tart cherries are sold to food service outlets and to consumers as pie filling; frozen cherries are sold as an ingredient to manufacturers of pies and cherry desserts. Juice and dried cherries are expanding market outlets for tart cherries.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. In general, the farm-level demand for a commodity consists of the demand at retail or food service outlets minus per-unit processing and distribution costs incurred in transforming the raw farm commodity into a product available to consumers. These costs comprise what is known as the ''marketing margin.''

The supply of tart cherries, by contrast, varies greatly. The magnitude of annual fluctuations in tart cherry supplies is one of the most pronounced for any agricultural commodity in the United States. In addition, since tart cherries are processed either into cans or frozen, they can be stored and carried over from year-to-year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely in equilibrium. As a result, grower prices fluctuate widely, reflecting the large swings in annual supplies.

In an effort to stabilize prices, the tart cherry industry uses the volume control mechanisms under the authority of the Federal marketing order. This authority allows the industry to set free and restricted percentages. These restricted percentages are only applied to states or districts with a 3-year average of production greater than six million pounds, and to states or districts in which the production is 50 percent or more of the previous 5-year processed production average.

The primary purpose of setting restricted percentages is an attempt to bring supply and demand into balance. If the primary market is over-supplied with cherries, grower prices decline substantially.

The tart cherry sector uses an industry-wide storage program as a supplemental coordinating mechanism under the Federal marketing order. The primary purpose of the storage program is to warehouse supplies in large crop years in order to supplement supplies in short crop years. The storage approach is feasible because the increase in price—when moving from a large crop to a short crop year—more than offsets the costs for storage, interest, and handling of the stored cherries.

The price that growers' receive for their crop is largely determined by the total production volume and carryin inventories. The Federal marketing order permits the industry to exercise supply control provisions, which allow for the establishment of free and restricted percentages for the primary market, and a storage program. The establishment of restricted percentages impacts the production to be marketed in the primary market, while the storage program has an impact on the volume of unsold inventories.

The volume control mechanism used by the cherry industry results in decreased shipments to primary markets. Without volume control the primary markets (domestic) would

likely be over-supplied, resulting in lower grower prices.

To assess the impact that volume control has on the prices growers receive for their product, an econometric model has been developed. The econometric model provides a way to see what impacts volume control may have on grower prices. The three districts in Michigan, along with the districts in Utah, New York, and Washington are the restricted areas for this crop year and their combined total production is 203 million pounds. A 27 percent restriction means 148 million pounds is available to be shipped to primary markets from these four states. Production levels of 0.6 million pounds for Wisconsin, 2.8 million pounds for Oregon and 3.7 million pounds for Pennsylvania (the unregulated areas in 2008–2009), result in an additional 7.1 million pounds available for primary market shipments.

In addition, USDA requires a 10 percent release from reserves as a market growth factor. This results in an additional 18 million pounds being available for the primary market. The 148 million pounds from Michigan, Utah, Washington, and New York, the 7.1 million pounds from the other producing states, the 18 million pound release, and the 35 million pound carryin inventory gives a total of 208 million pounds being available for the primary markets.

The econometric model is used to estimate the impact of establishing a reserve pool for this year's crop. With the volume controls, grower prices are estimated to be approximately $0.11 per pound higher than without volume controls.

The use of volume controls is estimated to have a positive impact on growers' total revenues. With regulation, growers' total revenues from processed cherries is estimated to be $4.3 million higher than without restrictions. The without restrictions scenario assumes that all tart cherries produced would be delivered to processors for payments.

It is concluded that the 27 percent volume control would not unduly burden producers, particularly smaller growers. The 27 percent restriction would be applied to the growers in Michigan, New York, Utah, and Washington. The growers in the other three States covered under the marketing order will benefit from this restriction.

The use of volume control is believed to have little or no effect on consumer prices and will not result in fewer retail sales or sales to food service outlets.

Without the use of volume controls, the industry could be expected to start to build large amounts of unwanted inventories. These inventories have a depressing effect on grower prices. The econometric model shows for every 1 million-pound increase in carrying inventories, a decrease in grower prices of $0.0036 per pound occurs. The use of volume controls allows the industry to supply the primary markets while avoiding the disastrous results of over-supplying these markets. In addition, through volume control, the industry has an additional supply of cherries that can be used to develop secondary markets such as exports and the development of new products. The use of reserve cherries in the production shortened 2002/03 crop year proved to be very useful and beneficial to growers and packers.

In discussing the possibility of marketing percentages for the 2008–2009 crop year, the Board considered the following factors contained in the marketing policy: (1) The estimated total production of tart cherries; (2) the estimated size of the crop to be handled; (3) the expected general quality of such cherry production; (4) the expected carryover as of July 1 of canned and frozen cherries and other cherry products; (5) the expected demand conditions for cherries in different market segments; (6) supplies of competing commodities; (7) an analysis of economic factors having a bearing on the marketing of cherries; (8) the estimated tonnage held by handlers in primary or secondary inventory reserves; and (9) any estimated release of primary or secondary inventory reserve cherries during the crop year.

The Board's review of the factors resulted in the computation and announcement in September 2008 of the free and restricted percentages by this rule (73 percent free and 27 percent restricted).

One alternative to this action would be not to have volume regulation this season. Board members stated that no volume regulation would be detrimental to the tart cherry industry due to the size of the 2008–2009 crop. Returns to growers would not cover their costs of production for this season which might cause some to go out of business.

As mentioned earlier, USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. The quantity available under this rule is 110 percent of the quantity shipped in the prior three years.

The free and restricted percentages established by this rule release the optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. There are no known additional costs incurred by small handlers that are not incurred by large handlers. The stabilizing effects of the percentages impact all handlers positively by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all producers by allowing them to better anticipate the revenues their tart cherries will generate.

While the benefits resulting from this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain markets even though tart cherry supplies fluctuate widely from season to season.

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

In addition, the Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 12, 2008, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally interested persons interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

A proposed rule concerning this action was published in the **Federal Register** on December 5, 2008 (73 FR 74073). Copies of the rule were mailed or sent via facsimile to all Board members and tart cherry handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending January 5, 2009, was provided to allow interested persons to respond to the proposal. No comments were received.

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

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned

address in the **FOR FURTHER INFORMATION CONTACT** section.

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

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers are already shipping tart cherries from the 2008–2009 crop. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule. No comments were received.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

■ For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

■ 1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 930.256 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 930.256 Final free and restricted percentages for the 2008–2009 crop year.

The final percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2008, which shall be free and restricted, respectively, are designated as follows: Free percentage, 73 percent and restricted percentage, 27 percent.

Dated: February 18, 2009.

Robert C. Keeney,

Acting Associate Administrator.

[FR Doc. E9–3849 Filed 2–23–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1078 Directorate Identifier 2008–CE–051–AD; Amendment 39–15814; AD 2009–04–08]

RIN 2120–AA64

Airworthiness Directives; BURKHART GROB LUFT—UND RAUMFAHRT GmbH & CO KG G103 Series Gliders

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

The Luftfahrt-Bundesamt received a report from the Grob Company that a bolt in the airbrake control was found failed during a pre-flight inspection on a G 103C TWIN III ACRO. During an extensive investigation (metallurgical investigation) a double sided fatigue crack was found as root cause. As the bolt is insignificantly stressed by cyclic bending the crack was probably caused by mean stress supported by a bolt torque exceeding the limit.

The actions specified by this airworthiness directive are intended to prevent further bolt cracking which can result in airbrake as well as elevator failure (elevator control is on the same pedestal) and reduced controllability of the power glider.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective March 31, 2009.

On March 31, 2009, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Greg Davison, Glider Program Manager, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on October 9, 2008 (73 FR 59571). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

The Luftfahrt-Bundesamt received a report from the Grob Company that a bolt in the airbrake control was found failed during a pre-flight inspection on a G 103C TWIN III ACRO. During an extensive investigation (metallurgical investigation) a double sided fatigue crack was found as root cause. As the bolt is insignificantly stressed by cyclic bending the crack was probably caused by mean stress supported by a bolt torque exceeding the limit.

The actions specified by this airworthiness directive are intended to prevent further bolt cracking which can result in airbrake as well as elevator failure (elevator control is on the same pedestal) and reduced controllability of the power glider.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the AD.

Costs of Compliance

Based on the service information, we estimate that this AD will affect 129 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with basic requirements of this AD. The average labor rate is $80 per work-hour.

Required parts will cost about $15 per product.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be $12,255 or $95 per product.

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

For the reasons discussed above, I certify this AD:

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

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

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

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

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 the NPRM, 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–04–08 BURKHART GROB LUFT—UND RAUMFAHRT GmbH & CO KG: Amendment 39–15814; Docket No. FAA–2008–1078; Directorate Identifier 2008–CE–051–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 31, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following models and serial numbers (SNs) gliders, certificated in any category:

(1) G103 TWIN II, SNs 3730 through 3878;

(2) G103A TWIN II ACRO, SNs 3730 through 34078 (K);

(3) G103C TWIN III ACRO, SNs 34101 through 34203; and

(4) G 103 C TWIN III SL, SNs 35001 through 35051.

Subject

(d) Air Transport Association of America (ATA) Code 27: Flight Controls.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

''The Luftfahrt-Bundesamt received a report from the Grob Company that a bolt in the airbrake control was found failed during a pre-flight inspection on a G 103C TWIN III ACRO. During an extensive investigation (metallurgical investigation) a double sided fatigue crack was found as root cause. As the bolt is insignificantly stressed by cyclic bending the crack was probably caused by mean stress supported by a bolt torque exceeding the limit.

''The actions specified by this airworthiness directive are intended to prevent further bolt cracking which can result in airbrake as well as elevator failure (elevator control is on the same pedestal) and reduced controllability of the power glider.'' The MCAI requires replacement of bolt LN9037–M6x60 from the airbrake bell crank 103B–4437 with a new bolt with a new locking nut and tightening the bolt to a specific torque; check of all parts of the airbrake bell crank and the attachment parts for any damage and replacement of any damaged parts; check of the airbrake locking force of the left-hand and right-hand wing for a specific force value range and that the locking is clearly noticeable; and check of the airbrake locking force at the operating lever in the front cockpit with the wings rigged for a specific force value range.

Actions and Compliance

(f) Unless already done, within 60 days after March 31, 2009 (the effective date of this AD), do the following actions following Grob Aerospace Service Bulletin No. MSB 315–76/1 and No. 869–27/1 (same document), dated June 23, 2008:

(1) Remove bolt LN9037–M6x60 from the airbrake bell crank 103B–4437 and install a new bolt LN9037–M6x60 with the new locking nut LN9348–M6 and torque the bolt to 6.4 Nm (4.7 lbs.ft).

(2) Inspect all parts of the airbrake bell crank including the attachment parts for any damage and, before further flight, replace any damaged parts.

(3) Inspect the airbrake locking force of the left-hand (LH) and right-hand (RH) wing using a spring balance. The force must be equal for the LH and RH wing (guidance value: 10 ± 2 daN, (22.5 ± 4.5 lbs)) and the locking must be clearly noticeable.

(4) Inspect the airbrake locking force at the operating lever in the front cockpit with the wings rigged. The guidance value is 10 ± 2 daN, (22.5 ± 4.5 lbs). It must not exceed 15–20 daN (33.7–45.0 lbs).

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Greg Davison, Glider Program Manager, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the

provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Federal Republic of Germany Luftfahrt-Bundesamt AD D–2008–231, dated July 11, 2008; and AD D–2008–232, dated July 11, 2008; and Grob Aerospace Service Bulletin No. MSB 315–76/1 and No. 869–27/1 (same document), dated June 23, 2008, for related information.

Material Incorporated by Reference

(i) You must use Grob Aerospace Service Bulletin No. MSB 315–76/1 and No. 869–27/1 (same document), dated June 23, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact GROB Luft-und Raumfahrt, Lettenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Germany; telephone: + 011 49 8268 998139; facsimile: + 011 49 8268 998200; E-mail: *productsupport@grob-aerospace.de;* Internet: *http://www.grob-aerospace.net.*

(3) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329–3768.

(4) You may also review copies of the service information incorporated by reference for this AD at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on February 6, 2009.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–3116 Filed 2–23–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0736; Directorate Identifier 2008–NM–102–AD; Amendment 39–15804; AD 2009–03–03]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–14, DC–9–15, and DC–9–15F Airplanes; and Model DC–9–20, DC–9–30, DC–9–40, and DC–9–50 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain McDonnell Douglas airplanes listed above. This AD requires installing a dam assembly for the container of the fuel boost pump of the center tank located in the right main tank, and doing the related investigative actions, and corrective actions if necessary. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent the center tank fuel boost pump from operating in a fuel vapor zone and becoming a potential ignition source in the right main tank, potentially resulting in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD is effective March 31, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 31, 2009.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: William S. Bond, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5253; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain McDonnell Douglas airplanes. That NPRM was published in the **Federal Register** on August 1, 2008 (73 FR 44937). That NPRM proposed to require installing a dam assembly for the container of the fuel boost pump of the center tank located in the right main tank, and doing the related investigative actions, and corrective actions if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received.

Request for Service Bulletin Validation

Northwest Airlines (NWA) has concerns that Boeing Service Bulletin DC9–28–216, dated March 18, 2008, has not been fully validated on an airplane. NWA states that the referenced service bulletin specifies that the identified change was completed on an airplane having fuselage number 807, before the initial release of the service bulletin. However, although accomplishment of the referenced service bulletin was started on that airplane (for a NWA airplane), it was determined that the fuel line hardware specified in the service bulletin is incorrect, and the actions could not be accomplished. NWA has contacted Boeing regarding the problem, and adds that, as written, the referenced service bulletin cannot be accomplished. NWA recommends that the service bulletin be validated prior to release of the AD.

We acknowledge the commenter's concern but we do not agree that Boeing Service Bulletin DC9–28–216, dated March 18, 2008, cannot be accomplished. The manufacturer has informed us that the fuel line hardware specified in Boeing Service Bulletin DC9–28–216, dated March 18, 2008, is correct. During validation of the service bulletin on the airplane having fuselage number 807, the identified problem was

corrected prior to the release of Boeing Service Bulletin DC9–28–216, dated March 18, 2008. Therefore, we have made no change to the AD in this regard.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD affects 413 airplanes of U.S. registry. We also estimate that it will take 3 or 7 work-hours per product, depending on airplane configuration, to comply with this AD. The average labor rate is $80 per work-hour. Required parts will cost $1,142 or $1,697 per product, depending on configuration of the airplane. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $570,766 or $932,141, or $1,382 or $2,257 per product, depending on configuration of the airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–03–03 McDonnell Douglas: Amendment 39–15804. Docket No. FAA–2008–0736; Directorate Identifier 2008–NM–102–AD.

Effective Date

(a) This airworthiness directive (AD) is effective March 31, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC–9–32F (C–9A, C–9B), DC–9–41, and DC–9–51 airplanes, certificated in any category; as identified in Boeing Service Bulletin DC9–28–216, dated March 18, 2008.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent the center tank fuel boost pump from operating in a fuel vapor zone and becoming a potential ignition source in the right main tank, potentially resulting in a fuel tank explosion and consequent loss of the airplane.

Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

Install Dam Assembly

(f) Within 60 months after the effective date of this AD, install a dam assembly for the container of the fuel boost pump of the center tank located in the right main tank, and do the related investigative and applicable corrective actions, by accomplishing all the actions specified in the Accomplishment Instructions of Boeing Service Bulletin DC9–28–216, dated March 18, 2008. Do the applicable corrective actions before further flight.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, FAA, Los Angeles Aircraft Certification Office, ATTN: William S. Bond, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5253; fax (562) 627–5210; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(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 appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(h) You must use Boeing Service Bulletin DC9–28–216, dated March 18, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *http://www.myboeingfleet.com.*

(3) You may review copies of the service information that is incorporated by reference 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 or 425–227–1152.

(4) You may also review copies of the service information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on January 21, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–3125 Filed 2–23–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0735; Directorate Identifier 2008–NM–085–AD; Amendment 39–15803; AD 2009–03–02]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain McDonnell Douglas transport category airplanes. That AD currently requires modification of the installation wiring for the electric motor-operated auxiliary hydraulic pumps in the right wheel well area of the main landing gear; repetitive inspections of the numbers 1 and 2 electric motors of the auxiliary hydraulic pumps for electrical resistance, continuity, mechanical rotation, and associated airplane wiring resistance/voltage; and corrective actions if necessary. This new AD also requires, for certain airplanes, modifying and rerouting, as applicable, certain components of the wiring of the electric motor for the auxiliary hydraulic pump located in the right wheel well. This AD results from reports of failure of the electric motor for the auxiliary hydraulic pump. We are issuing this AD to prevent failure of the electric motors of the hydraulic pump and associated wiring, which could result in fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure.

DATES: This AD becomes effective March 31, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of March 31, 2009.

On April 15, 2004 (69 FR 11504, March 11, 2004), the Director of the Federal Register approved the incorporation by reference of certain service information as listed in the AD.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Ken Sujishi, Aerospace Engineer, Cabin Safety/Mechanical and Environmental Systems Branch, ANM–150L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5353; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2004–05–20, amendment 39–13515 (69 FR 11504, March 11, 2004). The existing AD applies to certain McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F airplanes. That NPRM was published in the **Federal Register** on July 28, 2008 (73 FR 43643). That NPRM proposed to continue to require modification of the installation wiring for the electric motor-operated auxiliary hydraulic pumps in the right wheel well area of the main landing gear; repetitive inspections of the numbers 1 and 2 electric motors of the auxiliary hydraulic pumps for electrical resistance, continuity, mechanical rotation, and associated airplane wiring resistance/voltage; and corrective actions if necessary. That NPRM also proposed to require, for certain airplanes, modifying and rerouting, as applicable, certain components of the wiring of the electric motor for the auxiliary hydraulic pump located in the right wheel well.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been received on the NPRM.

Request To Include Reference to Approved Alternative Methods of Compliance (AMOCs)

Boeing requests that we revise the NPRM to include a reference to service information previously approved as AMOCs to AD 2004–05–20. Boeing points out that paragraphs (f) and (g)(2) of the NPRM refer to the following service bulletins as the sources of service information for certain prior/concurrent actions: Boeing Alert Service Bulletin MD11–29A057, Revision 02, dated April 17, 2003; and Boeing Alert Service Bulletin MD11–29A059, Revision 2, dated August 1, 2003. Boeing states that the following service bulletins have been approved as AMOCs to AD 2004–05–20 as follows: Boeing Alert Service Bulletin MD11–29A057, Revision 3, dated October 15, 2005; and Boeing Alert Service Bulletin MD11–29A059, Revision 3, dated September 24, 2004, Revision 4, dated November 1, 2005, and Revision 5, dated June 27, 2006.

We agree that these service documents were previously approved as AMOCs for AD 2004–05–20. We have added a new paragraph (i)(3) to this AD to state that AMOCs approved previously in accordance with AD 2004–05–20 are approved as AMOCs for the requirements of paragraphs (g)(1) and (g)(2) of this AD.

Request To Clarify Differences Between Service Bulletins

The United States Air Force (USAF) requests that operators in compliance with Boeing Alert Service Bulletin DC10–29A144, Revision 2, dated August 1, 2003, not be required to accomplish the re-check specified in Boeing Alert Service Bulletin DC10–29A148, dated March 20, 2008. (Boeing Alert Service Bulletin DC10–29A148 is the appropriate source of service information for the new actions required by paragraph (h) of this AD; Boeing Alert Service Bulletin DC10–29A144, Revision 2, is the appropriate source of service information for the prior/concurrent actions specified in paragraph (f)(1) of this AD.) The USAF states that it has completed Boeing Alert Service Bulletin DC10–29A144, Revision 2, on its fleet of McDonnell Douglas Model DC–10–30F (KC–10A and KDC–10) airplanes.

We disagree with the request that operators in compliance with Boeing

Alert Service Bulletin DC10–29A144, Revision 2, not be required to accomplish the re-check specified in Boeing Alert Service Bulletin DC10–29A148. (Boeing Alert Service Bulletin DC10–29A148, requires a re-check of the re-routing accomplished in accordance with Boeing Alert Service Bulletin DC10–29A144, Revision 2.) Boeing has notified us that it found problems with the actions specified in Boeing Alert Service Bulletin DC10–29A144, Revision 2. Specifically, Boeing found that bracket assemblies did not have adequate dimensions and tolerances as called out in the installation drawing for this service bulletin. Boeing Alert Service Bulletin DC10–29A148 supersedes Boeing Alert Service Bulletin DC10–29A144, Revision 2. The work instructions for Boeing Alert Service Bulletin DC10–29A148 specify using new installation dimensions and tolerances for the bracket assemblies. Boeing Alert Service Bulletin DC10–29A148 also provides instructions for modifying the installation wiring for airplanes that were not changed in accordance with Boeing Alert Service Bulletin DC10–29A144, Revision 2. We have not changed the AD in this regard.

Request To Apply AD Only to Certain Airplanes

KLM Royal Dutch Airlines (KLM) requests that the AD apply only to McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, and DC–10–40F airplanes, because the issue applies only to these airplanes. KLM states that this change would avoid confusion and redundant (administrative) AD actions for the entire fleet of Model MD–11 and MD–11F airplanes. KLM also points out that the new actions apply only to the DC–10 models. KLM requests that: (1) AD 2004–05–20 remain valid for all models to prescribe newer revisions of existing service information; and (2) a new AD be issued only for the DC–10 models to prescribe inspection criteria corrective actions in accordance with the new service bulletin (Boeing Alert Service Bulletin DC10–29A148).

We partially agree with KLM's request. We agree that no new work requirements have been added for Model MD–10–10F, MD–10–30F, MD–11, and MD–11F airplanes. We disagree with the request to issue a separate AD to cover only Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, and DC–10–40F airplanes. In order to do so, we would have to supersede AD 2004–05–20 to remove the DC–10 models from the applicability; otherwise that AD would remain in effect for those airplanes. We would then have to create a new AD to apply to the DC–10 models. Therefore, more redundancy and confusion would be created rather than less. We have not changed the AD in this regard.

Conclusion

We have carefully reviewed the available data, including the comments that have been received, and determined that air safety and the public interest require adopting the AD with the change described previously. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 409 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Modification (required by AD 2004–05–20).	9	$80	$4,886 to $7,920	$5,606 to $8,640	322	$1,805,132 to $2,782,080.
Inspection (required by AD 2004–05–20)	1	80	$0	$80, per inspection cycle.	322	$25,760, per inspection cycle.
Modification/rerouting (new action)	2 to 18.	80	$5,380 to $5,872	$5,540 to $7,312	128	$709,120 to $935,936.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–13515 (69 FR 11504, March 11, 2004) and by adding the following new airworthiness directive (AD):

2009–03–02 McDonnell Douglas: Amendment 39–15803. Docket No. FAA–2008–0735; Directorate Identifier 2008–NM–085–AD.

Effective Date

(a) This AD becomes effective March 31, 2009.

Affected ADs

(b) This AD supersedes AD 2004–05–20.

Applicability

(c) This AD applies to McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F airplanes; certificated in any category; as identified in the applicable service bulletin listed in Table 1 of this AD.

TABLE 1—AIRPLANES AFFECTED BY THIS AD

McDonnell Douglas model—	Identified in—	Referenced in—
DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes.	Boeing Alert Service Bulletin DC10–29A144, Revision 2, dated August 1, 2003.	Paragraph (f) of this AD.
MD–11 and MD–11F airplanes	Boeing Alert Service Bulletin MD11–29A059, Revision 2, dated August 1, 2003.	Paragraph (g) of this AD.
DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, and DC–10–40F airplanes.	Boeing Alert Service Bulletin DC10–29A148, dated March 20, 2008.	Paragraph (h) of this AD.

Unsafe Condition

(d) This AD results from reports of failure of the electric motor for the auxiliary hydraulic pump. We are issuing this AD to prevent failure of the electric motors of the hydraulic pump and associated wiring, which could result in fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure.

Compliance

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

Restatement of the Requirements of AD 2004–05–20

Modification/Prior or Concurrent Actions

(f) For Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes listed in Boeing Alert Service Bulletin DC10–29A144, Revision 2, dated August 1, 2003: Within 18 months after April 15, 2004 (the effective date of AD 2004–05–20), do the actions specified in paragraphs (f)(1) and (f)(2) of this AD.

(1) Modify the installation wiring of the electric motor operated auxiliary hydraulic pumps in the right wheel well area of the main landing gear (MLG) (including removing existing clamps, ground wires, if required, and sleeving from the wire assemblies; inspecting for cracks and chafing, installing new support bracket, clips, and bracket assemblies, as applicable; installing sleeving; re-routing and attaching wire assemblies using new clamps and attachments; installing an additional routing clip on the lower bracket of the fuel motor control valve, if applicable; and doing a voltage check and a functional test), per the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–29A144, Revision 2, dated August 1, 2003.

(2) Prior to or concurrently with accomplishment of paragraph (f)(1) or (h) of this AD: Do the actions specified in Boeing Alert Service Bulletin DC10–29A142, Revision 02, dated April 17, 2003; or Revision 3, dated October 15, 2005; (including inspecting the numbers 1 and 2 electric motors of the auxiliary hydraulic pumps for electrical resistance, continuity, mechanical rotation, and associated airplane wiring resistance/voltage; and replacing the auxiliary hydraulic pump with a serviceable pump and repairing the wiring if necessary), per the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–29A142, Revision 02, dated April 17, 2003; or Revision 3, dated October 15, 2005. Repeat the actions after that at intervals not to exceed 2,500 flight hours. After the effective date of this AD, Boeing Alert Service Bulletin DC10–29A142, Revision 3, dated October 15, 2005, must be used.

(g) For Model MD–11 and MD–11F airplanes listed in Boeing Alert Service Bulletin MD11–29A059, Revision 2, dated August 1, 2003: Within 18 months after April 15, 2004, do the actions specified in paragraphs (g)(1) and (g)(2) of this AD.

(1) Modify the installation wiring of the electric motor auxiliary hydraulic pumps in the wheel well area of the right MLG (including removing and retaining wire assembly clamps, if applicable; retaining the existing ground wire assemblies; retaining or replacing all other wire assemblies for both connectors; installing spiral wrap and sleeving; wrapping upper ends of individual wires with tape; installing new support bracket assemblies, if applicable; re-routing and attaching wire assemblies using new clamps and attachments, if applicable; and doing a voltage check and a functional test), per the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–29A059, Revision 2, dated August 1, 2003.

(2) Prior to or concurrently with accomplishment of paragraph (g)(1) of this AD: Do the actions specified in Boeing Alert Service Bulletin MD11–29A057, Revision 02, dated April 17, 2003 (including inspecting the numbers 1 and 2 electric motors of the auxiliary hydraulic pumps for electrical resistance, continuity, mechanical rotation, and associated airplane wiring resistance/voltage; and replacing the auxiliary hydraulic pump with a serviceable pump and repairing the wiring if necessary), per the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–29A057, Revision 02, dated April 17, 2003. Repeat the actions after that at intervals not to exceed 2,500 flight hours.

New Requirements of This AD

Modification and Rerouting

(h) For Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, and DC–10–40F airplanes identified in Boeing Alert Service Bulletin DC10–29A148, dated March 20, 2008: Within 24 months after the effective date of this AD, modify and reroute, as applicable, components of the wiring of the electric motor for the auxiliary hydraulic pump located in the right wheel well, and do all applicable investigative and corrective actions before further flight. Do all actions in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–29A148, dated March 20, 2008. The concurrent requirements, including the repetitive inspections, of paragraph (f)(2) of this AD continue to apply to these airplanes.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, ATTN: Ken Sujishi, Aerospace Engineer, Cabin Safety/Mechanical and Environmental Systems Branch, ANM–150L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–

4137; telephone (562) 627–5353; fax (562) 627–5210; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(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 appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(3) AMOCs approved previously in accordance with AD 2004–05–20 are approved as AMOCs for the requirements of paragraphs (g)(1) and (g)(2) of this AD.

Material Incorporated by Reference

(j) You must use the service information listed in Table 2 of this AD to perform the actions that are required by this AD, as applicable, unless the AD specifies otherwise.

TABLE 2—ALL MATERIAL INCORPORATED BY REFERENCE

Service Bulletin	Revision level	Date
Boeing Alert Service Bulletin DC10–29A142	Revision 02	April 17, 2003.
Boeing Alert Service Bulletin DC10–29A142	Revision 3	October 15, 2005.
Boeing Alert Service Bulletin DC10–29A144	Revision 2	August 1, 2003.
Boeing Alert Service Bulletin DC10–29A148	Original	March 20, 2008.
Boeing Alert Service Bulletin MD11–29A057	Revision 02	April 17, 2003.
Boeing Alert Service Bulletin MD11–29A059 including Appendix	Revision 2	August 1, 2003.

(1) The Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin DC10–29A142, Revision 3, dated October 15, 2005; and Boeing Alert Service Bulletin DC10–29A148, dated March 20, 2008; in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On April 15, 2004 (69 FR 11504, March 11, 2004), the Director of the Federal Register approved the incorporation by reference of the service information listed in Table 3 of this AD.

TABLE 3—MATERIAL PREVIOUSLY INCORPORATED BY REFERENCE

Service Bulletin	Revision level	Date
Boeing Alert Service Bulletin DC10–29A142	Revision 02	April 17, 2003.
Boeing Alert Service Bulletin DC10–29A144	Revision 2	August 1, 2003.
Boeing Alert Service Bulletin MD11–29A057	Revision 02	April 17, 2003.
Boeing Alert Service Bulletin MD11–29A059 including Appendix	Revision 2	August 1, 2003.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

(4) You may review copies of the service information that is incorporated by reference 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 or 425–227–1152.

(5) You may also review copies of the service information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on January 21, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–3123 Filed 2–23–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1199; Directorate Identifier 2008–NM–207–AD; Amendment 39–15781; AD 2008–24–51]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800, and –900 Series Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2008–24–51 that was sent previously to all known U.S. owners and operators of Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes by individual notices. This AD requires accomplishing a wiring test of the autoshutoff system to verify continuity and a visual verification that the wiring is correctly installed; doing corrective actions, if necessary; and doing a functional test of the autoshutoff system, and applicable maintenance actions. This AD is prompted by a report of a failure of the left-hand fuel pump of the center wing tank to shut off after being selected ''OFF'' by the flightcrew during flight on a Boeing Model 737–700 series airplane. Subsequent to that report, the failure was found on two additional airplanes. We are issuing this AD to prevent extended dry-running of the fuel pump, which could lead to localized overheating of parts inside the fuel pump, and which could produce an ignition source inside the fuel tank.

DATES: This AD becomes effective March 2, 2009 to all persons except those persons to whom it was made immediately effective by emergency AD 2008–24–51, issued November 18, 2008, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of March 2, 2009.

We must receive comments on this AD by April 27, 2009.

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 Boeing service information identified in this 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*.

For the Federal Aviation Administration Master Minimum Equipment List for Boeing 737 100/200/300/400/500/600/700/800/900 specified in this AD, contact the FAA, Flight Standards Division, Seattle Aircraft Evaluation Group, 1601 Lind Avenue, SW., Renton, Washington 98057. For information on the availability of this material at the FAA, call 425–917–6600 or fax 425–917–6638.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Samuel Spitzer, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6510; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: On November 18, 2008, we issued emergency AD 2008–24–51, which applies to Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes.

Background

We received a report of failure of the left-hand fuel pump of the center wing tank (CWT) to shut off after being selected ''OFF'' by the flightcrew during flight on a Boeing Model 737–700 series airplane. Subsequent to that report, the failure was found on two additional airplanes. Information indicates that the autoshutoff system appears to function normally; however, when the flightcrew manually turns off the CWT pump switches, that action turns off the right-hand pump, but re-energizes the left-hand pump due to incorrect wiring. The low-pressure lights turn off, incorrectly indicating to the flightcrew that power to both pumps has been removed. The failure condition results in continual running of the left-hand fuel pump without indication to the flightcrew, which could lead to localized overheating of parts inside the fuel pump, and which could produce an ignition source inside the fuel tank.

Investigation revealed that incorrect wiring could occur on airplanes on which an autoshutoff system was installed in accordance with Boeing Alert Service Bulletin 737–28A1206. Functional tests conducted in accordance with that service bulletin are not adequate to detect the incorrect wiring condition.

We approved installation of the autoshutoff system as an alternative method of compliance to AD 2002–24–51, amendment 39–12992 (68 FR 10, January 2, 2003). That AD was issued to address reports indicating that two fuel tank pumps showed evidence of extreme localized overheating of parts in the priming and vapor pump section of the fuel pump. That AD required revising the airplane flight manual to require the flightcrew to maintain certain minimal fuel levels in the center fuel tanks.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 737–28A1248, Revision 1, dated January 9, 2008. This service bulletin describes procedures for installing a power failed 'ON' protection system (*i.e.*, uncommanded pump 'ON' protection system) for the center tank fuel boost pump.

FAA's Determination and Requirements of This AD

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, we issued emergency AD 2008–24–51 to prevent extended dry-running of the fuel pump, which could lead to localized overheating of parts inside the fuel pump, and which could produce an ignition source inside the fuel tank. The AD requires accomplishing a wiring test of the autoshutoff system to verify continuity and a visual verification that the wiring is correctly installed; doing corrective actions, if necessary; and doing a functional test of the autoshutoff system, and applicable maintenance actions. These maintenance actions, which are specified in Chapter 28, Section 28–22 of the Boeing 737–600/700/800/900 Fault Isolation Manual, Document D633A103, Revision 37, dated October 15, 2008, include (but are not limited to) doing a fault isolation procedure, checks of the left center wing tank boost pump functions, relays and wiring checks, and repairs.

We found that immediate corrective action was required; therefore, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on November 18, 2008, to all known U.S. owners and operators of Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Interim Action

This AD is considered to be interim action. The inspection report that is required by this AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of the failure of the left-hand fuel pump of the CWT to shut off after being selected ''OFF'' by the flightcrew, and eventually to develop final action to address the unsafe condition. Once final action has been identified, we might consider further rulemaking.

In addition, for airplanes on which the uncommanded pump ''ON'' protection system is installed in accordance with Boeing Alert Service Bulletin 737–28A1248, we are considering further rulemaking that might require additional testing.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–1199; Directorate Identifier 2008–NM–207–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy

aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If this emergency regulation is later deemed significant under DOT Regulatory Policies and Procedures, we will prepare a final regulatory evaluation and place it in the AD Docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation, if filed.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2008–24–51 Boeing: Amendment 39–15781. Docket No. FAA–2008–1199; Directorate Identifier 2008–NM–207–AD.

Effective Date

(a) This AD becomes effective March 2, 2009, to all persons except those persons to whom it was made immediately effective by emergency AD 2008–24–51, issued on November 18, 2008, which contained the requirements of this amendment.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes, certificated in any category; on which Boeing Alert Service Bulletin 737–28A1206 has been accomplished.

Unsafe Condition

(d) This AD results from a report of a failure of the left-hand fuel pump of the center wing tank (CWT) to shut off after being selected ''OFF'' by the flightcrew during flight on a Boeing Model 737–700 series airplane. Subsequent to that report, the failure was found on two additional airplanes. The failure condition results in continual running of the pump without indication to the flightcrew. We are issuing this AD to prevent extended dry-running of the fuel pump, which could lead to localized overheating of parts inside the fuel pump, and which could produce an ignition source inside the fuel tank.

Compliance

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

Test

(f) Within 48 clock-hours after the effective date of this AD, or prior to further flight, whichever occurs later: Except as provided by paragraphs (g) and (h) of this AD, do the autoshutoff system wiring test specified in paragraphs (f)(1) through (f)(10) of this AD.

(1) Remove electrical power from the airplane.

(2) Open the following circuit breakers, and install collars and 'DO-NOT-CLOSE' tags on the circuit breakers.

(i) Circuit breaker (CB) C3012, XFR BUS 2 SECT 2, on the P92 panel.

(ii) CB C3002, XFR BUS 1 SECT 2, on the P91 panel.

(iii) CB C1639, Fuel Auto S/O BST PUMP CTR TNK L AC, on the P6–3 panel.

(3) Verify continuity between TB5060F in terminal 5 and the bus side terminal of CB C1639 in the P6–3 circuit breaker panel.

(4) Check that wire number W0040–6402–14 is installed in terminal 5 of TB5060F.

(5) If, during the action required by paragraph (f)(3) of this AD, there is no continuity; or if, during the check required by paragraph (f)(4) of this AD, the wire is found not installed in TB5060F terminal 5: Before further flight, trace wire W0040–6402–14 from CB C1639 and re-terminate the other end of the wire to TB5060F terminal 5. After re-terminating the wire, before further flight, do the actions specified in paragraphs (f)(3) and (f)(4) of this AD.

(6) Remove the tags and collars from the following circuit breakers and close the circuit breakers.

(i) CB C3012, XFR BUS 2 SECT 2, on the P92 panel.

(ii) CB C3002, XFR BUS 1 SECT 2, on the P91 panel.

(iii) CB C1639, Fuel Auto S/O BST PUMP CTR TNK L AC, on the P6–3 panel.

(7) Supply electrical power to the airplane.

(8) Verify the voltage at CB C1639 is 115 volts alternating current +/ − 5 volts.

(9) If the voltage is not within the limits specified in paragraph (f)(8) of this AD, before further flight, repeat the actions required by paragraphs (f)(1) through (f)(8) of this AD.

(10) Test the autoshutoff system as follows:

(i) On P5–4 panel, switch Bus Transfer to OFF.

(ii) Using only one power source (auxiliary power unit (APU) or an engine generator), power only AC Bus 1 with no power to AC Bus 2.

(iii) Do the ''Center Tank Boost Pump Auto Shutoff Functional Test'' in accordance with paragraphs 9.A. through 9.G. of Task 28–22–00–720–805 of the Boeing 737–600/700/800/900 Aircraft Maintenance Manual, Document D633A101, Revision 37, dated October 15, 2008. Accomplishment of paragraphs 9.H. and 9.I. of the functional test should not be accomplished.

(iv) If the autoshutoff test fails the test required by paragraph (f)(10)(iii) of this AD: Within 48 clock-hours after the effective date of this AD, or before further flight, whichever occurs later, do either paragraph (f)(10)(iv)(A) or (f)(10)(iv)(B) of this AD.

(A) Do all applicable maintenance actions in accordance with Chapter 28, Section 28–22, of the Boeing 737–600/700/800/900 Fault Isolation Manual, Document D633A103, Revision 37, dated October 15, 2008, and repeat the action required by paragraph (f)(10)(iii) of this AD.

(B) Deactivate the left-hand fuel pump of the CWT as specified in paragraph (g) of this AD.

Optional Deactivation/Reactivation

(g) Deactivation of the left-hand fuel pump of the CWT and operation in accordance with Item 28–02, 'Fuel Boost Pumps (Center Tank), of the Federal Aviation Administration Master Minimum Equipment List for Boeing 737 100/200/300/400/500/600/700/800/900, Revision 52, dated April 29, 2008, may be accomplished in lieu of the requirements of paragraph (f) of this AD until the left-hand fuel pump of the CWT is reactivated. If the pump is deactivated, dispatch under this configuration is allowed for 10 days. For airplanes on which the left-hand fuel pump of the CWT is deactivated under the provision of this paragraph: Prior to further flight after reactivating the pump, do the autoshutoff system wiring test and applicable corrective actions specified in paragraphs (f)(1) through (f)(10) of this AD.

Optional Installation

(h) Accomplishing the installation of the power failed 'ON' protection system (*i.e.,* uncommanded pump ''ON'' protection system) for the center tank fuel boost pump in accordance with Boeing Alert Service Bulletin 737–28A1248, dated December 21, 2006; or Revision 1, dated January 9, 2008; terminates the autoshutoff system wiring test required by paragraphs (f) and (g) of this AD.

Reporting

(i) Submit a report of the findings (both positive and negative) of the actions required by paragraph (f) of this AD to Boeing via e-mail at *RSE.BOECOM@BOEING.COM;* or via fax at (206) 766–5682; at the applicable time specified in paragraph (i)(1) or (i)(2) of this AD. The report must include: a description of the test failure; a description of the action taken to correct the failure; the total number of flight cycles/flight hours accumulated on the airplane at the time of inspection; and the date of accomplishment of Boeing Alert Service Bulletin 737–28A1206 and total number of flight hours/flight cycles accumulated on the airplane on the date of accomplishment of that service bulletin. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the test is done after the effective date of this AD: Submit the report within 10 days after accomplishing the test.

(2) If the test was accomplished prior to the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Samuel Spitzer, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6510; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(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 appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(k) You must use the documents specified in Table 1 of this AD, as applicable, to do the actions required by this AD, unless the AD specifies otherwise. If you accomplish the optional actions specified by this AD, you must use the documents specified in Table 2 of this AD, as applicable, to do the optional actions specified by this AD, unless the AD specifies otherwise.

TABLE 1—DOCUMENTS INCORPORATED BY REFERENCE FOR THE REQUIRED ACTIONS SPECIFIED IN THIS AD

Document	Page title/description	Page number(s)	Revision level	Date
Task 28–22–00–720–805 of the Boeing 737–600/700/800/900 Aircraft Maintenance Manual (AMM), Document.	AMM Part II, Practices and Procedures Title Page.	None shown ...	None noted* ...	October 15, 2008.
D633A101, Revision 37, dated October 15, 2008 ...	AMM Part II, Practices and Procedures Transmittal Letter.	1	37	October 15, 2008.
	AMM Part II, Practices and Procedures Effective Pages.	1–3	None noted* ...	October 15, 2008.
	AMM Chapter 28, 28-Effective Pages.	1–10	None noted* ...	October 15, 2008.
	Task 28–22–00–702–805 of AMM Section 28–22.	531–536	None noted* ...	February 15, 2008.
Chapter 28, Section 28–22, of the Boeing 737–600/700/800/900 Fault Isolation Manual (FIM), Document D633A103, Revision 37, dated October 15, 2008.	FIM Title Page	None shown ...	None noted* ...	October 15, 2008.
	FIM Transmittal Letter	1	37	October 15, 2008.
	FIM Effective Pages	1–3	None noted* ...	October 15, 2008.
	FIM Chapter 28 Effective Pages	1–2	None noted* ...	October 15, 2008.
	FIM Section 28–22	201–292	None noted* ...	February 15, 2008.

(*Only the Transmittal Letters for Boeing 737–600/700/800/900 AMM, Document D633A101, Revision 37; and Boeing 737–600/700/800/900 FIM, Document D633A103, Revision 37; contain the revision level of these documents.)

TABLE 2—DOCUMENTS INCORPORATED BY REFERENCE FOR THE OPTIONAL ACTIONS SPECIFIED IN THIS AD

Document	Page title/description	Page number(s)	Revision level	Date
Boeing Alert Service Bulletin 737–28A1248, dated December 21, 2006.	All	1–115	Original	December 21, 2006.
Boeing Alert Service Bulletin 737–28A1248, Revision 1, dated January 9, 2008.	All	1–119	1	January 9, 2008.
Department of Transportation, Federal Aviation Administration Master Minimum Equipment List (MMEL) for Boeing 737 100/200/300/400/500/600/700/800/900, Revision 52, dated April 29, 2008.	MMEL Title Page	None shown ...	52	April 29, 2008.

TABLE 2—DOCUMENTS INCORPORATED BY REFERENCE FOR THE OPTIONAL ACTIONS SPECIFIED IN THIS AD—Continued

Document	Page title/description	Page number(s)	Revision level	Date
	MMEL Contents	I	52	April 29, 2008.
	MMEL Item 28–02, 'Fuel Boost Pumps (Center Tank)'.	28–2, 28–3	52	April 29, 2008.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For Boeing service information identified in this 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*. For the Federal Aviation Administration Master Minimum Equipment List for Boeing 737 100/200/300/400/500/600/700/800/900 specified in this AD, contact the FAA, Flight Standards Division, Seattle Aircraft Evaluation Group, 1601 Lind Avenue, SW., Renton, Washington 98057. For information on the availability of this material at the FAA, call 425–917–6600 or fax 425–917–6638.

(3) You may review copies of the 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 or 425–227–1152.

(4) You may also review copies of the service information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on December 18, 2008.

Stephen P. Boyd,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–3823 Filed 2–23–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0155; Directorate Identifier 2009–CE–007–AD; Amendment 39–15825; AD 2009–05–01]

RIN 2120–AA64

Airworthiness Directives; Gippsland Aeronautics Pty. Ltd. Model GA8 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above that will supersede an existing AD. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Inspection of a high time aircraft has revealed cracks in the Horizontal Stabiliser rear spar splice plate and inboard main ribs around the area of the Horizontal Stabiliser rear pivot attachment. Additionally, failure of some attach bolts in service may be due to improper assembly.

This amendment is issued because the requirement document now contains an inspection for cracking in horizontal stabilisers which have load transferring fittings installed.

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective March 2, 2009.

On March 2, 2009, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

We must receive comments on this AD by March 26, 2009.

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

- *Federal eRulemaking Portal: Go to http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

On February 7, 2007, we issued AD 2007–04–12, Amendment 39–14944 (72 FR 7578; February 16, 2007). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2007–04–12, Gippsland Aeronautics has updated the service information to include an inspection for cracking in horizontal stabilizers that have load transfer fittings installed. In addition, the previous service information allowed spotfacing nut and bolt mating surfaces that were damaged or not square. The updated service information eliminated the spotfacing action and requires replacement of parts if nut and bolt mating surfaces are damaged or not square. Since repair by spotfacing is no longer acceptable, this AD also requires replacement of parts if previously repaired by spotfacing.

The Civil Aviation Safety Authority (CASA), which is the aviation authority for Australia, has issued AD/GA8/5, Amdt 2, dated January 22, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Inspection of a high time aircraft has revealed cracks in the Horizontal Stabiliser rear spar splice plate and inboard main ribs around the area of the Horizontal Stabiliser rear pivot attachment. Additionally, failure of some attach bolts in service may be due to improper assembly.

This amendment is issued because the requirement document now contains an inspection for cracking in horizontal

stabilisers which have load transferring fittings installed.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Gippsland Aeronautics has issued Mandatory Service Bulletin SB-GA8–2002–02, Issue 5, dated November 13, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might have also required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the AD. These requirements take precedence over those copied from the MCAI.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because of potential cracking of the horizontal stabilizer structure, which could lead to failure of the tailplane assembly. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2009–0155; Directorate Identifier 2009–CE–007–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a "significant regulatory action" under Executive Order 12866;

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this 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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–14944 (72 FR 7578; February 16, 2007), and adding the following new AD:

2009–05–01 Gippsland Aeronautics Pty. Ltd.: Amendment 39–15825; Docket No. FAA–2009–0155; Directorate Identifier 2009–CE–007–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 2, 2009.

Affected ADs

(b) This AD supersedes AD 2007–04–12; Amendment 39–14944.

Applicability

(c) This AD applies to Model GA8 airplanes, serial numbers GA8–00–004 and up, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 55: Stabilizers.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Inspection of a high time aircraft has revealed cracks in the Horizontal Stabiliser rear spar splice plate and inboard main ribs around the area of the Horizontal Stabiliser rear pivot attachment. Additionally, failure of some attach bolts in service may be due to improper assembly.

This amendment is issued because the requirement document now contains an inspection for cracking in horizontal stabilisers which have load transferring fittings installed.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Within the next 10 hours time-in-service (TIS) after March 2, 2009 (the effective date of this AD):

(i) For all aircraft not incorporating computer numeric control (CNC) machined elevator hinges, inspect and repair the left and right horizontal stabilizer rear pivot attachment installation following instruction ''3. Rear Pivot Attachment Inspection,'' of Gippsland Aeronautics Mandatory Service Bulletin SB–GA8–2002–02, Issue 5, dated November 13, 2008; and,

(ii) For all aircraft, inspect the left and right rear attach bolt mating surfaces for damage or an out of square condition and replace the left and right rear attach bolts following instruction ''5. Rear Attach Bolt Replacement,'' of Gippsland Aeronautics Mandatory Service Bulletin SB–GA8–2002–02, Issue 5, dated November 13, 2008. Reworking the mating surfaces by spotfacing is no longer acceptable. If the mating surfaces are damaged, not square, or were previously reworked by spotfacing the surface, replace the parts as specified in Gippsland Aeronautics Mandatory Service Bulletin SB–GA8–2002–02, Issue 5, dated November 13, 2008.

(2) Within the next 10 hours TIS after March 2, 2009 (the effective date of this AD) and repetitively thereafter at intervals not to exceed 100 hours TIS or 12 months, whichever occurs first, for all aircraft:

(i) Inspect the horizontal stabilizer externally following instruction ''2. External Inspection (Lower flange, Stabilizer rear spar),'' of Gippsland Aeronautics Mandatory Service Bulletin SB–GA8–2002–02, Issue 5, dated November 13, 2008; and

(ii) Inspect the horizontal stabilizer internally following instruction ''4. Internal Inspection,'' of Gippsland Aeronautics Mandatory Service Bulletin SB–GA8–2002–02, Issue 5, dated November 13, 2008.

(3) Before further flight, if during the inspection required by paragraph (f)(2) of this AD any excessive local deflection or movement of the lower skin surrounding the lower pivot attachment, cracking, or working (loose) rivet is found, obtain an FAA-approved repair scheme from the manufacturer and incorporate this repair scheme. Due to FAA policy, the repair scheme for crack damage must include an immediate repair of the crack, not a repetitive inspection. Continued operational flight with unrepaired crack damage is not permitted.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows:

(1) ''Requirement: 1. Daily Inspection (Stabilizer attach bolt)'' of the service information requires a daily inspection of the stabilizer attach bolt. The daily inspection is not a requirement of this AD. Instead of the daily inspection, we require you to perform, within 10 hours TIS, ''Requirement 3. Rear Pivot Attachment Inspection'' and ''Requirement 5. Rear Attachment Bolt Replacement'' of the service information. Compliance with requirement 3. and 5. is a terminating action for the daily inspection, and we are requiring these within 10 hours TIS after the effective date of this AD.

(2) ''Requirement: 2. External Inspection (Lower flange, Stabilizer rear spar)'' of the service information does not specify any action if excessive local deflection or movement of lower skin, cracking, or working (loose) rivet is found. We require obtaining and incorporating an FAA-approved repair scheme from the manufacturer before further flight.

(3) The MCAI does not state if further flight with known cracks is allowed. FAA policy is to not allow further flight with known cracks in critical structure. We require that if any cracks are found when accomplishing the inspection required in paragraph (f)(2) of this AD, you must repair the cracks before further flight.

(4) The service information does not state that parts with spotfaced nut and bolt mating surfaces require replacement. However, the service information no longer allows reworking of the mating surfaces by spotfacing. We require that if any nut and bolt surfaces were previously reworked by spotfacing, you must replace the parts.

Other FAA AD Provisions

(f) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(g) Refer to MCAI Civil Aviation Safety Authority AD No. AD/GA8/5, Amdt 2, dated January 22, 2009; and Gippsland Aeronautics Mandatory Service Bulletin SB–GA8–2002–02, Issue 5, dated November 13, 2008, for related information.

Material Incorporated by Reference

(h) You must use Gippsland Aeronautics Mandatory Service Bulletin SB–GA8–2002–02, Issue 5, dated November 13, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Gippsland Aeronautics, Attn: Technical Services, P.O. Box 881, Morwell Victoria 3840, Australia; telephone: +61 03 5172 1200; fax: +61 03 5172 1201; Internet: *http://www.gippsaero.com.*

(3) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329–3768.

(4) You may also review copies of the service information incorporated by reference for this AD at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri on February 17, 2009.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–3758 Filed 2–23–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28413; Directorate Identifier 2007–NE–25–AD; Amendment 39–15826; AD 2009–05–02]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–80C2 and CF6–80E1 Series Turbofan Engines

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for General Electric Company (GE) CF6–80C2 and CF6–80E1 series turbofan engines with fuel manifolds part numbers (P/Ns) 1303M31G12 and 1303M32G12, installed in drainless fuel manifold assemblies (introduced by GE Aircraft Engines (GEAE) Service Bulletins (SB) CF6–80C2 S/B 73–0253 and CF6–80E1 S/B 73–0026). This AD requires removing the loop clamps that hold the fuel manifold to the compressor rear frame (CRF) damper brackets, inspecting the fuel manifold for wear at each clamp

location, and replacing the clamps with new, zero-time parts. This AD also requires revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA) and air carrier's Continuous Airworthiness Maintenance Programs (CAMP) to require repetitive fuel manifold inspection and loop clamp replacement. This AD results from reports of fuel leaks during engine operation. We are issuing this AD to prevent fuel leaks that could result in an under-cowl fire and damage to the airplane.

DATES: This AD becomes effective March 31, 2009.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Robert Green, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *Robert.green@faa.gov*; telephone (781) 238–7754; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to GE CF6–80C2 and CF6–80E1 series turbofan engines with fuel manifolds P/Ns 1303M31G12 and 1303M32G12 installed in drainless fuel manifold assemblies. These drainless fuel manifold assemblies were introduced by GEAE SBs CF6–80C2 S/B 73–0253 and CF6–80E1 S/B 73–0026. We published the proposed AD in the **Federal Register** on September 7, 2007 (72 FR 51388). That action proposed to require removing and discarding the loop clamps that assemble the fuel manifolds to the CRF damper brackets, inspecting the fuel manifolds for wear at each clamp location, and replacing the clamps. That action also proposed to require revising the ICA ALS and air carrier's CAMP to require repetitive fuel manifold inspection and loop clamp replacement during each inspection.

Examining the AD 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 AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request To Clarify Inspection Requirements

GE and two air carriers request that we clarify that the AD inspection requirements are specific to the drainless fuel manifold configuration, which was introduced by GEAE SB CF6–80C2 S/B 73–0253 (–80C2) and SB CF6–80E1 S/B 73–0026 (–80E1).

We agree. We changed the AD to clarify the applicability and inspection requirements.

Request for a Phase-in Period

FedEx Express requests that we add a phase-in period for engines that might not have been part of a repetitive inspection program before the effective date of the AD. The commenter states that these engines would immediately fall out of compliance with the AD if they exceed the 7,500 flight-hour time-since-new (TSN) threshold for new, zero-time loop clamps, assuming the loop clamps were installed at the last shop visit. The commenter states that their fleet is almost entirely configured with drained manifold assemblies. They have not experienced any significant wear, and likely will have several engines exceeding the specified flight-hour life limit in the AD.

We partially agree. As we stated in the first comment response, this AD applies only to drainless manifold assemblies, so that portion of FedEx's comment is not relevant to this AD. The need for a phase-in period is valid. We received another comment on that point and we changed the AD to accommodate the concerns. That discussion follows below.

Incorrect Service Bulletin Reference

GE, the Air Transport Association, Boeing Commercial Airplanes, and seven carriers point out that the proposed AD incorrectly referenced SB GEAE CF6–80C2 S/B 73–0226, for the manifold inspection. The appropriate SB is CF6–80C2 S/B 73–0326.

We agree. We changed the reference in the AD.

Comment That Clamp Wear Is Also Applicable to Drained Fuel Manifold Assemblies

Air New Zealand Ltd and KLM Royal Dutch Airlines comment that the clamp wear problem is also applicable to fuel manifolds P/N 1303M31G10 and P/N 1303M32G10 installed in the drained fuel manifold assembly, pre-SB CF6–80C2 S/B 73–0253 configuration.

We do not agree. We are aware of only one leak found from loop clamp wear on a drained fuel manifold assembly, which was on a CF6–80C2 series turbofan engine. Considering the service history of the drained fuel manifold assembly, a mandatory inspection is not warranted at this time. We did not change the AD.

Request To Apply the Re-Inspection Interval to Engines That Have Had New, Zero-Time Loop Clamps Installed On-Wing

Air New Zealand Ltd and KLM Royal Dutch Airlines note that the proposed AD requires a 7,500 flight-hour re-inspection interval for first-run engines and engines that have new, zero-time loop clamps installed at last shop visit. The commenters request that we apply the same re-inspection interval to engines that have had new, zero-time loop clamps installed on-wing. Air New Zealand states that they have been replacing loop clamps with new, zero-time loop clamps when they perform on-wing inspections of the fuel manifolds.

We agree. We changed the AD to include on-wing replacement of loop clamps.

Request for Credit for Installing Loop Clamps On-Wing

All Nippon Airways requests that the AD initial inspection state that the 7,500 re-inspection interval for first-run engines or engines that have had new, zero-time loop clamps previously installed, apply regardless of previous inspection per GEAE SB CF6–80C2 S/B 73–0326 or SB CF6–80E1 S/B 73–0061. The commenter points out that the proposed AD does not recognize that operators were replacing the loop clamps on-wing.

We agree. We changed the AD to clarify that the re-inspection requirement is not preempted by compliance with existing SB inspection recommendations.

Request To Consider Using Room Temperature Vulcanizing (RTV) Rubber Compound

Air India requests that we consider allowing the use of red, room-temperature vulcanizing (RTV) rubber

compound (Specification A15F6B6; RTV 106; MIL–846106), between the loop clamps and fuel manifold when the loop clamps are replaced with new, zero-time parts at inspection. Air India states that they have applied RTV rubber compound on the inner diameter of loop clamps where they have observed wear on other engine tubing. GE previously recommended using RTV rubber compound on the low-pressure turbine cooling manifolds, and Air India now uses it at other locations.

We do not agree. We have no data or experience to justify use of RTV rubber compound in this application. We did not change the AD.

Recommendation To Use Fiberglass Tape

The Air Transport Association and American Airlines recommend that we revise the proposed AD to allow the optional use of fiberglass tape on the fuel manifolds under the loop clamps. The commenters state that using the tape will eliminate the wear and reduce the effects of vibration by improving the fit of the clamps on the fuel manifolds. American Airlines states that they have been installing the fiberglass tape on their fuel manifolds at the time of inspection and loop clamp replacement since the beginning of their program. They believe the tape is essential to preventing fuel manifold wear.

We do not agree. We reviewed the data GE provided and concluded that using fiberglass tape may contribute to the fuel manifold wear. GE has also stated that they no longer recommend fiberglass tape for this application. We did not change the AD.

Request for a Unique Compliance Recommendation and Re-Inspection Interval

Lufthansa Technik AG and a private citizen request a unique compliance recommendation and re-inspection interval for engines that had been previously inspected and or reassembled with new, zero-time loop clamps, with fiberglass tape between the loop clamps and fuel manifolds. Lufthansa Technik AG states that they have observed less wear when using the fiberglass tape.

We do not agree. As previously noted, GE has stated that they no longer recommend fiberglass tape for this application. We did not change the AD.

Request To Not Remove Fiberglass Tape

Lufthansa Technik AG and GE Aviation request that we revise the fuel manifold inspection to not require removal of tape between the loop clamp and fuel manifold, unless wear is observed on the tape. GEAE SB CF6–80C2 S/B 73–0326, dated March 5, 2003, introduced the option of installing fiberglass tape on CF6–80C2 series engines. Lufthansa Technik AG states that if there is no wear found on the tape, then there will be no wear on the fuel manifold. Removing and replacing all tape at the time of inspection will add additional unnecessary work-hours to the inspection.

We do not agree. As noted earlier, the tape may contribute to the wear, and GE no longer recommends fiberglass tape for this application. GE's comment was in anticipation of a future design change with Teflon tape between the loop clamps and fuel manifolds. We did not change the AD.

Request That the AD Recognize the Use of Teflon Tape

GE Aviation and five air carriers request that the AD recognize the use of Teflon tape between new, zero-time loop clamps and fuel manifolds. The commenters request that we allow these engines to continue in service until the next inspection, without limit or penalty. The air carriers state that they have already been installing Teflon tape between new, zero-time loop clamps and fuel manifolds.

We do not agree. We have no data or experience to make a determination for reducing or extending the inspection and loop clamp replacement intervals because of installing Teflon tape between the loop clamps and fuel manifolds. GE has certified new fuel manifolds with PTFE tape installed at the loop clamp locations. These parts have the same inspection and loop clamp replacement requirements as the original parts. We did not change this AD.

Request for Clarification of Compliance Inspection Schedule

Lufthansa Technik AG and Virgin Atlantic Airways request that we clarify whether a poorly fitting loop clamp, with or without tape, would compromise the compliance inspection schedule in the AD.

We respond that it would not compromise the compliance inspection schedule in the AD. We concluded that replacing the loop clamps every 7,500 flight-hours (FH) was appropriate based on a GE Weibull analysis of the engine fleet, the first five fuel leak failures, and the accrued operation of 1,289 engines that had no leaks. The data was from first-run engines, which encompasses typical production loop clamp stack-up variations without tape. None of the subsequent leaks and failures occurred with less time than the proposed AD inspection compliance interval of 7,500 FH. We did not change the AD.

Request To Specify Flight Hours Time-Since-Last-Inspection or Flight Hours Time-Since-Last-Shop Visit

Japan Airlines International requests that for clarification, the initial inspection schedule should specify FH time-since-last-inspection or FH time-since-last-shop visit as of the issue date of the AD.

We partially agree. The initial inspection schedule is defined relative to the last inspection or replacement of the loop clamps with new clamps. However, for those engines that exceed the 1,750 and 4,500 FH thresholds, the determination is made as of the effective date of the AD. We changed the AD to clarify this.

Request To Offset the Initial Inspection Schedule

Japan Airlines International requests that we offset the initial inspection schedule to accommodate the scheduling of maintenance.

We do not agree. The time for scheduling maintenance varies among operators. Defining a generic inspection threshold to accommodate this variation would introduce risk that the inspection schedule would be ambiguous. We did not change the AD.

Propose an Additional Inspection Category

Japan Airlines International proposes an additional inspection category for operators inspecting the manifolds at intervals longer than the GE-recommended 4,500 FH interval. The commenter proposes that in these cases, operators would initially replace the loop clamps and inspect the fuel manifolds using their existing inspection schedule or within 4 months, whichever occurs first. The commenter states that they currently inspect affected fuel manifolds at 6,000 FH intervals, and based on the wording in the proposed AD, engines would be immediately in violation of the inspection requirements once the AD is effective.

We partially agree. The commenter points out the need to include a transitional period for operators who are inspecting the fuel manifolds at intervals longer than the earlier GE inspection SB recommendation, which is engines operating with more than 4,500 FH time-since-last-inspection or time-since-last-shop visit. We changed the AD to include a four-month transition period, to bring these engines into compliance.

Request To Permit Alternate Methods of Measuring

Japan Airlines International and GE Aviation request that we permit alternate methods of measuring the depth of wear in fuel manifolds, such as ultrasonic wall thickness measurement. The commenters note that the proposed AD requires using a pinpoint micrometer to measure depth of wear. Because of limited access at the top of the installed engine, the commenter states it is not possible to use a pinpoint micrometer.

We partially agree. GE does not have a procedure for ultrasonic inspections of the fuel manifolds for depth of wear. However, we agree that equivalent measuring techniques are acceptable. We eliminated the requirement to use a pinpoint micrometer.

Request for Clarification of the Use of Part Manufacturer Approval (PMA) Loop Clamps

Japan Airlines International requests clarification on the use of PMA loop clamps. The commenter asks if the proposed AD also applies to PMA loop clamps, part number VL1039GE2–10.

Yes, the AD applies to PMA loop clamps. They are also susceptible to deteriorating and causing fuel leaks. We changed the AD to include a reference to PMA loop clamps.

Question on Compliance Time Selection

KLM Royal Dutch Airlines questions the selection of the proposed AD compliance time of 1,750 FH time-since-last-inspection (TSLI). The commenter asks why we did not base the compliance recommendation on the low-time TSLI fuel manifold leak event for an engine with used loop clamps, which is 350 FH. The commenter also asks why we did not use the next lowest-time fuel manifold leak event, which is 2,000 FH TSLI. The commenter cites data presented by GE at the CF6 Technical Symposium on May 9 through May 10, 2007.

We do not agree. Since 2005, the fuel manifold leak failure rate has increased. There were four leak events in 2006, six in 2007, and six to date in 2008. Thirteen of the events are known to have occurred before the GE-recommended 4,500 FH re-inspection interval. The average TSLI for the thirteen failures is 2,250 FH. The 350 FH leak is a low-time event relative to the other failures and is believed to be unique. The 1,750 FH TSLI compliance requirement was based on the next-lowest TSLI leak event at the time, which was after the GE CF6 Technical Symposium. We did not change the AD.

Question on Why the Compliance Time Is Extended

KLM Royal Dutch Airlines questions why the proposed AD extends the 1,750 FH TSLI compliance time to 4,500 FH TSLI or 4 months after the effective date of the AD, for engines with used clamps or clamps of unknown heritage that have already accumulated more than 1,750 FH. The commenter is concerned that this 4-month compliance period will increase the probability of a fuel manifold leak event.

We do not agree. The proposed inspection and loop clamp replacement schedule for engines that already exceed the 1,750 FH threshold is an effort to transition the engine fleet to new loop clamps within a reasonable period of time. This will be achieved either through the original GE-recommended 4,500 FH schedule or within 4 months, whichever comes first. We did not change the AD.

Question on GE's Risk Assessment

KLM Royal Dutch Airlines questions why we disregarded GE's risk assessment that justified the 4,500 FH inspection interval.

We did because GE's risk assessment predicted fuel manifold leak events within the 4,500 FH inspection intervals. As previously noted, the leaking fuel could ignite resulting in an under-cowl fire and damage to the airplane, which is unacceptable.

Recommendation That We Eliminate Revising the Air Carrier's Approved CAMP and ALS of Chapter 5

The Air Transport Association and U.S. Airways recommend that we eliminate the requirement to revise the air carrier's approved CAMP and ALS of Chapter 5 in the CF6–80C2 and CF6–80E1 Instructions for Continued Airworthiness (ICA) from the proposed AD. The commenters state that GE has indicated it is developing new-design fuel manifolds to eliminate the repetitive maintenance required by this AD.

We do not agree. The AD requires GE to revise the ALS of the ICAs, and air carriers to revise their CAMP, to specify the repetitive inspections and loop clamp replacements for the drainless fuel manifold assemblies with fuel manifold P/N 1303M31G12 and P/N 1303M32G12. The AD would not be applicable to a new design. We did not change the AD.

Request To Change the Proposed AD Discussion

GE Aviation requests that we change the proposed AD Discussion to state that abrasive dirt and debris collecting between the worn loop clamps and fuel manifolds can result in fuel manifold wear with loop clamps that appear serviceable.

We partially agree. The deterioration of the loop clamp and possible accumulation of dirt and debris between the loop clamp cushion and fuel manifold might contribute to fuel manifold wear, but if so, it is a secondary factor. The root cause of the fuel manifold wear is fuel manifold vibration during engine operation. We did not change the AD.

Request To Consider the Probability of an Under-Cowl Fire

GE Aviation requests that we consider a longer inspection/replacement interval, and requests that we consider the probability of an under-cowl engine fire if we use 4,500 flight-hours instead. GE Aviation requests that we consider an intermediate compliance time that is supportable by industry if the 4,500 FH does not sufficiently reduce the risk of an under-cowl fire. GE states that our proposed 1,750 FH TSLI interval will reduce the average time between inspections from 15 months to less than 6 months, and increase the number of engines that will need to be inspected per week during the transition by a factor of 2.5. This will severely burden industry's maintenance capacity. GE also states that the additional work required to bring engines that already exceed the 1,750 FH into compliance, during the 4-month grace period, will make the burden worse.

We partially agree. The commenter did not consider first-run engines or engines that have already had new, zero-time loop clamps installed during either last shop visit or an earlier in-service inspection. We also note that despite the GE 4,500 FH TSLI SB recommendation, one fuel leak event occurred in 2005, four occurred in 2006, and six fuel leak events occurred in 2007. Nine of these 11 events occurred within the recommended 4,500 FH interval. We agree that the lack of a calendar compliance period with the 1,750 FH threshold could result in an immediate maintenance scheduling problem and we changed the AD to include the 4-month compliance period with the 1,750 FH threshold to facilitate the transition.

Request To Revise Costs of Compliance

Japan Airlines International and GE Aviation request that we revise the Costs of Compliance. GE Aviation estimates that 2 work-hours are required to inspect the loop clamps and fuel manifolds. Japan Airlines estimates that

based on their experience, 8 work-hours are required for the inspections.

We do not agree. In recognizing the possible work-hour variations from operator to operator, we believe that 4 work-hours is a valid average. We did not change the AD.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 350 CF6–80C2 series turbofan engines installed on airplanes of U.S. registry. We also estimate that it will take about 4 work-hours per engine to perform the actions, and that the average labor rate is $80 per work-hour. Required parts will cost about $162 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators for a once-through-the-fleet manifold visual inspection and loop clamp replacement to be $168,700.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–05–02 General Electric Company: Amendment 39–15826. Docket No. FAA–2007–28413; Directorate Identifier 2007–NE–25–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 31, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to:

(1) General Electric (GE) CF6–80C2A1, –80C2A2, –80C2A3, –80C2A5, –80C2A8, –80C2A5F, –80C2B1, –80C2B2, –80C2B4, –80C2B6, –80C2B1F, –80C2B1F1, –80C2B1F2, –80C2B2F, –80C2B3F, –80C2B4F, –80C2B5F, –80C2B6F, –80C2B6FA, –80C2B7F, –80C2B8F, –80C2D1F, –80C2L1F, –80C2K1F turbofan engine models with fuel manifold part numbers (P/Ns) 1303M31G12 and 1303M32G12, installed in drainless fuel manifold assemblies (introduced by GE Aircraft Engines (GEAE) Service Bulletin (SB) CF6–80C2 S/B 73–0253). These engines are installed on, but not limited to, Boeing 747, 767, MD11, and Airbus A300–600 and A310 airplanes.

(2) This AD also applies to GE CF6–80E1A1, –80E1A2, –80E1A3, –80E1A4, –80E1A4/B turbofan engine models with fuel manifold P/Ns 1303M31G12 and 1303M32G12, installed in drainless fuel manifold assemblies (introduced by GEAE SB CF6–80E1 S/B 73–0026). These engines are installed on Airbus A330 airplanes.

Unsafe Condition

(d) This AD results from reports of fuel leaks during engine operation. We are issuing this AD to prevent fuel leaks that could result in an under-cowl fire and damage to the airplane.

Compliance

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

Removal and Replacement of Loop Clamps and Fuel Manifold Inspection Compliance Times

(f) Using Table 1 of this AD, Schedule for Inspections and Replacements, accomplish the following actions in the intervals indicated in the table: remove and discard all loop clamps, P/N J1220G10, or part manufacturer approval (PMA) equivalent, that hold the fuel manifold to the compressor rear frame (CRF) friction damper brackets. Inspect the fuel manifold for wear at each clamp location as specified in paragraphs (g) and (h) of this AD. Replace the discarded loop clamps with new, zero-time clamps.

TABLE 1—SCHEDULE FOR INSPECTIONS AND REPLACEMENTS

If:	Then replace clamps and inspect within:
(1) The engine was previously inspected using GEAE SB CF6–80C2 S/B 73–0326, dated March 5, 2003, for CF6–80C2 engines; or GEAE SB CF6–80E1 S/B 73–0061, dated April 14, 2003, for CF6–80E1 engines.	1,750 flight hours (FH) time-since-last-inspection (TSLI) or within 4 months after the effective date of this AD.
(2) Used loop clamps or clamps of unknown heritage were installed at last shop visit.	1,750 FH time-since-last-shop-visit or within 4 months after the effective date of this AD.

TABLE 1—SCHEDULE FOR INSPECTIONS AND REPLACEMENTS—Continued

If:	Then replace clamps and inspect within:
(3) The engine is a first-run engine or is an engine with zero-time, new loop clamps previously installed on-wing or at shop visit.	7,500 FH time-since-new or since zero-time, new loop clamps were installed (regardless if previously inspected per GEAE SB CF6–80C2 S/B 73–0326 or GEAE SB CF6–80E1 S/B 73–0061).
(4) The engine has already exceeded the 1,750 FH initial inspection threshold on the effective date of this AD, but has fewer than 4,500 flight hours TSLI.	4,500 FH TSLI, or 4 months after the effective date of this AD, whichever occurs first.
(5) The engine has already exceeded the 4,500 FH initial inspection threshold on the effective date of this AD.	4 months after the effective date of this AD.

Inspection of Fuel Manifold P/Ns 1303M31G12 and 1303M32G12

(g) Remove any tape at any clamp location. Visually inspect the full circumference of the manifold for wear at each clamp location. If any wear is found, follow paragraph (h) of this AD.

(h) When the fuel manifold shows any signs of wear, determine the depth of the wear as follows:

(1) Measure the outside diameter of the tube adjacent to the worn area.

(2) Measure the worn area at the smallest diameter.

(3) Subtract the measurement of the worn tube diameter from the unworn diameter measurement. Allowable wear is 0.0035 inch.

(4) Replace fuel manifolds with wear greater than 0.010 inch before further flight.

(5) Replace fuel manifolds with wear greater than 0.0035 inch but less than 0.010 inch, within 50 flight cycles.

Revise Air Carrier's Continuous Airworthiness Maintenance Program (CAMP) and Airworthiness Limitation Section (ALS)

(i) Within 30 days of the effective date of this AD, revise the air carrier's approved CAMP and Instructions for Continued Airworthiness (ICA) Chapter 5, Airworthiness Limitation Section for the CF6–80C2 and CF6–80E1 series engines to require:

(1) Repetitive inspections of fuel manifolds, P/Ns 1303M31G12 and 1303M32G12, installed in drainless fuel manifold assemblies introduced by CF6–80C2 S/B 73–0253 and CF6–80E1 S/B 73–0026, as detailed in paragraphs (g) and (h) of this AD, at 7,500 FH intervals.

(2) Mandatory removal of all loop clamps that hold the fuel manifold, P/Ns 1303M31G12 and 1303M32G12, to the CRF damper brackets, at each inspection.

(3) Replacement of all loop clamps with new, zero-time loop clamps, at each inspection.

Alternative Methods of Compliance

(j) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(k) GEAE SB CF6–80C2 S/B 73–0326, dated March 5, 2003, and GEAE SB CF6–80E1 S/B 73–0061, dated April 14, 2003; and the following GE engine manuals pertain to the subject of this AD:

(1) CF6–80C2 Engine Manual GEK 92451.

(2) CF6–80C2L1F Engine Manual GEK 112213.

(3) CF6–80C2K1F Engine Manual GEK 112721.

(4) CF6–80E1 Engine Manual GEK 99376.

(l) Contact General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215; telephone (513) 672–8400; fax (513) 672–8422, for the service information identified in this AD.

(m) Contact Robert Green, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *Robert.green@faa.gov*; telephone (781) 238–7754; fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on February 17, 2009.

Thomas A. Boudreau,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E9–3868 Filed 2–23–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–1185; Airspace Docket No. 08–AGL–11]

Amendment of Class E Airspace; Columbus, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Columbus, OH. Additional controlled airspace is necessary to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Rickenbacker International Airport, Columbus, OH. This action also makes a minor change to the geographical coordinates of Bolton Field Airport, Columbus, OH. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at Rickenbacker International Airport.

DATES: Effective Date: 0901 UTC, May 7, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76193–0530; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On December 18, 2008, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Columbus, OH, adding additional controlled airspace at Rickenbacker International Airport, Columbus, OH. (73 FR 76985, Docket No. FAA–2008–1185). 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 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order. 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 action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace at Columbus, OH, adding additional controlled airspace at Rickenbacker International Airport, Columbus, OH., and makes a minor change to the geographical coordinates of Bolton Field Airport, Columbus, OH.

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. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, 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 adds additional controlled airspace at Rickenbacker International Airport, Columbus, OH.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008, is amended as follows:

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

* * * * *

AGL OH E5 Columbus, OH [Amended]

Columbus, Port Columbus International Airport, OH
(Lat. 39°59′53″ N., long. 82°53′31″ W.)
Columbus, Rickenbacker International Airport, OH
(Lat. 39°48′50″ N., long. 82°55′40″ W.)
Columbus, Ohio State University Airport, OH
(Lat. 40°04′47″ N., long. 83°04′23″ W.)
Columbus, Bolton Field Airport, OH
(Lat. 39°54′04″ N., long. 83°08′13″ W.)
Columbus, Darby Dan Airport, OH
(Lat. 39°56′31″ N., long. 83°12′18″ W.)
Lancaster, Fairfield County Airport, OH
(Lat. 39°45′20″ N., long. 82°39′26″ W.)
Don Scott NDB
(Lat. 40°04′49″ N., long. 83°04′44″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Port Columbus International Airport, and within a 7-mile radius of Rickenbacker International Airport and within 4 miles either side of the 045° bearing from Rickenbacker International Airport extending from the 7-mile radius area to 12.5 miles northeast of the airport, and within a 6.5-mile radius of the Ohio State University Airport, and within 3 miles either side of the 091° bearing from the Don Scott NDB extending from the 6.5-mile radius area to 9.8 miles east of the NDB, and within a 7.4-mile radius of Bolton Field Airport, and within a 6.4-mile radius of Fairfield County Airport, and within a 6.5-mile radius of Darby Dan Airport, excluding that airspace within the London, OH, Class E airspace area.

* * * * *

Issued in Fort Worth, TX, on February 12, 2009.

Roger M. Trevino,

Acting Manager, Operations Support Group, Central Service Center.

[FR Doc. E9–3820 Filed 2–23–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–1211; Airspace Docket No. 08–AGL–13]

Amendment of Class E Airspace; Medford, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Medford, WI. Additional controlled airspace is necessary to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Taylor County Airport, Medford, WI. This action also makes a minor change to the geographical coordinates of Taylor County Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at Taylor County Airport.

DATES: *Effective Date:* 0901 UTC, May 7, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76193–0530; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On December 18, 2008, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Medford, WI, adding additional controlled airspace at Taylor County Airport, Medford, WI. (73 FR 76982, Docket No. FAA–2008–1211). 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 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order. 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 action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace at Medford, WI, adding additional controlled airspace at Taylor County Airport, Medford, WI., and makes a minor change to the geographical coordinates of Taylor County 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. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44

FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, 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 adds additional controlled airspace at Taylor County Airport, Medford, WI.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008, is amended as follows:

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

* * * * *

AGL WI E5 Medford, WI [Amended]

Medford, Taylor County Airport, WI
(Lat. 45°06′05″ N., long. 90°18′03″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Taylor County Airport, and within 2.7 miles each side of the 162° bearing from the airport extending from the 6.8-mile radius to 7 miles southeast of the airport.

* * * * *

Issued in Fort Worth, TX, on February 12, 2009.

Roger M. Trevino,

Acting Manager, Operations Support Group

[FR Doc. E9–3822 Filed 2–23–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–1104; Airspace Docket No. 08–ACE–2]

Amendment of Class E Airspace; Sioux City, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Sioux City, IA. Additional controlled airspace is necessary to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Sioux Gateway Airport/Col. Bud Day Field, Sioux City, IA. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at Sioux Gateway Airport/Col. Bud Day Field.

DATES: *Effective Date:* 0901 UTC, May 7, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76193–0530; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On December 18, 2008, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Sioux City, IA, adding additional controlled airspace at Sioux Gateway Airport/Col. Bud Day Field, Sioux City, IA (73 FR 76983, Docket No. FAA–2008–1104). 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 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace at Sioux City, IA, adding additional controlled airspace at Sioux Gateway Airport/Col. Bud Day Field, Sioux City, IA.

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. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, 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 adds additional controlled airspace in the Sioux City, IA airspace area, at Sioux Gateway Airport/Col. Bud Day Field, Sioux City, IA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008, is amended as follows:

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

* * * * *

ACE IA E5 Sioux City, IA [Amended]

Sioux City, Sioux Gateway Airport/Col. Bud Day Field, IA
(Lat. 42°24′09″ N., long. 96°23′04″ W.)
Sioux City VORTAC
(Lat. 42°20′40″ N., long. 96°19′25″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Sioux Gateway Airport/Col. Bud Day Field and within 3 miles each side of the 139° radial of the Sioux City VORTAC extending from the 7-mile radius to 17.8 miles southeast of the VORTAC, and within 3 miles each side of the 319° radial of the Sioux City VORTAC extending from the 7-mile radius to 25.3 miles northwest of the VORTAC, and within 3.8 miles each side of the 316° bearing from Sioux Gateway Airport/Col. Bud Day Field extending from the 7-mile radius to 10.5 miles northwest of the airport, and within 4 miles each side of the 001° bearing from Sioux Gateway Airport/Col. Bud Day Field extending from the 7-mile radius to 12 miles northwest of the airport.

* * * * *

Issued in Fort Worth, TX, on February 12, 2009.

Roger M. Trevino,

Acting Manager, Operations Support Group, Central Service Center.

[FR Doc. E9–3821 Filed 2–23–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–1291; Airspace Docket No. 08–AGL–20]

Amendment of Class E Airspace; Milwaukee, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Milwaukee, WI. Additional controlled airspace is necessary to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Waukesha County Airport, Waukesha, WI. Also, this rule changes an airport name from John H. Batten Field to John H. Batten Airport, Racine, WI. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at Waukesha County Airport.

DATES: *Effective Date:* 0901 UTC, May 7, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76193–0530; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On December 18, 2008, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Milwaukee, WI, adding additional controlled airspace at Waukesha County Airport, Waukesha, WI (73 FR 76981, Docket No. FAA–2008–1291). 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 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace at Milwaukee, WI, adding additional controlled airspace at Waukesha County Airport, Waukesha, WI, to accommodate SIAPs. This action also changes the name of John H. Batten Field to John H. Batten Airport, Racine, WI.

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. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, 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 adds additional controlled airspace in the Milwaukee, WI, airspace area, at Waukesha County Airport, Waukesha, WI.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008, is amended as follows:

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

* * * * *

AGL WI E5 Milwaukee, WI [Amended]

Milwaukee, General Mitchell International Airport, WI
(Lat. 42°56′50″ N., long. 87°53′48″ W.)
Racine, John H. Batten Airport, WI
(Lat. 42°45′40″ N., long. 87°48′50″ W.)
Waukesha, Waukesha County Airport, WI
(Lat. 43°02′28″ N., long. 88°14′13″ W.)
Milwaukee, Lawrence J. Timmerman Airport, WI
(Lat. 43°06′37″ N., long. 88°02′04″ W.)

That airspace extending upward from 700 feet above the surface within a 8.4-mile radius of General Mitchell International Airport, and within an 8.1-mile radius of John H. Batten Airport, and within a 7.5-mile radius of the Waukesha County Airport, and within 2 miles each side of the 282° bearing from the Waukesha County Airport extending from the 7.5-mile radius to 10.5 miles west of the Waukesha County Airport, and within an 8.9-mile radius of Lawrence J. Timmerman Airport.

* * * * *

Issued in Fort Worth, TX, on February 12, 2009.

Roger M. Trevino,

Acting Manager, Operations Support Group, Central Service Center.

[FR Doc. E9–3818 Filed 2–23–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–1186; Airspace Docket No. 08–AGL–12]

Establishment of Class E Airspace; Tower, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Tower, MN. Controlled airspace is necessary to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at Tower Municipal Airport, Tower, MN. This rule also updates the geographic coordinates for the airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at Tower Municipal Airport.

DATES: *Effective Date:* 0901 UTC, May 7, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd, Fort Worth, TX 76193–0530; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On November 25, 2008, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Class E airspace at Tower, MN (73 FR 71569, Docket No. FAA–2008–1186). 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 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order. 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 action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace at Tower Municipal Airport, Tower, MN. This rule also updates the geographic coordinates of Tower Municipal 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. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, 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 controlled airspace at Tower Municipal Airport, Tower, MN.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends14 CFR Part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008, is amended as follows:

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

* * * * *

AGL MN E5 Tower, MN [New]

Tower Municipal Airport, MN
(Lat. 47°49′05″ N., long. 92°17′10″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Tower Municipal Airport, excluding that airspace within Prohibited Area P–205.

* * * * *

Issued in Fort Worth, TX, on February 12, 2009.

Roger M. Trevino,

Acting Manager, Operations Support Group, Central Service Center.

[FR Doc. E9–3817 Filed 2–23–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0455; Airspace Docket No. 08–AAL–14]

Establishment of Class E Airspace; Umiat, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Umiat, AK to provide adequate controlled airspace to contain aircraft executing Standard Instrument Approach Procedures (SIAPs). Two SIAPs are being created for the Umiat Airport along with a textual Obstacle Departure Procedure (ODP). This action establishes Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Umiat Airport, Umiat, AK.

DATES: *Effective Date:* 0901 UTC, May 7, 2009. 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: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov*. Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/*.

SUPPLEMENTARY INFORMATION:

History

On Monday December 8, 2008, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR) part 71 to establish Class E airspace upward from 700 ft. above the surface and from 1,200 ft. above the surface at Umiat, AK (73 FR 74377). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing instrument procedures for the Umiat Airport. Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface in the Umiat Airport area is created by this action.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. The rule is adopted as proposed with the following exception. The airport location has been updated to reflect current survey data. With the exception of editorial changes, and the changes described above, this rule is the same as that proposed in the NPRM.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9S, *Airspace Designations and Reporting Points,* signed October 3, 2008, and effective October 31, 2008, 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.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at the Umiat Airport, Alaska. This Class E airspace is created to accommodate aircraft executing new instrument procedures, and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at the Umiat Airport, Umiat, Alaska.

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. 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 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 1, 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 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Umiat Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9S, *Airspace Designations and Reporting Points,* signed October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 6005 Class E Airspace Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Umiat, AK [New]

Umiat, Umiat Airport, AK
(Lat. 69°22′16″ N., long. 152°08′06″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Umiat Airport, AK, and within 4 miles either side of the 266° bearing from the Umiat Airport, AK, extending from the 6.5-mile radius to 11.6 miles west of the Umiat Airport, AK, and within 4 miles either side of the 082° bearing from the Umiat Airport, AK, extending from the 6.5-mile radius to 11.6 miles east of the Umiat Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Umiat Airport, AK.

* * * * *

Issued in Anchorage, AK, February 13, 2009.

James L. Krause,

Acting Manager, Alaska Flight Services Information Area Group.

[FR Doc. E9–3827 Filed 2–23–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–1162; Airspace Docket No. 08–AAL–33]

Revision of Class D and E Airspace; King Salmon, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class D and E airspace at King Salmon, AK, to provide adequate controlled airspace to contain aircraft executing Standard Instrument Approach Procedures (SIAPs). Nine SIAPs, and a textual Obstacle Departure Procedure (ODP) are being amended for the King Salmon Airport. This action revises Class D and E airspace upward from the surface, and from 700 feet (ft.) and 1,200 ft. above the surface at King Salmon Airport, King Salmon, AK.

DATES: *Effective Date:* 0901 UTC, May 7, 2009. 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: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov*. Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/*.

SUPPLEMENTARY INFORMATION:

History

On Monday, Decemer 8, 2008, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class D and E airspace upward from the surface, and from 700 ft. and 1,200 ft. above the surface at King Salmon, AK (73 FR 74378). The action was proposed in order to create Class D and E airspace sufficient in size to contain aircraft while executing instrument procedures for the King Salmon Airport. Class D and E controlled airspace extending upward from the surface, and from 700 ft. and 1,200 ft. above the surface in the King Salmon Airport area is revised by this action.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. The rule is adopted as proposed with the following exception. The airport location has been updated to reflect current survey data. With the exception of editorial changes, and the changes described above, this rule is the same as that proposed in the NPRM.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class D airspace area designations are published in paragraph 5000 in FAA Order 7400.9S, *Airspace Designations and Reporting Points,* signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E2 surface areas are published in paragraph 6002 in FAA Order 7400.9S, *Airspace Designations and Reporting Points,* signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E4 surface areas designated as extensions to Class D surface areas are published in paragraph 6004 in FAA Order 7400.9S, *Airspace Designations and Reporting Points,* signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9S, *Airspace Designations and Reporting Points,* signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document would be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises Class D and E airspace at the King Salmon Airport, Alaska. This Class D and E airspace is revised to accommodate aircraft executing amended instrument procedures, and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at the King Salmon Airport, King Salmon, Alaska.

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. 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. Because this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule 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 1, 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 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class D and E airspace sufficient in size to contain aircraft executing instrument procedures for the King Salmon Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9S, *Airspace Designations and Reporting Points,* signed October 3, 2008, and effective October 31, 2008, is amended as follows:

* * * * *

Paragraph 5000 General.

* * * * *

AAL AK D King Salmon, AK [Revised]

King Salmon, King Salmon Airport, AK
(Lat. 58°40′35″ N., long. 156°38′55″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.4-mile radius of the King Salmon Airport, AK. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

AAL AK E2 King Salmon, AK [Revised]

King Salmon, King Salmon Airport, AK
(Lat. 58°40′35″ N., long. 156°38′55″ W.)

Within a 4.4-mile radius of the King Salmon Airport, AK. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D Surface Area.

* * * * *

AAL AK E4 King Salmon, AK [Revised]

King Salmon, King Salmon Airport, AK
(Lat. 58°40′35″ N., long. 156°38′55″ W.)

That airspace extending upward from the surface within 4 miles either side of the 312° bearing from the King Salmon Airport, AK, to 10.7 miles northwest of the King Salmon Airport, AK.

* * * * *

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

* * * * *

AAL AK E5 King Salmon, AK [Revised]

King Salmon, King Salmon Airport, AK
(Lat. 58°40′35″ N., long. 156°38′55″ W.)
King Salmon VORTAC
(Lat. 58°43′29″ N., long. 156°45′08″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of the King Salmon Airport, AK, and within 5 miles north and 9 miles south of the 132° radial of the King Salmon VORTAC, AK, extending from the King Salmon VORTAC, AK, to 36 miles southeast of the King Salmon VORTAC, AK, and within 3.9 miles either side of the 312° radial of the King Salmon VORTAC, AK, extending from the 6.9-mile radius to 13.9 miles northwest of the King Salmon VORTAC, AK; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the King Salmon Airport, AK.

* * * * *

Issued in Anchorage, AK, on February 13, 2009.

James L. Krause,

Acting Manager, Alaska Flight Services Information Area Group.

[FR Doc. E9–3825 Filed 2–23–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30653; Amdt. No. 479]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: *Effective Date:* 0901 UTC, March 12, 2009.

FOR FURTHER INFORMATION CONTACT: Harry Hodges, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

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. 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC on February 13, 2009.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, March 12,2009.

■ 1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 479 effective date March 12, 2009]

From	To	MEA	MAA
§ 95.4000 High Altitude RNAV Routes is Added to Read § 95.4254 RNAV Route T254			
LAKE CHARLES, LA VORTAC	CREPO, TX FIX	2200	10000
CREPO, TX FIX	EAKES, TX FIX	3100	10000
EAKES, TX FIX	COLLEGE STATION, TX VORTAC	3000	10000
COLLEGE STATION, TX VORTAC *2100—MOCA.	CENTEX, TX VORTAC	*3000	10000

From	To	MEA
§ 95.6001 Victor Routes—U.S. is Amended to Read in Part § 95.6002 VOR Federal Airway V2		
JAMESTOWN, ND VOR/DME *6000—MRA	*CHAFE, ND FIX	3300
§ 95.6012 VOR Federal Airway V12 is Amended to Read in Part		
ALLEGHENY, PA VOR/DME	MILWO, PA FIX	4000
§ 95.6014 VOR Federal Airway V14 is Amended to Read in Part		
#BUFFALO, NY VOR/DME #BUF R–106 UNUSABLE	GENESEO, NY VOR/DME	4000
§ 95.6018 VOR Federal Airway V18 is Amended to Read in Part		
LASHE, SC FIX *2100—MOCA	NORMS, SC FIX	*3000
§ 95.6026 VOR Federal Airway V26 is Amended to Read in Part		
CHEROKEE, WY VOR/DME *9900—MRA	*ALCOS, WY FIX	11600
*ALCOS, WY FIX	MUDDY MOUNTAIN, WY VORTAC	.....
	NE BND	**8400
	SW BND	**9700
*9900—MRA **7900—MOCA		
§ 95.6037 VOR Federal Airway V37 is Amended to Read in Part		
ALLENDALE, SC VOR *2000—GNSS MEA	COLUMBIA, SC VORTAC	*3000
§ 95.6070 VOR Federal Airway V70 is Amended to Read in Part		
PALACIOS, TX VORTAC	SCHOLES, TX VORTAC	2600
§ 95.6084 VOR Federal Airway V84 is Amended to Read in Part		
#BUFFALO, NY VOR/DME #BUF R–106 UNUSABLE	GENESEO, NY VOR/DME	4000
§ 95.6129 VOR Federal Airway V129 is Amended to Read in Part		
EAU CLAIRE, WI VORTAC *3100—MOCA	DULUTH, MN VORTAC	*4000
§ 95.6139 VOR Federal Airway V139 is Amended to Read in Part		
PLUME, NJ FIX *5000—MRA **3000—MOCA **3000—GNSS MEA	*KOPPY, NY FIX	**4000
*KOPPY, NY FIX *5000—MRA **3000—MOCA **3000—GNSS MEA	BEADS, NY FIX	**4000

From	To	MEA
§ 95.6170 VOR Federal Airway V170 is Amended to Read in Part		
WORTHINGTON, MN VOR/DME	FAIRMONT, MN VOR/DME	3300
§ 95.6250 VOR Federal Airway V250 is Amended to Read in Part		
WORTHINGTON, MN VOR/DME	MANKATO, MN VOR/DME	3400
§ 95.6268 VOR Federal Airway V268 is Amended to Read in Part		
PLUME, NJ FIX	*KOPPY, NY FIX	**4000
*5000—MRA		
**3000—MOCA		
**3000—GNSS MEA		
*KOPPY, NY FIX	BEADS, NY FIX	**4000
*5000—MRA		
**3000—MOCA		
**3000—GNSS MEA		
§ 95.6286 VOR Federal Airway V286 is Amended to Read in Part		
BROOKE, VA VORTAC	ZUNAR, VA FIX	3000
ZUNAR, VA FIX	GWYNN, VA FIX	2000
GWYNN, VA FIX	CAPE CHARLES, VA VORTAC	*2000
*1500—MOCA		
§ 95.6308 VOR Federal Airway V308 is Amended to Read in Part		
NOTTINGHAM, MD VORTAC	*BILIT, MD FIX	**6000
*6000—MCA BILIT, MD FIX, W BND		
**1600—MOCA		
**2000—GNSS MEA		
BILIT, MD FIX	WATERLOO, DE VOR/DME	*2000
*1500—MOCA		
PLUME, NJ FIX	*KOPPY, NY FIX	**4000
*5000—MRA		
**3000—MOCA		
**3000—GNSS MEA		
*KOPPY, NY FIX	BEADS, NY FIX	**4000
*5000—MRA		
**3000—MOCA		
**3000—GNSS MEA		
§ 95.6345 VOR Federal Airway V345 is Amended to Read in Part		
EAU CLAIRE, WI VORTAC	*HOMLO, WI FIX	**5200
*10000—MRA		
**3100—MOCA		
**4000—GNSS MEA		
*HOMLO, WI FIX	HAYWARD, WI VOR/DME	**10000
*10000—MRA		
**3100—MOCA		
**4000—GNSS MEA		
HAYWARD, WI VOR/DME	*GRASS, WI FIX	#**10000
*6000—MRA		
**3000—MOCA		
**4000—GNSS MEA		
#UNUSABLE BELOW 10000		
*GRASS, WI FIX	ASHLAND, WI VOR/DME	**4000
*6000—MRA		
**2900—MOCA		
**3000—GNSS MEA		
§ 95.6362 VOR Federal Airway V362 is Amended to Read in Part		
BRUNSWICK, GA VORTAC	*HABLE, GA FIX	**3000
*10000—MCA HABLE, GA FIX, NW BND		
**1700—MOCA		
HABLE, GA FIX	ALMA, GA VORTAC	*10000
*1700—MOCA		
*3000—GNSS MEA		
§ 95.6394 VOR Federal Airway V394 is Amended to Read in Part		
DAGGETT, CA VORTAC	OASYS, NV FIX	*12000

From	To	MEA
*9500—MOCA *10000—GNSS MEA		
§ 95.6500 VOR Federal Airway V500 is Amended to Read in Part		
NEWBERG, OR VOR/DME	GLARA, OR FIX	4000
GLARA, OR FIX	*HARZL, OR FIX	
	W BND	**7200
	E BND	**10000
*7200—MRA **6600—MOCA **7000—GNSS MEA		
*HARZL, OR FIX	RATZZ, OR FIX	
	E BND	**10000
	W BND	**8000
*7200—MRA **7400—MOCA **8000—GNSS MEA		
RATZZ, OR FIX	*GASHE, OR FIX	**10000
*10000—MRA **8000—MOCA **8000—GNSS MEA		
*GASHE, OR FIX	KIMBERLY, OR VORTAC	**9200
*10000—MRA **8200—MOCA		
§ 95.6510 VOR Federal Airway V510 is Amended to Read in Part		
JAMESTOWN, ND VOR/DME	*CHAFE, ND FIX	3300
*6000—MRA		
§ 95.6562 VOR Federal Airway V562 is Amended to Read in Part		
*FERER, AZ FIX	DRAKE, AZ VORTAC	**10000
*12000—MRA **9200—MOCA		
§ 95.6567 VOR Federal Airway V567 is Amended to Read in Part		
*FERER, AZ FIX	WINSLOW, AZ VORTAC	**14000
*12000—MRA **10000—GNSS MEA		
§ 95.6589 VOR Federal Airway V589 is Amended to Read in Part		
MEDICINE BOW, WY VOR/DME	*ALCOS, WY FIX	9900
*9900—MRA		
*ALCOS, WY FIX	MUDDY MOUNTAIN, WY VORTAC	
	NE BND	**8400
	SW BND	**9700
*9900—MRA **7900—MOCA		
§ 95.6605 VOR Federal Airway V605 is Amended to Read in Part		
HOLSTON MOUNTAIN, TN VORTAC	*GENOD, NC FIX	8500
*15000—MRA		
*GENOD, NC FIX	SPARTANBURG, SC VORTAC	**15000
*15000—MRA **4200—MOCA **5000—GNSS MEA		
§ 95.6319 Alaska VOR Federal Airway V319 is Amended to Read in Part		
EYAKS, AK FIX	*JOHNSTONE POINT, AK VOR/DME	5000
*4800—MCA JOHNSTONE POINT, AK VOR/DME , E BND		
JOHNSTONE POINT, AK VOR/DME	*EDELE, AK FIX	4400
*8000—MCA EDELE, AK FIX , W BND		
EDELE, AK FIX	WILER, AK FIX	
	W BND	*10000
	E BND	*8000
*5900—MOCA *6000—GNSS MEA		

From	To	MEA	MAA
§ 95.7001 Jet Routes			
§ 95.7042 Jet Route J42 is Amended to Read in Part			
FOUNT, KY FIX *18000—GNSS MEA	TONIO, KY FIX	*20000	35000
TONIO, KY FIX *18000—GNSS MEA #BKW R–257 UNSUSABLE.	#BECKLEY, WV VORTAC	*18000	35000
§ 95.7083 Jet Route J83 is Amended to Read in Part			
#APPLETON, OH VORTAC #APE R–021 UNUSABLE.	DRYER, OH VOR/DME	18000	45000
Airway segment		Changeover points	
From	To	Distance	From
§ 95.8003 VOR Federal Airway Changeover Points is Amended to Delete Changeover Point			
ROCHESTER, NY VOR/DME	ROCHESTER, NY VOR/DME	13	Rochester
V20 is Amended to Add Changeover Point			
PALACIOS, TX VORTAC	HOBBY, TX VOR/DME	41	Palacios
V166 is Amended to Add Changeover Point			
WESTMINSTER, MD VORTAC	DUPONT, DE VORTAC	40	Westminster

[FR Doc. E9–3914 Filed 2–23–09; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30650; Amdt. No. 3307]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective February 24, 2009. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 24, 2009.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs are available online free of charge. Visit *http://nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P-NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and

publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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. 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on January 23, 2009.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs,

FDC date	State	City	Airport	FDC No.	Subject
01/06/09	NJ	WOODBINE	WOODBINE MUNI	9/0353	GPS RWY 19, ORIG-A
01/07/09	TN	TRULLAHOMA	TULLAHOMA GNL/WM NORTHERN FLD.	9/0398	VOR RWY 24, ORIG-A
01/07/09	TN	TULLAHOMA	TULLAHOMA RGNL/WM NORTHERN FLD.	9/0399	RNAV (GPS) RWY 18, ORIG
01/07/09	TN	TULLAHOMA	TULLAHOMA RGNL/WM NORTHERN FLD.	9/0412	RNAV (GPS) RWY 24, ORIG-B
01/07/09	HI	HILO	HILO INTL	9/0577	ILS RWY 26, AMDT 12A
01/07/09	HI	HILO	HILO INTL	9/0581	VOR/DME OR TACAN RWY 26, AMDT 5B
01/07/09	HI	HILO	HILO INTL	9/0582	VOR/DME OR TACAN-A, AMDT 7A
01/07/09	HI	HILO	HILO INTL	9/0583	VOR-B, ORIG-A
01/07/09	WA	WALLA WALLA	WALLA WALLA REGIONAL	9/0603	NDB RWY 20, AMDT 5A
01/06/09	MN	BEMIDJI	BEMIDJI RGNL	9/0635	ILS OR LOC RWY 31, AMDT 4
01/08/09	IL	CHICAGO	CHICAGO-O HARE INTL	9/0639	ILS OR LOC RWY 9R, AMDT 9
01/08/09	IL	CHICAGO	CHICAGO-O HARE INTL	9/0640	ILS OR LOC RWY 27L, ILS RWY 27L (CAT II), ILS RWY 27L (CAT III), AMDT 28
01/08/09	IL	CHICAGO	CHICAGO-O HARE INTL	9/0641	ILS OR LOC RWY 9L, ILS RWY 9L (CAT II), ILS RWY 9L (CAT III), ORIG
01/08/09	IL	CHICAGO	CHICAGO-O HARE INTL	9/0642	ILS OR LOC RWY 27R, ILS RWY 27R (CAT II), ILS RWY 27R (CAT III), ORIG
01/08/09	IL	CHICAGO	CHICAGO-O HARE INTL	9/0643	TAKEOFF MINIMUMS AND OBSTACLE DP, AMDT 16

FDC date	State	City	Airport	FDC No.	Subject
01/08/09	MN	MINNEAPOLIS	MINNEAPOLIS-ST PAUL INTL/WOLD CHAMBERLAIN.	9/0652	ILS OR LOC RWY 35, ILS RWY 35 (CAT II), ILS RWY 35 (CAT III), AMDT 1
01/08/09	GQ	AGANA	GUAM INTL	9/0787	RNAV (RNP) Z RWY 6L, ORIG-A
01/12/09	WA	PUYALLUP	PIERCE COUNTY-THUN FIELD	9/1072	TAKEOFF MINIMUMS AND OBSTACLE DP, AMDT 1
01/12/09	CA	SAN BERNARDINO	SAN BERNARDINO INTL	9/1074	ILS OR LOC Z RWY 6, AMDT 2A
01/13/09	NC	WILSON	WILSON INDUSTRIAL AIR CENTER	9/1202	RNAV (GPS) RWY 9, AMDT 1
01/13/09	NC	WILSON	WILSON INDUSTRIAL AIR CENTER	9/1203	RNAV (GPS) RWY 21, ORIG
01/13/09	NC	WILSON	WILSON INDUSTRIAL AIR CENTER	9/1204	RNAV (GPS) RWY 15, AMDT 1
01/13/09	NC	WILSON	WILSON INDUSTRIAL AIR CENTER	9/1205	RNAV (GPS) RWY 33, ORIG
01/13/09	NC	WILSON	WILSON INDUSTRIAL AIR CENTER	9/1206	RNAV (GPS) RWY 3, AMDT 1
01/13/09	AZ	PHOENIX	PHOENIX SKY HARBOR INTL	9/1273	TAKEOFF MINIMUMS AND OBSTACLE DP, AMDT 4
01/13/09	AZ	PHOENIX	PHOENIX SKY HARBOR INTL	9/1274	ILS OR LOC RWY 7R, AMDT 1C
01/13/09	AZ	PHOENIX	PHOENIX SKY HARBOR INTL	9/1275	ILS OR LOC RWY 8, ORIG-A
01/13/09	AZ	PHOENIX	PHOENIX SKY HARBOR INTL	9/1276	ILS OR LOC RWY 26, ORIG-B
01/13/09	AZ	PHOENIX	PHOENIX SKY HARBOR INTL	9/1277	ILS RWY 25L, AMDT 1B
01/13/09	AZ	PHOENIX	PHOENIX SKY HARBOR INTL	9/1278	ILS OR LOC RWY 7L, AMDT 10B
01/14/09	AL	MUSCLE SHOALS	NORTHWEST ALABAMA REGIONAL	9/1355	VOR RWY 29, AMDT 27
01/14/09	CA	SANTA ANA	JOHN WAYNE-ORANGE COUNTY	9/1413	RNAV (GPS) RWY 19R, AMDT 1
01/15/09	TX	MOUNT PLEASANT	MOUNT PLEASANT RGNL	9/1597	VOR/DME A, ORIG
01/15/09	CO	DURANGO	DURANGO-LA PLATA COUNTY	9/1650	VOR/DME RWY 2, AMDT 4B
01/15/09	AS	PAGO PAGO	PAGO PAGO INTL	9/1651	TAKEOFF MINIMUMS AND OBSTACLE DP, ORIG
01/15/09	AS	PAGO PAGO	PAGO PAGO INTL	9/1652	ILS/DME RWY 5, AMDT 13C
01/15/09	AS	PAGO PAGO	PAGO PAGO INTL	9/1654	NDB-C, AMDT 6A
01/15/09	AS	PAGO PAGO	PAGO PAGO INTL	9/1655	VOR/DME OR TACAN-B, AMDT 5B
01/15/09	AS	PAGO PAGO	PAGO PAGO INTL	9/1657	VOR/DME OR TACAN-A, AMDT 4
01/15/09	ID	COEUR D ALENE	COEUR D ALENE AIR TERMINAL	9/1668	VOR RWY 5, ORIG
01/15/09	ID	COEUR D ALENE	COEUR D ALENE AIR TERMINAL	9/1669	VOR/DME RWY 1, AMDT 1
01/15/09	ID	COEUR D ALENE	COEUR D ALENE AIR TERMINAL	9/1670	NDB RWY 5, AMDT 2
01/15/09	ID	COEUR D ALENE	COEUR D ALENE AIR TERMINAL	9/1671	ILS OR LOC/DME RWY 5, AMDT 5
01/16/09	FL	TALLAHASSEE	TALLAHASSEE REGIONAL	9/1948	ILS OR LOC RWY 27, AMDT 9
01/16/09	OH	COLUMBUS	RICKENBACKER INTL	9/2429	ILS RWY 5R, ILS RWY 5R (CAT II), AMDT 2
01/16/09	OH	CLEVELAND	CLEVELAND-HOPKINS INTL	9/2430	ILS OR LOC RWY 24L, AMDT 21
01/16/09	OH	COLUMBUS	RICKENBACKER INTL	9/2432	ILS RWY 23L, ORIG-D

[FR Doc. E9–3000 Filed 2–23–09; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30649 Amdt. No 3306]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective February 24, 2009. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 24, 2009.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2.The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the, associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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. 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on January 23, 2009.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 12 FEB 2009

San Francisco, CA, San Francisco Intl, ILS PRM RWY 28L (Simultaneous Close Parallel), Amdt 1A
San Francisco, CA, San Francisco Intl, LDA PRM RWY 28R (Simultaneous Close Parallel), Amdt 1A

Effective 12 MAR 2009

Phoenix, AZ, Phoenix-Mesa Gateway, GPS RWY 30C, Orig, CANCELLED
Phoenix, AZ, Phoenix-Mesa Gateway, ILS OR LOC RWY 30C, Amdt 3
Phoenix, AZ, Phoenix-Mesa Gateway, RNAV (GPS) RWY 30C, Orig
Phoenix, AZ, Phoenix-Mesa Gateway, VOR OR TACAN RWY 30C, Amdt 2
Calipatria, CA, Cliff Hatfield Memorial, RNAV (GPS) RWY 8, Amdt 1
Lodi, CA, Lodi, RNAV (GPS)–B, Orig
Lodi, CA, Lodi, VOR–A, Amdt 3
Twentynine Palms, CA, Twentynine Palms, RNAV (GPS) RWY 26, Amdt 1
Twentynine Palms, CA, Twentynine Palms, VOR RWY 26, Amdt 2
Alamosa, CO, San Luis Valley Rgnl/Bergman Field, GPS RWY 2, Amdt 2, CANCELLED
Alamosa, CO, San Luis Valley Rgnl/Bergman Field, ILS OR LOC RWY 2, Amdt 1
Alamosa, CO, San Luis Valley Rgnl/Bergman Field, RNAV (GPS) RWY 2, Orig
Alamosa, CO, San Luis Valley Rgnl/Bergman Field, RNAV (GPS) RWY 20, Amdt 1
Pueblo, CO, Pueblo Memorial, RADAR–1, Amdt 7, CANCELLED
Washington, DC, Ronald Reagan Washington Natl, VOR RWY 1, Amdt 13
Washington, DC, Washington Dulles Intl, ILS OR LOC/DME RWY 1L; ILS RWY 1L (CAT II); ILS RWY 1L (CAT II), Amdt 1
Washington, DC, Washington Dulles Intl, ILS OR LOC/DME RWY 19R; ILS RWY 19R (CAT II); ILS RWY 19R (CAT III), Amdt 1
Marianna, FL, Marianna Muni, Takeoff Minimums and Obstacle DP, Orig
Quincy, FL, Quincy Muni, RNAV (GPS) RWY 14, Orig
Quincy, FL, Quincy Muni, RNAV (GPS) RWY 32, Orig
Quincy, FL, Quincy Muni, Takeoff Minimums and Obstacle DP, Orig
Quincy, FL, Quincy Muni, VOR/DME–A, Amdt 1
St Augustine, FL, St Augustine, GPS RWY 13, Orig–A, CANCELLED
St Augustine, FL, St Augustine, GPS RWY 31, Orig, CANCELLED
St Augustine, FL, St Augustine, RNAV (GPS) RWY 13, Orig
St Augustine, FL, St Augustine, RNAV (GPS) RWY 31, Orig
Atlanta, GA, Peachtree City-Falcon Field, ILS OR LOC RWY 31, Orig
Atlanta, GA, Peachtree City-Falcon Field, LOC RWY 31, Amdt 1B, CANCELLED
Atlanta, GA, Peachtree City-Falcon Field, RNAV (GPS) RWY 31, Amdt 1
Honolulu, HI, Honolulu Intl, HONOLULU ONE Graphic Obstacle DP
Honolulu, HI, Honolulu Intl, Takeoff Minimums and Obstacle DP, Amdt 8
Atlantic, IA, Atlantic Muni, GPS RWY 12, Amdt 1, CANCELLED
Atlantic, IA, Atlantic Muni, NDB RWY 12, Amdt 9B, CANCELLED
Atlantic, IA, Atlantic Muni, RNAV (GPS) RWY 2, Orig
Atlantic, IA, Atlantic Muni, RNAV (GPS) RWY 20, Orig
Atlantic, IA, Atlantic Muni, Takeoff Minimums and Obstacle DP, Amdt 6
Dubuque, IA, Dubuque Rgnl, RNAV (GPS) RWY 36, Orig
Sioux City, IA, Sioux Gateway/Col Bud Day Field, GPS RWY 17, Amdt 1A, CANCELLED
Sioux City, IA, Sioux Gateway/Col Bud Day Field, RNAV (GPS) RWY 13, Orig
Sioux City, IA, Sioux Gateway/Col Bud Day Field, RNAV (GPS) RWY 17, Orig
Sioux City, IA, Sioux Gateway/Col Bud Day Field, RNAV (GPS) RWY 31, Orig
Sioux City, IA, Sioux Gateway/Col Bud Day Field, VOR/DME OR TACAN
RWY 13, Amdt 18
Sioux City, IA, Sioux Gateway/Col Bud Day Field, VOR OR TACAN
RWY 31, Amdt 26
Boise ID, Boise Air Terminal/Gowen Fld, ILS OR LOC/DME RWY 28R, Orig
Coeur D'Alene, ID, Coeur D'Alene-Pappy Boyington Field, RNAV (GPS) RWY 5, Orig–A
Iola, KS, Allen County, GPS RWY 1, Orig–B, CANCELLED
Iola, KS, Allen County, GPS RWY 19, Orig–B, CANCELLED
Iola, KS, Allen County, NDB RWY 1, Amdt 2
Iola, KS, Allen County, RNAV (GPS) RWY 1, Orig
Iola, KS, Allen County, RNAV (GPS) RWY 19, Orig
Iola, KS, Allen County, Takeoff Minimums and Obstacle DP, Orig
Vivian, LA, Vivian, NDB RWY 9, Amdt 2
Vivian, LA, Vivian, RNAV (GPS) RWY 9, Orig
Vivian, LA, Vivian, RNAV (GPS) RWY 27, Orig
Vivian, LA, Vivian, Takeoff Minimums and Obstacle DP, Amdt 2
Vivian, LA, Vivian, VOR/DME–A, Amdt 3
Greenville, ME, Greenville Muni, RNAV (GPS) RWY 14, Orig
Benson, MN, Benson Muni, RNAV (GPS) RWY 14, Amdt 1
Benson, MN, Benson Muni, RNAV (GPS) RWY 32, Amdt 1
Thief River Falls, MN, Thief River Falls Rgnl, ILS OR LOC RWY 31, Amdt 3
Thief River Falls, MN, Thief River Falls Rgnl, NDB RWY 31, Amdt 2
Thief River Falls, MN, Thief River Falls Rgnl, RNAV (GPS) RWY 13, Orig
Thief River Falls, MN, Thief River Falls Rgnl, RNAV (GPS) RWY 31, Orig
Thief River Falls, MN, Thief River Falls Rgnl, Takeoff Minimums and Obstacle DP, Orig
Thief River Falls, MN, Thief River Falls Rgnl, VOR RWY 13, Amdt 9
Fulton, MO, Elton Hensley Memorial, RNAV (GPS) RWY 6, Amdt 1
Fulton, MO, Elton Hensley Memorial, RNAV (GPS) RWY 18, Orig
Fulton, MO, Elton Hensley Memorial, RNAV (GPS) RWY 24, Amdt 1
Fulton, MO, Elton Hensley Memorial, RNAV (GPS) RWY 36, Orig
Fulton, MO, Elton Hensley Memorial, Takeoff Minimums and Obstacle DP, Amdt 1
Fulton, MO, Elton Hensley Memorial, VOR–A, Amdt 4,
Jefferson City, MO, Jefferson City Memorial, GPS RWY 30, Orig-A, CANCELLED
Jefferson City, MO, Jefferson City Memorial, RNAV (GPS) RWY 12, Amdt 1
Jefferson City, MO, Jefferson City Memorial, RNAV (GPS) RWY 30, Orig
Helena, MT, Helena Rgnl, RNAV (GPS) X RWY 27, Amdt 1A
Helena, MT, Helena Rgnl, RNAV (GPS) Y RWY 9, Amdt 1A
Livingston, MT, Mission Field, LIVINGSTON ONE Graphic Obstacle DP
Livingston, MT, Mission Field, Takeoff Minimums and Obstacle DP, Amdt 3
Livingston, MT, Mission Field, VOR/DME–B, Amdt 2
Albermarle, NC, Stanly County, Takeoff Minimums and Obstacle DP, Orig
Greenville, NC, Pitt-Greenville, RNAV (GPS) RWY 8, Amdt 2
Greenville, NC, Pitt-Greenville, RNAV (GPS) RWY 20, Amdt 2
Greenville, NC, Pitt-Greenville, RNAV (GPS) RWY 26, Amdt 2
Roanoke Rapids, NC, Halifax County, NDB OR GPS RWY 5, Amdt 3C, CANCELLED
Wallace, NC, Henderson Field, Takeoff Minimums and Obstacle DP, Orig
Waxhaw, NC, Jaars-Townsend, GPS RWY 4, Orig, CANCELLED
Waxhaw, NC, Jaars-Townsend, GPS RWY 22, Orig, CANCELLED
Waxhaw, NC, Jaars-Townsend, RNAV (GPS) RWY 4, Orig
Waxhaw, NC, Jaars-Townsend, RNAV (GPS) RWY 22, Orig
Waxhaw, NC, Jaars-Townsend, Takeoff Minimums and Obstacle DP, Orig
Waxhaw, NC, Jaars-Townsend, VOR/DME OR GPS–A, Amdt 3, CANCELLED
Vincentown, NJ, Red Lion, RNAV (GPS) RWY 5, Orig
Vincentown, NJ, Red Lion, Takeoff Minimums and Obstacle, DP, Amdt 1

Vincentown, NJ, Red Lion, VOR–A, Amdt 6
Reno, NV, Reno/Tahoe Intl, LOC RWY 16R, Amdt 7
Ogdensburg, NY, Ogdensburg Intl, LOC RWY 27, Amdt 3
Dayton, OH, Greene County-Lewis A Jackson Rgnl, VOR–A, Orig
Salem, OR, McNary Fld, ILS OR LOC RWY 31, Amdt 29
Salem, OR, McNary Fld, LOC BC RWY 13, Amdt 7
Salem, OR, McNary Fld, RNAV (GPS) RWY 31, Amdt 2
Salem, OR, McNary Fld, RNAV (GPS) Y RWY 31, Orig–A, CANCELLED
Mount Pocono, PA, Pocono Mountains Muni, RNAV (GPS) RWY 5, Orig
Mount Pocono, PA, Pocono Mountains Muni, RNAV (GPS) RWY 13, Amdt 1
Mount Pocono, PA, Pocono Mountains Muni, RNAV (GPS) RWY 31, Orig
Pageland, SC, Pageland, Takeoff Minimums and Obstacle DP, Orig
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, ILS OR LOC RWY 17L, ILS RWY 17L (CAT II), ILS RWY 17L (CAT III), Amdt 5A
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, RNAV (GPS) RWY 17L, Amdt 3A
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, RNAV (GPS) RWY 35R, Amdt 2A
Manitowoc, WI, Manitowoc County, RNAV (GPS) RWY 17, Amdt 1
Manitowoc, WI, Manitowoc County, RNAV (GPS) RWY 35, Amdt 1
Manitowoc, WI, Manitowoc County, Takeoff Minimums and Obstacle DP, Amdt 4
Manitowoc, WI, Manitowoc County, VOR/DME RWY 35, Amdt 1
Moundsville, WV, Marshall County, GPS RWY 24, Orig, CANCELLED
Moundsville, WV, Marshall County, RNAV (GPS) RWY 6, Orig
Moundsville, WV, Marshall County, RNAV (GPS) RWY 24, Orig
Moundsville, WV, Marshall County, VOR/DME–A, Amdt 2
Parkersburg, WV, Mid-Ohio Valley Regional, RNAV (GPS) RWY 3, Amdt 1
Parkersburg, WV, Mid-Ohio Valley Regional, RNAV (GPS) RWY 21, Amdt 1
Parkersburg, WV, Mid-Ohio Valley Regional, RNAV (GPS) Y RWY 3, Orig, CANCELLED
Parkersburg, WV, Mid-Ohio Valley Regional, RNAV (GPS) Y RWY 21, Orig, CANCELLED
Parkersburg, WV, Mid-Ohio Valley Regional, Takeoff Minimums and Obstacle DP, Amdt 2
Parkersburg, WV, Mid-Ohio Valley Regional, VOR RWY 21, Amdt 17
Gillette, WY, Gillette-Campbell County, Takeoff Minimums and Obstacle DP, Amdt 4

[FR Doc. E9–3048 Filed 2–23–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 0812241647–9151–01]

RIN 0694–AE51

Removal and Modification of Certain Entries From the Entity List: Person Removed Based on Removal Request and Clarification of Certain Entries

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by removing a person from the Entity List (Supplement No. 4 to Part 744). This person is being removed from the Entity List because the End-User Review Committee (ERC) decided to approve this person's request for removal from the Entity List.

This rule also makes a clarification for two persons that were listed on the Entity List prior to this rule being published to revise the addresses provided for these listed persons. This rule updates the address information for these two persons by replacing incorrect information.

The Entity List provides notice to the public that certain exports and reexports to parties identified on the Entity List require a license from the Bureau of Industry and Security (BIS) and that availability of License Exceptions in such transactions is limited.

DATES: *Effective Date:* This rule is effective February 24, 2009. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694–AE51, by any of the following methods:

E-mail: publiccomments@bis.doc.gov Include ''RIN 0694–AE51'' in the subject line of the message.

Fax: (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.

Mail or Hand Delivery/Courier: Timothy Mooney, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, Attn: RIN 0694–AE51.

Send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by e-mail to *Jseehra@omb.eop.gov,* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Comments on this collection of information should be submitted separately from comments on the final rule (i.e. RIN 0694–AE51)—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: Karen Nies-Vogel, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–3811, Fax: (202) 482–3911, E-mail: *kniesv@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

In Supplement No. 4 to part 744 (The Entity List) of the EAR, this rule removes one person from the Entity List on the basis of § 744.16 (Procedure for requesting removal or modification of an Entity List Entity) of the EAR. In addition, as a clarification, this rule modifies the entries for two listed persons. The modifications to existing entries include revising the addresses for two listed persons in Malaysia that were listed on the Entity List prior to this rule being published.

On August 21, 2008 (73 FR 49311), BIS published a final rule that expanded the Entity List by adding § 744.11 (License Requirements that Apply to Entities Acting Contrary to the National Security or Foreign Policy Interests of the United States) to the EAR. Since the publication of that August 2008 rule, BIS has published two final rules that added persons to the Entity List on the basis of § 744.11 of the EAR. The first rule that added persons to the Entity List on the basis of § 744.11 of the EAR was published on September 22, 2008 (73 FR 54499) and the second rule was published on December 5, 2008 (73 FR 73999).

In addition to adding § 744.11, the August 2008 rule added § 744.16 and Supplement No. 5 to part 744 to the EAR. Section 744.16 established a formal procedure under the EAR whereby persons listed on the Entity List could submit to BIS in writing a formal request for removal or modification of their listing on the Entity List. The procedures for submitting these removal or modification requests were outlined in § 744.16 and the review and decision

process for the requests was outlined in Supplement No. 5 to part 744.

ERC Entity List Decisions

The ERC, composed of representatives of the Departments of Commerce, State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from or changes to the Entity List. The ERC is chaired by the Department of Commerce and makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote. As noted in the preamble of the August 2008 final rule and in Supplement No. 5 to part 744, the activities of the ERC include conducting an annual review of the Entity List to make a determination whether any removals or modifications should be made.

Pursuant to Supplement No. 5 to Part 744, the ERC determined that the following Entity List entry should be removed, for the reasons provided below. This rule implements this decision. In total, this rule removes one (1) entry from the Entity List and modifies two (2) additional entries, as described below under Technical Update to Two Entities.

Removal Based Upon § 744.16

The person being removed with this rule submitted a formal removal request to BIS based upon the procedures outlined in § 744.16 of the EAR. This one entity is located in Hong Kong:

Hong Kong

(1) *Britestone,* 4/F, Chinabest International Centre, 8 Kwai On Rd, Kwai Chung, N.T., Hong Kong.

As outlined in Supplement No. 5 to part 744, the ERC received and reviewed this removal request submitted by this listed entity. Based upon the review of the information provided in the removal request submitted to BIS, in accordance with § 744.16 and further review that was conducted by the ERC's member agencies of this end-user, the ERC determined that this one person should be removed from the Entity List. The ERC decision to remove Britestone took into account Britestone's cooperation with the U.S. Government, as well as Britestone's assurances of future compliance with the EAR. In accordance with § 744.16(c), the Deputy Assistant Secretary for Export Administration has sent written notification to this person informing them of the ERC's decision to remove them from the Entity List. This final rule implements the decision to remove this one Hong Kong person from the Entity List.

Reminder To Consider Other End-Use/ End-User Controls

The removal of this one person from the Entity List (from Hong Kong, as described above) eliminates the existing license requirement in Supplement No. 4 to part 744 for exports and reexports to this person. However, the removal of this person from the Entity List does not relieve persons of other obligations under part 744 of the EAR or under other parts of the EAR. Neither the removal of a person from the Entity List nor the removal of Entity List-based license requirements relieve persons of their obligations under General Prohibition 5 in § 736.2(b)(5) of the EAR which provides that, ''you may not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end-use that is prohibited by part 744 of the EAR.'' Nor do such removals relieve persons of their obligation to apply for export or reexport licenses required by other provisions of the EAR. BIS strongly urges the use of Supplement No. 3 to part 732 of the EAR, ''BIS's 'Know Your Customer' Guidance and Red Flags,'' when persons are involved in transactions that are subject to the EAR.

Technical Update for Two Entities

This rule revises the addresses of two persons that were listed on the Entity List under Malaysia prior to this rule being published to update the addresses provided for these listed persons. These updated addresses will better assist the public in identifying these listed persons. This rule revises the addresses in Malaysia for these two persons, respectively, as follows:

Malaysia

(2) *Antcorp System,* 5–02 Wisma Pantai, Jalan Wisma Pantai 12200 Butterworth, Penang, Malaysia; 27–G Lorong Kelasah 2, Tamen Kelasah 13700 Seberang Jaya, Penang, Malaysia; and No. 9 Jalan 3/4C Desa Melawati 53100 Kuala Lumpur, Malaysia; and

(3) *Mohd Ansari,* 5–02 Wisma Pantai, Jalan Wisma Pantai 12200 Butterworth, Penang, Malaysia; 27–G Lorong Kelasah 2, Tamen Kelasah 13700 Seberang Jaya, Penang Malaysia; and No. 9 Jalan 3/4C Desa Melawati 53100 Kuala Lumpur Malaysia.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of July 23, 2008, 73 FR 43603 (July 23, 2008), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by the OMB under control numbers 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Miscellaneous and recordkeeping activities account for 12 minutes per submission. Total burden hours associated with the Paperwork Reduction Act and Office and Management and Budget control number 0694–0088 are expected to increase slightly as a result of this rule.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*See* 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* , are not applicable.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

■ Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR,

1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008); Notice of November 10, 2008, 73 FR 67097 (November 12, 2008).

■ 2. Supplement No. 4 to part 744 is amended:

(a) By removing under Hong Kong, this one Hong Kong entity ''Britestone, 4/F, Chinabest International Centre, 8 Kwai On Rd, Kwai Chung, N.T., Hong Kong''; and

(b) By revising under Malaysia, in alphabetical order, two Malaysian entities, to read as follows:

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST

Country	Entity	License requirement	License review policy	Federal Register citation
*	*	*	*	*
Malaysia				
*	*	*	*	*
	Antcorp System, 5–02 Wisma Pantai, Jalan Wisma Pantai 12200 Butterworth, Penang, Malaysia; 27–G Lorong Kelasah 2, Tamen Kelasah 13700 Seberang Jaya, Penang, Malaysia; and No. 9 Jalan 3/4C Desa Melawati 53100 Kuala Lumpur, Malaysia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	73 FR 54508. 9/22/08. 74 FR [INSERT FR PAGE NUMBER]. 2/24/2009.
*	*	*	*	*
	Mohd Ansari, 5–02 Wisma Pantai, Jalan Wisma Pantai 12200 Butterworth, Penang, Malaysia; 27–G Lorong Kelasah 2, Tamen Kelasah 13700 Seberang Jaya, Penang Malaysia; and No. 9 Jalan 3/4C Desa Melawati 53100 Kuala Lumpur Malaysia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	73 FR 54508 9/22/08. 73 FR 74001 12/5/08. 74 FR [INSERT FR PAGE NUMBER]. 2/24/2009.
*	*	*	*	*

Dated: February 19, 2009.

Matthew S. Borman,

Acting Assistant Secretary for Export Administration.

[FR Doc. E9–3918 Filed 2–23–09; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM09–6–000]

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

February 17, 2009.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; update of Federal land use fees.

SUMMARY: In accordance with the Commission's regulations, the Commission by its designee, the Executive Director, is updating its schedule of fees for the use of government lands. The yearly update is based on the most recent schedule of fees for the use of linear rights-of-way prepared by the United States Forest Service. Since the next fiscal year will cover the period from October 1, 2008 through September 30, 2009 the fees in this notice will become effective October 1, 2008. The fees will apply to fiscal year 2009 annual charges for the use of government lands. The Commission has concluded, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB that this rule is not a ''major rule'' as defined in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804(2).

DATES: *Effective Date:* February 24, 2009.

These fees apply for the fiscal period from October 1, 2008 through September 30, 2009.

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: *Document Availability:* 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://www.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.

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 MSWord 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.

User assistance is available for eLibrary and the Commission's Web site during normal business hours from FERC's Online Support at (202) 502–6652 (toll free 1–866 208–3676) or e-mail at *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov*.

List of Subjects in 18 CFR Part 11

Electric power, Reporting and recordkeeping requirements.

Thomas R. Herlihy,

Executive Director, Office of the Executive Director.

■ Accordingly, the Commission amends part 11 of Chapter I, Title 18 of the Code of Federal Regulations, as follows:

PART 11—[AMENDED]

■ 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 part 11, Appendix A is revised to read as follows.

Appendix A to Part 11—Fee Schedule for FY 2009

State	County	(Fee/acre/yr)
Alabama	Autauga	$46.21
Alabama	Baldwin	$69.31
Alabama	Barbour	$23.10
Alabama	Bibb	$34.66
Alabama	Blount	$69.31
Alabama	Bullock	$34.66
Alabama	Butler	$34.66
Alabama	Calhoun	$69.31
Alabama	Chambers	$23.10
Alabama	Cherokee	$34.66
Alabama	Chilton	$34.66
Alabama	Choctaw	$34.66
Alabama	Clarke	$34.66
Alabama	Clay	$34.66
Alabama	Cleburne	$46.21
Alabama	Coffee	$23.10
Alabama	Colbert	$34.66
Alabama	Conecuh	$23.10
Alabama	Coosa	$34.66
Alabama	Covington	$34.66
Alabama	Crenshaw	$34.66
Alabama	Cullman	$69.31
Alabama	Dale	$34.66
Alabama	Dallas	$23.10
Alabama	DeKalb	$46.21
Alabama	Elmore	$46.21
Alabama	Escambia	$34.66
Alabama	Etowah	$69.31
Alabama	Fayette	$23.10
Alabama	Franklin	$34.66
Alabama	Geneva	$34.66
Alabama	Greene	$23.10
Alabama	Hale	$23.10
Alabama	Henry	$23.10
Alabama	Houston	$34.66
Alabama	Jackson	$46.21
Alabama	Jefferson	$69.31
Alabama	Lamar	$23.10
Alabama	Lauderdale	$34.66
Alabama	Lawrence	$34.66
Alabama	Lee	$46.21
Alabama	Limestone	$46.21
Alabama	Lowndes	$23.10
Alabama	Macon	$34.66
Alabama	Madison	$46.21
Alabama	Marengo	$23.10
Alabama	Marion	$34.66
Alabama	Marshall	$69.31
Alabama	Mobile	$69.31
Alabama	Monroe	$34.66
Alabama	Montgomery	$46.21
Alabama	Morgan	$69.31
Alabama	Perry	$23.10
Alabama	Pickens	$34.66
Alabama	Pike	$34.66
Alabama	Randolph	$46.21
Alabama	Russell	$34.66
Alabama	Shelby	$69.31
Alabama	St. Clair	$46.21
Alabama	Sumter	$23.10
Alabama	Talladega	$69.31
Alabama	Tallapoosa	$34.66
Alabama	Tuscaloosa	$46.21
Alabama	Walker	$34.66
Alabama	Washington	$34.66
Alabama	Wilcox	$23.10
Alabama	Winston	$46.21
Alaska	Aleutian Islands Area.**	$5.78
Alaska	Anchorage Area.**	$46.21
Alaska	Fairbanks Area.**	$23.10
Alaska	Juneau Area**	$1,155.13
Alaska	Kenai Peninsula.**	$34.66
Arizona	Apache	$5.78
Arizona	Cochise	$23.10
Arizona	Coconino	$5.78
Arizona	Gila	$5.78
Arizona	Graham	$11.55
Arizona	Greenlee	$34.66
Arizona	La Paz	$23.10
Arizona	Maricopa	$69.31
Arizona	Mohave	$11.55
Arizona	Navajo	$5.78
Arizona	Pima	$5.78
Arizona	Pinal	$23.10
Arizona	Santa Cruz	$34.66
Arizona	Yavapai	$11.55
Arizona	Yuma	$115.52
Arkansas	Arkansas	$34.66
Arkansas	Ashley	$34.66
Arkansas	Baxter	$34.66
Arkansas	Benton	$69.31
Arkansas	Boone	$34.66
Arkansas	Bradley	$46.21
Arkansas	Calhoun	$34.66
Arkansas	Carroll	$34.66
Arkansas	Chicot	$23.10
Arkansas	Clark	$34.66
Arkansas	Clay	$34.66
Arkansas	Cleburne	$34.66
Arkansas	Cleveland	$46.21
Arkansas	Columbia	$34.66
Arkansas	Conway	$34.66
Arkansas	Craighead	$34.66
Arkansas	Crawford	$34.66
Arkansas	Crittenden	$34.66
Arkansas	Cross	$34.66
Arkansas	Dallas	$34.66
Arkansas	Desha	$23.10
Arkansas	Drew	$34.66
Arkansas	Faulkner	$34.66
Arkansas	Franklin	$34.66
Arkansas	Fulton	$23.10
Arkansas	Garland	$46.21
Arkansas	Grant	$34.66
Arkansas	Greene	$34.66
Arkansas	Hempstead	$34.66
Arkansas	Hot Spring	$34.66
Arkansas	Howard	$34.66
Arkansas	Independence	$23.10
Arkansas	Izard	$23.10
Arkansas	Jackson	$23.10
Arkansas	Jefferson	$23.10
Arkansas	Johnson	$46.21
Arkansas	Lafayette	$23.10
Arkansas	Lawrence	$34.66
Arkansas	Lee	$23.10
Arkansas	Lincoln	$23.10
Arkansas	Little River	$23.10
Arkansas	Logan	$34.66
Arkansas	Lonoke	$34.66
Arkansas	Madison	$34.66
Arkansas	Marion	$34.66
Arkansas	Miller	$23.10
Arkansas	Mississippi	$34.66
Arkansas	Monroe	$23.10
Arkansas	Montgomery	$34.66
Arkansas	Nevada	$23.10
Arkansas	Newton	$34.66
Arkansas	Ouachita	$34.66
Arkansas	Perry	$34.66
Arkansas	Phillips	$23.10
Arkansas	Pike	$34.66
Arkansas	Poinsett	$34.66
Arkansas	Polk	$34.66
Arkansas	Pope	$46.21
Arkansas	Prairie	$23.10
Arkansas	Pulaski	$34.66
Arkansas	Randolph	$34.66
Arkansas	Saline	$46.21
Arkansas	Scott	$34.66
Arkansas	Searcy	$23.10
Arkansas	Sebastian	$46.21
Arkansas	Sevier	$34.66
Arkansas	Sharp	$23.10
Arkansas	St. Francis	$23.10
Arkansas	Stone	$23.10
Arkansas	Union	$46.21
Arkansas	Van Buren	$34.66
Arkansas	Washington	$69.31
Arkansas	White	$34.66
Arkansas	Woodruff	$23.10
Arkansas	Yell	$34.66
California	Alameda	$69.31
California	Alpine	$46.21
California	Amador	$46.21
California	Butte	$115.52
California	Calaveras	$34.66
California	Colusa	$69.31
California	Contra Costa	$231.02
California	Del Norte	$115.52
California	El Dorado	$69.31
California	Fresno	$69.31
California	Glenn	$46.21
California	Humboldt	$23.10
California	Imperial	$69.31
California	Inyo	$23.10
California	Kern	$34.66
California	Kings	$69.31
California	Lake	$115.52
California	Lassen	$23.10
California	Los Angeles	$462.05
California	Madera	$69.31
California	Marin	$69.31
California	Mariposa	$23.10
California	Mendocino	$46.21
California	Merced	$115.52
California	Modoc	$23.10
California	Mono	$34.66
California	Monterey	$69.31

State	County	(Fee/acre/yr)
California	Napa	$462.05
California	Nevada	$69.31
California	Orange	$231.02
California	Placer	$115.52
California	Plumas	$23.10
California	Riverside	$115.52
California	Sacramento	$115.52
California	San Benito	$46.21
California	San Bernardino.	$46.21
California	San Diego	$231.02
California	San Francisco	$693.08
California	San Joaquin	$231.02
California	San Luis Obispo.	$69.31
California	San Mateo	$115.52
California	Santa Barbara	$69.31
California	Santa Clara	$69.31
California	Santa Cruz	$231.02
California	Shasta	$34.66
California	Sierra	$34.66
California	Siskiyou	$34.66
California	Solano	$115.52
California	Sonoma	$231.02
California	Stanislaus	$115.52
California	Sutter	$115.52
California	Tehama	$34.66
California	Trinity	$23.10
California	Tulare	$115.52
California	Tuolumne	$34.66
California	Ventura	$231.02
California	Yolo	$69.31
California	Yuba	$69.31
Colorado	Adams	$23.10
Colorado	Alamosa	$23.10
Colorado	Arapahoe	$23.10
Colorado	Archuleta	$34.66
Colorado	Baca	$5.78
Colorado	Bent	$11.55
Colorado	Boulder	$231.02
Colorado	Broomfield*	$23.10
Colorado	Chaffee	$46.21
Colorado	Cheyenne	$11.55
Colorado	Clear Creek	$34.66
Colorado	Conejos	$23.10
Colorado	Costilla	$11.55
Colorado	Crowley	$5.78
Colorado	Custer	$34.66
Colorado	Delta	$46.21
Colorado	Denver*	$23.10
Colorado	Dolores	$23.10
Colorado	Douglas	$69.31
Colorado	Eagle	$34.66
Colorado	El Paso	$23.10
Colorado	Elbert	$23.10
Colorado	Fremont	$23.10
Colorado	Garfield	$34.66
Colorado	Gilpin	$69.31
Colorado	Grand	$23.10
Colorado	Gunnison	$34.66
Colorado	Hinsdale	$69.31
Colorado	Huerfano	$11.55
Colorado	Jackson	$11.55
Colorado	Jefferson	$115.52
Colorado	Kiowa	$5.78
Colorado	Kit Carson	$11.55
Colorado	La Plata	$23.10
Colorado	Lake	$34.66
Colorado	Larimer	$46.21
Colorado	Las Animas	$5.78
Colorado	Lincoln	$5.78
Colorado	Logan	$11.55
Colorado	Mesa	$34.66
Colorado	Mineral	$34.66
Colorado	Moffat	$11.55
Colorado	Montezuma	$11.55
Colorado	Montrose	$23.10
Colorado	Morgan	$23.10
Colorado	Otero	$11.55
Colorado	Ouray	$34.66
Colorado	Park	$23.10
Colorado	Phillips	$23.10
Colorado	Pitkin	$115.52
Colorado	Prowers	$11.55
Colorado	Pueblo	$11.55
Colorado	Rio Blanco	$23.10
Colorado	Rio Grande	$34.66
Colorado	Routt	$46.21
Colorado	Saguache	$23.10
Colorado	San Juan*	$23.10
Colorado	San Miguel	$23.10
Colorado	Sedgwick	$23.10
Colorado	Summit	$34.66
Colorado	Teller	$34.66
Colorado	Washington	$11.55
Colorado	Weld	$34.66
Colorado	Yuma	$11.55
Connecticut	Fairfield	$693.08
Connecticut	Hartford	$462.05
Connecticut	Litchfield	$231.02
Connecticut	Middlesex	$231.02
Connecticut	New Haven	$462.05
Connecticut	New London	$231.02
Connecticut	Tolland	$115.52
Connecticut	Windham	$231.02
Delaware	Kent	$69.31
Delaware	New Castle	$115.52
Delaware	Sussex	$115.52
Florida	Alachua	$69.31
Florida	Baker	$115.52
Florida	Bay	$69.31
Florida	Bradford	$46.21
Florida	Brevard	$46.21
Florida	Broward	$462.05
Florida	Calhoun	$34.66
Florida	Charlotte	$34.66
Florida	Citrus	$46.21
Florida	Clay	$46.21
Florida	Collier	$69.31
Florida	Columbia	$34.66
Florida	Dade	$231.02
Florida	DeSoto	$46.21
Florida	Dixie	$34.66
Florida	Duval	$115.52
Florida	Escambia	$46.21
Florida	Flagler	$34.66
Florida	Franklin	$23.10
Florida	Gadsden	$46.21
Florida	Gilchrist	$46.21
Florida	Glades	$34.66
Florida	Gulf	$46.21
Florida	Hamilton	$34.66
Florida	Hardee	$46.21
Florida	Hendry	$115.52
Florida	Hernando	$115.52
Florida	Highlands	$46.21
Florida	Hillsborough	$115.52
Florida	Holmes	$34.66
Florida	Indian River	$69.31
Florida	Jackson	$34.66
Florida	Jefferson	$34.66
Florida	Lafayette	$34.66
Florida	Lake	$115.52
Florida	Lee	$69.31
Florida	Leon	$46.21
Florida	Levy	$46.21
Florida	Liberty	$34.66
Florida	Madison	$34.66
Florida	Manatee	$69.31
Florida	Marion	$115.52
Florida	Martin	$69.31
Florida	Monroe	$462.05
Florida	Nassau	$115.52
Florida	Okaloosa	$69.31
Florida	Okeechobee	$46.21
Florida	Orange	$115.52
Florida	Osceola	$34.66
Florida	Palm Beach	$69.31
Florida	Pasco	$115.52
Florida	Pinellas	$693.08
Florida	Polk	$69.31
Florida	Putnam	$46.21
Florida	Santa Rosa	$69.31
Florida	Sarasota	$69.31
Florida	Seminole	$115.52
Florida	St. Johns	$115.52
Florida	St. Lucie	$69.31
Florida	Sumter	$46.21
Florida	Suwannee	$69.31
Florida	Taylor	$34.66
Florida	Union	$34.66
Florida	Volusia	$115.52
Florida	Wakulla	$69.31
Florida	Walton	$46.21
Florida	Washington	$46.21
Georgia	Appling	$34.66
Georgia	Atkinson	$34.66
Georgia	Bacon	$46.21
Georgia	Baker	$34.66
Georgia	Baldwin	$46.21
Georgia	Banks	$115.52
Georgia	Barrow	$115.52
Georgia	Bartow	$69.31
Georgia	Ben Hill	$34.66
Georgia	Berrien	$34.66
Georgia	Bibb	$46.21
Georgia	Bleckley	$34.66
Georgia	Brantley	$34.66
Georgia	Brooks	$34.66
Georgia	Bryan	$34.66
Georgia	Bulloch	$34.66
Georgia	Burke	$34.66
Georgia	Butts	$46.21
Georgia	Calhoun	$34.66
Georgia	Camden	$34.66
Georgia	Candler	$34.66
Georgia	Carroll	$115.52
Georgia	Catoosa	$115.52
Georgia	Charlton	$46.21
Georgia	Chatham	$46.21
Georgia	Chattahoochee	$34.66
Georgia	Chattooga	$34.66
Georgia	Cherokee	$231.02
Georgia	Clarke	$115.52
Georgia	Clay	$23.10
Georgia	Clayton	$115.52
Georgia	Clinch	$34.66
Georgia	Cobb	$231.02
Georgia	Coffee	$34.66
Georgia	Colquitt	$34.66
Georgia	Columbia	$115.52
Georgia	Cook	$34.66
Georgia	Coweta	$115.52
Georgia	Crawford	$46.21
Georgia	Crisp	$34.66
Georgia	Dade	$46.21
Georgia	Dawson	$115.52
Georgia	Decatur	$34.66
Georgia	DeKalb	$231.02

State	County	(Fee/acre/yr)
Georgia	Dodge	$23.10
Georgia	Dooly	$34.66
Georgia	Dougherty	$34.66
Georgia	Douglas	$115.52
Georgia	Early	$34.66
Georgia	Echols	$34.66
Georgia	Effingham	$34.66
Georgia	Elbert	$46.21
Georgia	Emanuel	$23.10
Georgia	Evans	$34.66
Georgia	Fannin	$69.31
Georgia	Fayette	$115.52
Georgia	Floyd	$69.31
Georgia	Forsyth	$231.02
Georgia	Franklin	$115.52
Georgia	Fulton	$115.52
Georgia	Gilmer	$115.52
Georgia	Glascock	$34.66
Georgia	Glynn	$34.66
Georgia	Gordon	$115.52
Georgia	Grady	$34.66
Georgia	Greene	$69.31
Georgia	Gwinnett	$231.02
Georgia	Habersham	$115.52
Georgia	Hall	$115.52
Georgia	Hancock	$23.10
Georgia	Haralson	$69.31
Georgia	Harris	$46.21
Georgia	Hart	$69.31
Georgia	Heard	$46.21
Georgia	Henry	$115.52
Georgia	Houston	$46.21
Georgia	Irwin	$34.66
Georgia	Jackson	$115.52
Georgia	Jasper	$46.21
Georgia	Jeff Davis	$34.66
Georgia	Jefferson	$34.66
Georgia	Jenkins	$34.66
Georgia	Johnson	$34.66
Georgia	Jones	$46.21
Georgia	Lamar	$46.21
Georgia	Lanier	$23.10
Georgia	Laurens	$34.66
Georgia	Lee	$34.66
Georgia	Liberty	$46.21
Georgia	Lincoln	$69.31
Georgia	Long	$34.66
Georgia	Lowndes	$46.21
Georgia	Lumpkin	$115.52
Georgia	Macon	$34.66
Georgia	Madison	$115.52
Georgia	Marion	$34.66
Georgia	McDuffie	$46.21
Georgia	McIntosh	$34.66
Georgia	Meriwether	$46.21
Georgia	Miller	$34.66
Georgia	Mitchell	$34.66
Georgia	Monroe	$46.21
Georgia	Montgomery	$34.66
Georgia	Morgan	$69.31
Georgia	Murray	$69.31
Georgia	Muscogee	$69.31
Georgia	Newton	$115.52
Georgia	Oconee	$115.52
Georgia	Oglethorpe	$69.31
Georgia	Paulding	$231.02
Georgia	Peach	$46.21
Georgia	Pickens	$115.52
Georgia	Pierce	$34.66
Georgia	Pike	$69.31
Georgia	Polk	$46.21
Georgia	Pulaski	$34.66
Georgia	Putnam	$69.31
Georgia	Quitman	$34.66
Georgia	Rabun	$115.52
Georgia	Randolph	$23.10
Georgia	Richmond	$69.31
Georgia	Rockdale	$115.52
Georgia	Schley	$34.66
Georgia	Screven	$34.66
Georgia	Seminole	$34.66
Georgia	Spalding	$115.52
Georgia	Stephens	$115.52
Georgia	Stewart	$34.66
Georgia	Sumter	$34.66
Georgia	Talbot	$34.66
Georgia	Taliaferro	$34.66
Georgia	Tattnall	$46.21
Georgia	Taylor	$34.66
Georgia	Telfair	$34.66
Georgia	Terrell	$34.66
Georgia	Thomas	$34.66
Georgia	Tift	$46.21
Georgia	Toombs	$34.66
Georgia	Towns	$115.52
Georgia	Treutlen	$34.66
Georgia	Troup	$34.66
Georgia	Turner	$34.66
Georgia	Twiggs	$34.66
Georgia	Union	$115.52
Georgia	Upson	$46.21
Georgia	Walker	$69.31
Georgia	Walton	$231.02
Georgia	Ware	$34.66
Georgia	Warren	$34.66
Georgia	Washington	$34.66
Georgia	Wayne	$34.66
Georgia	Webster	$34.66
Georgia	Wheeler	$23.10
Georgia	White	$115.52
Georgia	Whitfield	$46.21
Georgia	Wilcox	$34.66
Georgia	Wilkes	$34.66
Georgia	Wilkinson	$34.66
Georgia	Worth	$34.66
Hawaii	Hawaii	$69.31
Hawaii	Honolulu	$231.02
Hawaii	Kauai	$115.52
Hawaii	Maui	$115.52
Idaho	Ada	$69.31
Idaho	Adams	$11.55
Idaho	Bannock	$23.10
Idaho	Bear Lake	$23.10
Idaho	Benewah	$23.10
Idaho	Bingham	$23.10
Idaho	Blaine	$34.66
Idaho	Boise	$23.10
Idaho	Bonner	$69.31
Idaho	Bonneville	$34.66
Idaho	Boundary	$46.21
Idaho	Butte	$23.10
Idaho	Camas	$23.10
Idaho	Canyon	$115.52
Idaho	Caribou	$23.10
Idaho	Cassia	$23.10
Idaho	Clark	$23.10
Idaho	Clearwater	$34.66
Idaho	Custer	$34.66
Idaho	Elmore	$23.10
Idaho	Franklin	$23.10
Idaho	Fremont	$23.10
Idaho	Gem	$23.10
Idaho	Gooding	$69.31
Idaho	Idaho	$23.10
Idaho	Jefferson	$34.66
Idaho	Jerome	$46.21
Idaho	Kootenai	$46.21
Idaho	Latah	$34.66
Idaho	Lemhi	$23.10
Idaho	Lewis	$23.10
Idaho	Lincoln	$23.10
Idaho	Madison	$46.21
Idaho	Minidoka	$46.21
Idaho	Nez Perce	$23.10
Idaho	Oneida	$23.10
Idaho	Owyhee	$23.10
Idaho	Payette	$34.66
Idaho	Power	$23.10
Idaho	Shoshone	$69.31
Idaho	Teton	$46.21
Idaho	Twin Falls	$46.21
Idaho	Valley	$34.66
Idaho	Washington	$23.10
Illinois	Adams	$46.21
Illinois	Alexander	$34.66
Illinois	Bond	$46.21
Illinois	Boone	$69.31
Illinois	Brown	$34.66
Illinois	Bureau	$69.31
Illinois	Calhoun	$34.66
Illinois	Carroll	$46.21
Illinois	Cass	$46.21
Illinois	Champaign	$69.31
Illinois	Christian	$69.31
Illinois	Clark	$46.21
Illinois	Clay	$34.66
Illinois	Clinton	$46.21
Illinois	Coles	$69.31
Illinois	Cook	$231.02
Illinois	Crawford	$34.66
Illinois	Cumberland	$46.21
Illinois	De Witt	$69.31
Illinois	DeKalb	$115.52
Illinois	Douglas	$69.31
Illinois	DuPage	$115.52
Illinois	Edgar	$46.21
Illinois	Edwards	$34.66
Illinois	Effingham	$46.21
Illinois	Fayette	$34.66
Illinois	Ford	$69.31
Illinois	Franklin	$34.66
Illinois	Fulton	$46.21
Illinois	Gallatin	$34.66
Illinois	Greene	$34.66
Illinois	Grundy	$69.31
Illinois	Hamilton	$34.66
Illinois	Hancock	$69.31
Illinois	Hardin	$34.66
Illinois	Henderson	$46.21
Illinois	Henry	$46.21
Illinois	Iroquois	$46.21
Illinois	Jackson	$34.66
Illinois	Jasper	$46.21
Illinois	Jefferson	$34.66
Illinois	Jersey	$46.21
Illinois	Jo Daviess	$46.21
Illinois	Johnson	$34.66
Illinois	Kane	$115.52
Illinois	Kankakee	$69.31
Illinois	Kendall	$115.52
Illinois	Knox	$46.21
Illinois	La Salle	$69.31
Illinois	Lake	$115.52
Illinois	Lawrence	$34.66
Illinois	Lee	$69.31
Illinois	Livingston	$69.31
Illinois	Logan	$69.31
Illinois	Macon	$69.31
Illinois	Macoupin	$46.21

State	County	(Fee/acre/yr)
Illinois	Madison	$46.21
Illinois	Marion	$34.66
Illinois	Marshall	$69.31
Illinois	Mason	$46.21
Illinois	Massac	$23.10
Illinois	McDonough	$46.21
Illinois	McHenry	$115.52
Illinois	McLean	$69.31
Illinois	Menard	$46.21
Illinois	Mercer	$46.21
Illinois	Monroe	$69.31
Illinois	Montgomery	$46.21
Illinois	Morgan	$46.21
Illinois	Moultrie	$69.31
Illinois	Ogle	$69.31
Illinois	Peoria	$69.31
Illinois	Perry	$34.66
Illinois	Piatt	$69.31
Illinois	Pike	$34.66
Illinois	Pope	$23.10
Illinois	Pulaski	$34.66
Illinois	Putnam	$69.31
Illinois	Randolph	$46.21
Illinois	Richland	$34.66
Illinois	Rock Island	$69.31
Illinois	Saline	$34.66
Illinois	Sangamon	$69.31
Illinois	Schuyler	$34.66
Illinois	Scott	$46.21
Illinois	Shelby	$46.21
Illinois	St. Clair	$69.31
Illinois	Stark	$69.31
Illinois	Stephenson	$46.21
Illinois	Tazewell	$69.31
Illinois	Union	$46.21
Illinois	Vermilion	$46.21
Illinois	Wabash	$34.66
Illinois	Warren	$69.31
Illinois	Washington	$46.21
Illinois	Wayne	$23.10
Illinois	White	$34.66
Illinois	Whiteside	$69.31
Illinois	Will	$115.52
Illinois	Williamson	$46.21
Illinois	Winnebago	$69.31
Illinois	Woodford	$69.31
Indiana	Adams	$69.31
Indiana	Allen	$69.31
Indiana	Bartholomew	$69.31
Indiana	Benton	$46.21
Indiana	Blackford	$46.21
Indiana	Boone	$69.31
Indiana	Brown	$69.31
Indiana	Carroll	$69.31
Indiana	Cass	$46.21
Indiana	Clark	$69.31
Indiana	Clay	$46.21
Indiana	Clinton	$69.31
Indiana	Crawford	$34.66
Indiana	Daviess	$46.21
Indiana	Dearborn	$69.31
Indiana	Decatur	$69.31
Indiana	DeKalb	$46.21
Indiana	Delaware	$69.31
Indiana	Dubois	$46.21
Indiana	Elkhart	$115.52
Indiana	Fayette	$46.21
Indiana	Floyd	$69.31
Indiana	Fountain	$46.21
Indiana	Franklin	$46.21
Indiana	Fulton	$46.21
Indiana	Gibson	$46.21
Indiana	Grant	$69.31
Indiana	Greene	$46.21
Indiana	Hamilton	$115.52
Indiana	Hancock	$69.31
Indiana	Harrison	$69.31
Indiana	Hendricks	$69.31
Indiana	Henry	$69.31
Indiana	Howard	$69.31
Indiana	Huntington	$46.21
Indiana	Jackson	$46.21
Indiana	Jasper	$46.21
Indiana	Jay	$69.31
Indiana	Jefferson	$46.21
Indiana	Jennings	$46.21
Indiana	Johnson	$115.52
Indiana	Knox	$46.21
Indiana	Kosciusko	$69.31
Indiana	LaGrange	$69.31
Indiana	Lake	$69.31
Indiana	LaPorte	$69.31
Indiana	Lawrence	$34.66
Indiana	Madison	$69.31
Indiana	Marion	$115.52
Indiana	Marshall	$46.21
Indiana	Martin	$46.21
Indiana	Miami	$46.21
Indiana	Monroe	$46.21
Indiana	Montgomery	$46.21
Indiana	Morgan	$69.31
Indiana	Newton	$46.21
Indiana	Noble	$69.31
Indiana	Ohio	$69.31
Indiana	Orange	$46.21
Indiana	Owen	$46.21
Indiana	Parke	$46.21
Indiana	Perry	$34.66
Indiana	Pike	$46.21
Indiana	Porter	$69.31
Indiana	Posey	$46.21
Indiana	Pulaski	$46.21
Indiana	Putnam	$46.21
Indiana	Randolph	$46.21
Indiana	Ripley	$69.31
Indiana	Rush	$69.31
Indiana	Scott	$46.21
Indiana	Shelby	$69.31
Indiana	Spencer	$46.21
Indiana	St. Joseph	$69.31
Indiana	Starke	$46.21
Indiana	Steuben	$46.21
Indiana	Sullivan	$46.21
Indiana	Switzerland	$46.21
Indiana	Tippecanoe	$69.31
Indiana	Tipton	$69.31
Indiana	Union	$46.21
Indiana	Vanderburgh	$69.31
Indiana	Vermillion	$46.21
Indiana	Vigo	$46.21
Indiana	Wabash	$69.31
Indiana	Warren	$46.21
Indiana	Warrick	$46.21
Indiana	Washington	$46.21
Indiana	Wayne	$46.21
Indiana	Wells	$46.21
Indiana	White	$69.31
Indiana	Whitley	$69.31
Iowa	Adair	$34.66
Iowa	Adams	$34.66
Iowa	Allamakee	$34.66
Iowa	Appanoose	$23.10
Iowa	Audubon	$34.66
Iowa	Benton	$46.21
Iowa	Black Hawk	$69.31
Iowa	Boone	$46.21
Iowa	Bremer	$69.31
Iowa	Buchanan	$46.21
Iowa	Buena Vista	$46.21
Iowa	Butler	$46.21
Iowa	Calhoun	$46.21
Iowa	Carroll	$46.21
Iowa	Cass	$34.66
Iowa	Cedar	$46.21
Iowa	Cerro Gordo	$46.21
Iowa	Cherokee	$46.21
Iowa	Chickasaw	$46.21
Iowa	Clarke	$23.10
Iowa	Clay	$46.21
Iowa	Clayton	$46.21
Iowa	Clinton	$46.21
Iowa	Crawford	$46.21
Iowa	Dallas	$69.31
Iowa	Davis	$23.10
Iowa	Decatur	$23.10
Iowa	Delaware	$46.21
Iowa	Des Moines	$46.21
Iowa	Dickinson	$46.21
Iowa	Dubuque	$46.21
Iowa	Emmet	$46.21
Iowa	Fayette	$46.21
Iowa	Floyd	$46.21
Iowa	Franklin	$46.21
Iowa	Fremont	$34.66
Iowa	Greene	$46.21
Iowa	Grundy	$69.31
Iowa	Guthrie	$34.66
Iowa	Hamilton	$46.21
Iowa	Hancock	$46.21
Iowa	Hardin	$46.21
Iowa	Harrison	$34.66
Iowa	Henry	$46.21
Iowa	Howard	$46.21
Iowa	Humboldt	$46.21
Iowa	Ida	$46.21
Iowa	Iowa	$34.66
Iowa	Jackson	$34.66
Iowa	Jasper	$46.21
Iowa	Jefferson	$34.66
Iowa	Johnson	$46.21
Iowa	Jones	$46.21
Iowa	Keokuk	$34.66
Iowa	Kossuth	$46.21
Iowa	Lee	$34.66
Iowa	Linn	$69.31
Iowa	Louisa	$46.21
Iowa	Lucas	$23.10
Iowa	Lyon	$46.21
Iowa	Madison	$34.66
Iowa	Mahaska	$34.66
Iowa	Marion	$34.66
Iowa	Marshall	$46.21
Iowa	Mills	$34.66
Iowa	Mitchell	$46.21
Iowa	Monona	$34.66
Iowa	Monroe	$23.10
Iowa	Montgomery	$34.66
Iowa	Muscatine	$46.21
Iowa	O''Brien	$69.31
Iowa	Osceola	$46.21
Iowa	Page	$34.66
Iowa	Palo Alto	$46.21
Iowa	Plymouth	$46.21
Iowa	Pocahontas	$46.21
Iowa	Polk	$46.21
Iowa	Pottawattamie	$46.21
Iowa	Poweshiek	$34.66
Iowa	Ringgold	$23.10
Iowa	Sac	$46.21

State	County	(Fee/acre/yr)
Iowa	Scott	$69.31
Iowa	Shelby	$46.21
Iowa	Sioux	$69.31
Iowa	Story	$46.21
Iowa	Tama	$46.21
Iowa	Taylor	$23.10
Iowa	Union	$34.66
Iowa	Van Buren	$23.10
Iowa	Wapello	$34.66
Iowa	Warren	$34.66
Iowa	Washington	$46.21
Iowa	Wayne	$23.10
Iowa	Webster	$46.21
Iowa	Winnebago	$46.21
Iowa	Winneshiek	$34.66
Iowa	Woodbury	$34.66
Iowa	Worth	$46.21
Iowa	Wright	$46.21
Kansas	Allen	$23.10
Kansas	Anderson	$23.10
Kansas	Atchison	$23.10
Kansas	Barber	$11.55
Kansas	Barton	$11.55
Kansas	Bourbon	$23.10
Kansas	Brown	$23.10
Kansas	Butler	$23.10
Kansas	Chase	$11.55
Kansas	Chautauqua	$11.55
Kansas	Cherokee	$23.10
Kansas	Cheyenne	$11.55
Kansas	Clark	$11.55
Kansas	Clay	$23.10
Kansas	Cloud	$11.55
Kansas	Coffey	$23.10
Kansas	Comanche	$11.55
Kansas	Cowley	$23.10
Kansas	Crawford	$23.10
Kansas	Decatur	$11.55
Kansas	Dickinson	$23.10
Kansas	Doniphan	$34.66
Kansas	Douglas	$46.21
Kansas	Edwards	$11.55
Kansas	Elk	$11.55
Kansas	Ellis	$11.55
Kansas	Ellsworth	$11.55
Kansas	Finney	$11.55
Kansas	Ford	$11.55
Kansas	Franklin	$23.10
Kansas	Geary	$23.10
Kansas	Gove	$11.55
Kansas	Graham	$11.55
Kansas	Grant	$23.10
Kansas	Gray	$23.10
Kansas	Greeley	$11.55
Kansas	Greenwood	$11.55
Kansas	Hamilton	$11.55
Kansas	Harper	$11.55
Kansas	Harvey	$23.10
Kansas	Haskell	$23.10
Kansas	Hodgeman	$11.55
Kansas	Jackson	$23.10
Kansas	Jefferson	$23.10
Kansas	Jewell	$23.10
Kansas	Johnson	$46.21
Kansas	Kearny	$11.55
Kansas	Kingman	$23.10
Kansas	Kiowa	$11.55
Kansas	Labette	$23.10
Kansas	Lane	$11.55
Kansas	Leavenworth	$34.66
Kansas	Lincoln	$11.55
Kansas	Linn	$23.10
Kansas	Logan	$11.55
Kansas	Lyon	$23.10
Kansas	Marion	$23.10
Kansas	Marshall	$23.10
Kansas	McPherson	$23.10
Kansas	Meade	$11.55
Kansas	Miami	$34.66
Kansas	Mitchell	$23.10
Kansas	Montgomery	$23.10
Kansas	Morris	$23.10
Kansas	Morton	$11.55
Kansas	Nemaha	$23.10
Kansas	Neosho	$23.10
Kansas	Ness	$11.55
Kansas	Norton	$11.55
Kansas	Osage	$23.10
Kansas	Osborne	$11.55
Kansas	Ottawa	$11.55
Kansas	Pawnee	$11.55
Kansas	Phillips	$11.55
Kansas	Pottawatomie	$23.10
Kansas	Pratt	$23.10
Kansas	Rawlins	$11.55
Kansas	Reno	$23.10
Kansas	Republic	$23.10
Kansas	Rice	$23.10
Kansas	Riley	$23.10
Kansas	Rooks	$11.55
Kansas	Rush	$11.55
Kansas	Russell	$11.55
Kansas	Saline	$23.10
Kansas	Scott	$11.55
Kansas	Sedgwick	$23.10
Kansas	Seward	$23.10
Kansas	Shawnee	$34.66
Kansas	Sheridan	$11.55
Kansas	Sherman	$11.55
Kansas	Smith	$23.10
Kansas	Stafford	$23.10
Kansas	Stanton	$11.55
Kansas	Stevens	$23.10
Kansas	Sumner	$23.10
Kansas	Thomas	$11.55
Kansas	Trego	$11.55
Kansas	Wabaunsee	$23.10
Kansas	Wallace	$11.55
Kansas	Washington	$23.10
Kansas	Wichita	$11.55
Kansas	Wilson	$23.10
Kansas	Woodson	$11.55
Kansas	Wyandotte	$115.52
Kentucky	Adair	$34.66
Kentucky	Allen	$34.66
Kentucky	Anderson	$46.21
Kentucky	Ballard	$34.66
Kentucky	Barren	$34.66
Kentucky	Bath	$34.66
Kentucky	Bell	$34.66
Kentucky	Boone	$69.31
Kentucky	Bourbon	$69.31
Kentucky	Boyd	$34.66
Kentucky	Boyle	$46.21
Kentucky	Bracken	$34.66
Kentucky	Breathitt	$23.10
Kentucky	Breckinridge	$34.66
Kentucky	Bullitt	$69.31
Kentucky	Butler	$34.66
Kentucky	Caldwell	$23.10
Kentucky	Calloway	$34.66
Kentucky	Campbell	$115.52
Kentucky	Carlisle	$34.66
Kentucky	Carroll	$46.21
Kentucky	Carter	$34.66
Kentucky	Casey	$23.10
Kentucky	Christian	$34.66
Kentucky	Clark	$46.21
Kentucky	Clay	$23.10
Kentucky	Clinton	$34.66
Kentucky	Crittenden	$23.10
Kentucky	Cumberland	$23.10
Kentucky	Daviess	$46.21
Kentucky	Edmonson	$23.10
Kentucky	Elliott	$23.10
Kentucky	Estill	$23.10
Kentucky	Fayette	$115.52
Kentucky	Fleming	$34.66
Kentucky	Floyd	$34.66
Kentucky	Franklin	$46.21
Kentucky	Fulton	$34.66
Kentucky	Gallatin	$46.21
Kentucky	Garrard	$34.66
Kentucky	Grant	$69.31
Kentucky	Graves	$34.66
Kentucky	Grayson	$34.66
Kentucky	Green	$34.66
Kentucky	Greenup	$23.10
Kentucky	Hancock	$34.66
Kentucky	Hardin	$46.21
Kentucky	Harlan	$46.21
Kentucky	Harrison	$34.66
Kentucky	Hart	$34.66
Kentucky	Henderson	$46.21
Kentucky	Henry	$46.21
Kentucky	Hickman	$34.66
Kentucky	Hopkins	$34.66
Kentucky	Jackson	$23.10
Kentucky	Jefferson	$115.52
Kentucky	Jessamine	$69.31
Kentucky	Johnson	$34.66
Kentucky	Kenton	$115.52
Kentucky	Knott	$34.66
Kentucky	Knox	$34.66
Kentucky	Larue	$46.21
Kentucky	Laurel	$46.21
Kentucky	Lawrence	$23.10
Kentucky	Lee	$23.10
Kentucky	Leslie	$23.10
Kentucky	Letcher	$23.10
Kentucky	Lewis	$23.10
Kentucky	Lincoln	$34.66
Kentucky	Livingston	$23.10
Kentucky	Logan	$34.66
Kentucky	Lyon	$23.10
Kentucky	Madison	$46.21
Kentucky	Magoffin	$23.10
Kentucky	Marion	$34.66
Kentucky	Marshall	$34.66
Kentucky	Martin	$11.55
Kentucky	Mason	$46.21
Kentucky	McCracken	$34.66
Kentucky	McCreary	$46.21
Kentucky	McLean	$34.66
Kentucky	Meade	$46.21
Kentucky	Menifee	$46.21
Kentucky	Mercer	$69.31
Kentucky	Metcalfe	$34.66
Kentucky	Monroe	$34.66
Kentucky	Montgomery	$46.21
Kentucky	Morgan	$23.10
Kentucky	Muhlenberg	$34.66
Kentucky	Nelson	$46.21
Kentucky	Nicholas	$34.66
Kentucky	Ohio	$34.66
Kentucky	Oldham	$115.52
Kentucky	Owen	$34.66
Kentucky	Owsley	$34.66
Kentucky	Pendleton	$34.66

State	County	(Fee/acre/yr)
Kentucky	Perry	$23.10
Kentucky	Pike	$23.10
Kentucky	Powell	$34.66
Kentucky	Pulaski	$34.66
Kentucky	Robertson	$23.10
Kentucky	Rockcastle	$34.66
Kentucky	Rowan	$34.66
Kentucky	Russell	$46.21
Kentucky	Scott	$69.31
Kentucky	Shelby	$69.31
Kentucky	Simpson	$46.21
Kentucky	Spencer	$69.31
Kentucky	Taylor	$34.66
Kentucky	Todd	$34.66
Kentucky	Trigg	$34.66
Kentucky	Trimble	$34.66
Kentucky	Union	$34.66
Kentucky	Warren	$46.21
Kentucky	Washington	$34.66
Kentucky	Wayne	$46.21
Kentucky	Webster	$34.66
Kentucky	Whitley	$34.66
Kentucky	Wolfe	$23.10
Kentucky	Woodford	$115.52
Louisiana	Acadia	$34.66
Louisiana	Allen	$23.10
Louisiana	Ascension	$69.31
Louisiana	Assumption	$34.66
Louisiana	Avoyelles	$34.66
Louisiana	Beauregard	$34.66
Louisiana	Bienville	$34.66
Louisiana	Bossier	$34.66
Louisiana	Caddo	$34.66
Louisiana	Calcasieu	$34.66
Louisiana	Caldwell	$34.66
Louisiana	Cameron	$34.66
Louisiana	Catahoula	$23.10
Louisiana	Claiborne	$34.66
Louisiana	Concordia	$23.10
Louisiana	De Soto	$34.66
Louisiana	East Baton Rouge.	$69.31
Louisiana	East Carroll	$23.10
Louisiana	East Feliciana	$46.21
Louisiana	Evangeline	$34.66
Louisiana	Franklin	$23.10
Louisiana	Grant	$34.66
Louisiana	Iberia	$46.21
Louisiana	Iberville	$34.66
Louisiana	Jackson	$69.31
Louisiana	Jefferson	$46.21
Louisiana	Jefferson Davis.	$23.10
Louisiana	La Salle	$34.66
Louisiana	Lafayette	$69.31
Louisiana	Lafourche	$34.66
Louisiana	Lincoln	$46.21
Louisiana	Livingston	$69.31
Louisiana	Madison	$23.10
Louisiana	Morehouse	$23.10
Louisiana	Natchitoches	$34.66
Louisiana	Orleans	$1,155.13
Louisiana	Ouachita	$34.66
Louisiana	Plaquemines	$69.31
Louisiana	Pointe Coupee	$34.66
Louisiana	Rapides	$34.66
Louisiana	Red River	$23.10
Louisiana	Richland	$23.10
Louisiana	Sabine	$46.21
Louisiana	St. Bernard	$115.52
Louisiana	St. Charles	$115.52
Louisiana	St. Helena	$46.21
Louisiana	St. James	$34.66
Louisiana	St. John the Baptist.	$69.31
Louisiana	St. Landry	$34.66
Louisiana	St. Martin	$34.66
Louisiana	St. Mary	$34.66
Louisiana	St. Tammany	$115.52
Louisiana	Tangipahoa	$69.31
Louisiana	Tensas	$23.10
Louisiana	Terrebonne	$34.66
Louisiana	Union	$46.21
Louisiana	Vermilion	$34.66
Louisiana	Vernon	$34.66
Louisiana	Washington	$46.21
Louisiana	Webster	$69.31
Louisiana	West Baton Rouge.	$46.21
Louisiana	West Carroll	$34.66
Louisiana	West Feliciana	$34.66
Louisiana	Winn	$34.66
Maine	Androscoggin	$46.21
Maine	Aroostook	$23.10
Maine	Cumberland	$115.52
Maine	Franklin	$34.66
Maine	Hancock	$46.21
Maine	Kennebec	$46.21
Maine	Knox	$69.31
Maine	Lincoln	$69.31
Maine	Oxford	$46.21
Maine	Penobscot	$34.66
Maine	Piscataquis	$23.10
Maine	Sagadahoc	$69.31
Maine	Somerset	$34.66
Maine	Waldo	$34.66
Maine	Washington	$23.10
Maine	York	$115.52
Maryland	Allegany	$46.21
Maryland	Anne Arundel	$231.02
Maryland	Baltimore	$231.02
Maryland	Calvert	$115.52
Maryland	Caroline	$69.31
Maryland	Carroll	$115.52
Maryland	Cecil	$115.52
Maryland	Charles	$69.31
Maryland	Dorchester	$69.31
Maryland	Frederick	$115.52
Maryland	Garrett	$46.21
Maryland	Harford	$115.52
Maryland	Howard	$115.52
Maryland	Kent	$69.31
Maryland	Montgomery	$115.52
Maryland	Prince George's.	$231.02
Maryland	Queen Anne's	$69.31
Maryland	Somerset	$69.31
Maryland	St. Mary's	$69.31
Maryland	Talbot	$115.52
Maryland	Washington	$115.52
Maryland	Wicomico	$69.31
Maryland	Worcester	$46.21
Massachusetts.	Barnstable	$462.05
Massachusetts.	Berkshire	$115.52
Massachusetts.	Bristol	$462.05
Massachusetts.	Dukes	$231.02
Massachusetts.	Essex	$462.05
Massachusetts.	Franklin	$115.52
Massachusetts.	Hampden	$231.02
Massachusetts.	Hampshire	$231.02
Massachusetts.	Middlesex	$462.05
Massachusetts.	Nantucket	$1,155.13
Massachusetts.	Norfolk	$462.05
Massachusetts.	Plymouth	$462.05
Massachusetts.	Suffolk	$1,155.13
Massachusetts.	Worcester	$231.02
Michigan	Alcona	$46.21
Michigan	Alger	$34.66
Michigan	Allegan	$69.31
Michigan	Alpena	$46.21
Michigan	Antrim	$69.31
Michigan	Arenac	$46.21
Michigan	Baraga	$23.10
Michigan	Barry	$69.31
Michigan	Bay	$69.31
Michigan	Benzie	$69.31
Michigan	Berrien	$115.52
Michigan	Branch	$46.21
Michigan	Calhoun	$46.21
Michigan	Cass	$46.21
Michigan	Charlevoix	$69.31
Michigan	Cheboygan	$46.21
Michigan	Chippewa	$34.66
Michigan	Clare	$46.21
Michigan	Clinton	$46.21
Michigan	Crawford	$69.31
Michigan	Delta	$34.66
Michigan	Dickinson	$34.66
Michigan	Eaton	$69.31
Michigan	Emmet	$69.31
Michigan	Genesee	$115.52
Michigan	Gladwin	$46.21
Michigan	Gogebic	$34.66
Michigan	Grand Traverse.	$115.52
Michigan	Gratiot	$46.21
Michigan	Hillsdale	$46.21
Michigan	Houghton	$34.66
Michigan	Huron	$46.21
Michigan	Ingham	$69.31
Michigan	Ionia	$69.31
Michigan	Iosco	$46.21
Michigan	Iron	$34.66
Michigan	Isabella	$46.21
Michigan	Jackson	$69.31
Michigan	Kalamazoo	$69.31
Michigan	Kalkaska	$46.21
Michigan	Kent	$115.52
Michigan	Keweenaw	$46.21
Michigan	Lake	$46.21
Michigan	Lapeer	$115.52
Michigan	Leelanau	$115.52
Michigan	Lenawee	$69.31
Michigan	Livingston	$115.52
Michigan	Luce	$34.66
Michigan	Mackinac	$34.66
Michigan	Macomb	$115.52
Michigan	Manistee	$46.21
Michigan	Marquette	$34.66
Michigan	Mason	$46.21
Michigan	Mecosta	$46.21
Michigan	Menominee	$34.66
Michigan	Midland	$69.31
Michigan	Missaukee	$46.21
Michigan	Monroe	$69.31

State	County	(Fee/acre/yr)
Michigan	Montcalm	$46.21
Michigan	Montmorency	$46.21
Michigan	Muskegon	$69.31
Michigan	Newaygo	$69.31
Michigan	Oakland	$231.02
Michigan	Oceana	$69.31
Michigan	Ogemaw	$46.21
Michigan	Ontonagon	$23.10
Michigan	Osceola	$46.21
Michigan	Oscoda	$46.21
Michigan	Otsego	$46.21
Michigan	Ottawa	$115.52
Michigan	Presque Isle	$46.21
Michigan	Roscommon	$69.31
Michigan	Saginaw	$46.21
Michigan	Sanilac	$46.21
Michigan	Schoolcraft	$34.66
Michigan	Shiawassee	$46.21
Michigan	St. Clair	$115.52
Michigan	St. Joseph	$46.21
Michigan	Tuscola	$46.21
Michigan	Van Buren	$69.31
Michigan	Washtenaw	$115.52
Michigan	Wayne	$231.02
Michigan	Wexford	$69.31
Minnesota	Aitkin	$23.10
Minnesota	Anoka	$115.52
Minnesota	Becker	$23.10
Minnesota	Beltrami	$23.10
Minnesota	Benton	$46.21
Minnesota	Big Stone	$23.10
Minnesota	Blue Earth	$46.21
Minnesota	Brown	$46.21
Minnesota	Carlton	$23.10
Minnesota	Carver	$69.31
Minnesota	Cass	$23.10
Minnesota	Chippewa	$34.66
Minnesota	Chisago	$69.31
Minnesota	Clay	$23.10
Minnesota	Clearwater	$23.10
Minnesota	Cook	$34.66
Minnesota	Cottonwood	$34.66
Minnesota	Crow Wing	$23.10
Minnesota	Dakota	$69.31
Minnesota	Dodge	$46.21
Minnesota	Douglas	$34.66
Minnesota	Faribault	$46.21
Minnesota	Fillmore	$34.66
Minnesota	Freeborn	$46.21
Minnesota	Goodhue	$46.21
Minnesota	Grant	$34.66
Minnesota	Hennepin	$115.52
Minnesota	Houston	$34.66
Minnesota	Hubbard	$23.10
Minnesota	Isanti	$46.21
Minnesota	Itasca	$23.10
Minnesota	Jackson	$34.66
Minnesota	Kanabec	$34.66
Minnesota	Kandiyohi	$34.66
Minnesota	Kittson	$11.55
Minnesota	Koochiching	$23.10
Minnesota	Lac qui Parle	$23.10
Minnesota	Lake	$34.66
Minnesota	Lake of the Woods.	$11.55
Minnesota	Le Sueur	$46.21
Minnesota	Lincoln	$23.10
Minnesota	Lyon	$34.66
Minnesota	Mahnomen	$23.10
Minnesota	Marshall	$11.55
Minnesota	Martin	$46.21
Minnesota	McLeod	$46.21
Minnesota	Meeker	$34.66
Minnesota	Mille Lacs	$34.66
Minnesota	Morrison	$34.66
Minnesota	Mower	$46.21
Minnesota	Murray	$34.66
Minnesota	Nicollet	$46.21
Minnesota	Nobles	$34.66
Minnesota	Norman	$23.10
Minnesota	Olmsted	$46.21
Minnesota	Otter Tail	$23.10
Minnesota	Pennington	$11.55
Minnesota	Pine	$34.66
Minnesota	Pipestone	$34.66
Minnesota	Polk	$23.10
Minnesota	Pope	$23.10
Minnesota	Ramsey	$462.05
Minnesota	Red Lake	$23.10
Minnesota	Redwood	$34.66
Minnesota	Renville	$46.21
Minnesota	Rice	$69.31
Minnesota	Rock	$34.66
Minnesota	Roseau	$11.55
Minnesota	Scott	$69.31
Minnesota	Sherburne	$69.31
Minnesota	Sibley	$46.21
Minnesota	St. Louis	$34.66
Minnesota	Stearns	$34.66
Minnesota	Steele	$46.21
Minnesota	Stevens	$34.66
Minnesota	Swift	$23.10
Minnesota	Todd	$23.10
Minnesota	Traverse	$23.10
Minnesota	Wabasha	$34.66
Minnesota	Wadena	$23.10
Minnesota	Waseca	$46.21
Minnesota	Washington	$115.52
Minnesota	Watonwan	$34.66
Minnesota	Wilkin	$23.10
Minnesota	Winona	$46.21
Minnesota	Wright	$69.31
Minnesota	Yellow Medicine.	$34.66
Mississippi	Adams	$23.10
Mississippi	Alcorn	$34.66
Mississippi	Amite	$34.66
Mississippi	Attala	$34.66
Mississippi	Benton	$23.10
Mississippi	Bolivar	$23.10
Mississippi	Calhoun	$23.10
Mississippi	Carroll	$23.10
Mississippi	Chickasaw	$23.10
Mississippi	Choctaw	$23.10
Mississippi	Claiborne	$23.10
Mississippi	Clarke	$34.66
Mississippi	Clay	$23.10
Mississippi	Coahoma	$23.10
Mississippi	Copiah	$34.66
Mississippi	Covington	$34.66
Mississippi	DeSoto	$46.21
Mississippi	Forrest	$69.31
Mississippi	Franklin	$34.66
Mississippi	George	$69.31
Mississippi	Greene	$34.66
Mississippi	Grenada	$23.10
Mississippi	Hancock	$46.21
Mississippi	Harrison	$115.52
Mississippi	Hinds	$34.66
Mississippi	Holmes	$23.10
Mississippi	Humphreys	$23.10
Mississippi	Issaquena	$23.10
Mississippi	Itawamba	$23.10
Mississippi	Jackson	$115.52
Mississippi	Jasper	$34.66
Mississippi	Jefferson	$34.66
Mississippi	Jefferson Davis.	$34.66
Mississippi	Jones	$46.21
Mississippi	Kemper	$23.10
Mississippi	Lafayette	$34.66
Mississippi	Lamar	$46.21
Mississippi	Lauderdale	$34.66
Mississippi	Lawrence	$34.66
Mississippi	Leake	$34.66
Mississippi	Lee	$34.66
Mississippi	Leflore	$23.10
Mississippi	Lincoln	$46.21
Mississippi	Lowndes	$23.10
Mississippi	Madison	$34.66
Mississippi	Marion	$34.66
Mississippi	Marshall	$34.66
Mississippi	Monroe	$23.10
Mississippi	Montgomery	$23.10
Mississippi	Neshoba	$46.21
Mississippi	Newton	$69.31
Mississippi	Noxubee	$23.10
Mississippi	Oktibbeha	$34.66
Mississippi	Panola	$23.10
Mississippi	Pearl River	$69.31
Mississippi	Perry	$46.21
Mississippi	Pike	$46.21
Mississippi	Pontotoc	$23.10
Mississippi	Prentiss	$23.10
Mississippi	Quitman	$23.10
Mississippi	Rankin	$34.66
Mississippi	Scott	$34.66
Mississippi	Sharkey	$23.10
Mississippi	Simpson	$46.21
Mississippi	Smith	$46.21
Mississippi	Stone	$34.66
Mississippi	Sunflower	$23.10
Mississippi	Tallahatchie	$23.10
Mississippi	Tate	$34.66
Mississippi	Tippah	$23.10
Mississippi	Tishomingo	$34.66
Mississippi	Tunica	$23.10
Mississippi	Union	$34.66
Mississippi	Walthall	$69.31
Mississippi	Warren	$23.10
Mississippi	Washington	$34.66
Mississippi	Wayne	$34.66
Mississippi	Webster	$23.10
Mississippi	Wilkinson	$34.66
Mississippi	Winston	$34.66
Mississippi	Yalobusha	$23.10
Mississippi	Yazoo	$23.10
Missouri	Adair	$23.10
Missouri	Andrew	$34.66
Missouri	Atchison	$34.66
Missouri	Audrain	$34.66
Missouri	Barry	$34.66
Missouri	Barton	$23.10
Missouri	Bates	$23.10
Missouri	Benton	$23.10
Missouri	Bollinger	$34.66
Missouri	Boone	$69.31
Missouri	Buchanan	$34.66
Missouri	Butler	$34.66
Missouri	Caldwell	$34.66
Missouri	Callaway	$34.66
Missouri	Camden	$34.66
Missouri	Cape Girardeau.	$46.21
Missouri	Carroll	$34.66
Missouri	Carter	$23.10
Missouri	Cass	$34.66
Missouri	Cedar	$23.10
Missouri	Chariton	$34.66

State	County	(Fee/acre/yr)
Missouri	Christian	$46.21
Missouri	Clark	$23.10
Missouri	Clay	$69.31
Missouri	Clinton	$34.66
Missouri	Cole	$46.21
Missouri	Cooper	$34.66
Missouri	Crawford	$23.10
Missouri	Dade	$34.66
Missouri	Dallas	$34.66
Missouri	Daviess	$23.10
Missouri	DeKalb	$23.10
Missouri	Dent	$23.10
Missouri	Douglas	$23.10
Missouri	Dunklin	$46.21
Missouri	Franklin	$46.21
Missouri	Gasconade	$34.66
Missouri	Gentry	$23.10
Missouri	Greene	$69.31
Missouri	Grundy	$23.10
Missouri	Harrison	$23.10
Missouri	Henry	$23.10
Missouri	Hickory	$23.10
Missouri	Holt	$34.66
Missouri	Howard	$34.66
Missouri	Howell	$34.66
Missouri	Iron	$34.66
Missouri	Jackson	$69.31
Missouri	Jasper	$34.66
Missouri	Jefferson	$69.31
Missouri	Johnson	$34.66
Missouri	Knox	$34.66
Missouri	Laclede	$34.66
Missouri	Lafayette	$34.66
Missouri	Lawrence	$34.66
Missouri	Lewis	$23.10
Missouri	Lincoln	$46.21
Missouri	Linn	$23.10
Missouri	Livingston	$34.66
Missouri	Macon	$23.10
Missouri	Madison	$23.10
Missouri	Maries	$23.10
Missouri	Marion	$23.10
Missouri	McDonald	$46.21
Missouri	Mercer	$115.52
Missouri	Miller	$34.66
Missouri	Mississippi	$34.66
Missouri	Moniteau	$34.66
Missouri	Monroe	$23.10
Missouri	Montgomery	$34.66
Missouri	Morgan	$34.66
Missouri	New Madrid	$34.66
Missouri	Newton	$34.66
Missouri	Nodaway	$23.10
Missouri	Oregon	$23.10
Missouri	Osage	$34.66
Missouri	Ozark	$34.66
Missouri	Pemiscot	$34.66
Missouri	Perry	$34.66
Missouri	Pettis	$34.66
Missouri	Phelps	$34.66
Missouri	Pike	$34.66
Missouri	Platte	$46.21
Missouri	Polk	$34.66
Missouri	Pulaski	$34.66
Missouri	Putnam	$23.10
Missouri	Ralls	$34.66
Missouri	Randolph	$23.10
Missouri	Ray	$34.66
Missouri	Reynolds	$23.10
Missouri	Ripley	$23.10
Missouri	Saline	$34.66
Missouri	Schuyler	$23.10
Missouri	Scotland	$23.10
Missouri	Scott	$34.66
Missouri	Shannon	$23.10
Missouri	Shelby	$23.10
Missouri	St. Louis	$69.31
Missouri	St. Charles	$115.52
Missouri	St. Clair	$23.10
Missouri	St. Francois	$46.21
Missouri	Ste. Genevieve.	$34.66
Missouri	Stoddard	$46.21
Missouri	Stone	$46.21
Missouri	Sullivan	$23.10
Missouri	Taney	$34.66
Missouri	Texas	$23.10
Missouri	Vernon	$23.10
Missouri	Warren	$46.21
Missouri	Washington	$34.66
Missouri	Wayne	$23.10
Missouri	Webster	$34.66
Missouri	Worth	$23.10
Missouri	Wright	$34.66
Montana	Beaverhead	$11.55
Montana	Big Horn	$5.78
Montana	Blaine	$5.78
Montana	Broadwater	$11.55
Montana	Carbon	$23.10
Montana	Carter	$5.78
Montana	Cascade	$11.55
Montana	Chouteau	$11.55
Montana	Custer	$5.78
Montana	Daniels	$5.78
Montana	Dawson	$5.78
Montana	Deer Lodge	$23.10
Montana	Fallon	$5.78
Montana	Fergus	$11.55
Montana	Flathead	$46.21
Montana	Gallatin	$23.10
Montana	Garfield	$5.78
Montana	Glacier	$11.55
Montana	Golden Valley	$5.78
Montana	Granite	$23.10
Montana	Hill	$11.55
Montana	Jefferson	$11.55
Montana	Judith Basin	$11.55
Montana	Lake	$23.10
Montana	Lewis and Clark.	$11.55
Montana	Liberty	$11.55
Montana	Lincoln	$69.31
Montana	Madison	$23.10
Montana	McCone	$5.78
Montana	Meagher	$11.55
Montana	Mineral	$46.21
Montana	Missoula	$34.66
Montana	Musselshell	$5.78
Montana	Park	$23.10
Montana	Petroleum	$5.78
Montana	Phillips	$5.78
Montana	Pondera	$11.55
Montana	Powder River	$5.78
Montana	Powell	$11.55
Montana	Prairie	$5.78
Montana	Ravalli	$69.31
Montana	Richland	$5.78
Montana	Roosevelt	$5.78
Montana	Rosebud	$5.78
Montana	Sanders	$23.10
Montana	Sheridan	$11.55
Montana	Silver Bow	$23.10
Montana	Stillwater	$11.55
Montana	Sweet Grass	$11.55
Montana	Teton	$11.55
Montana	Toole	$11.55
Montana	Treasure	$5.78
Montana	Valley	$5.78
Montana	Wheatland	$5.78
Montana	Wibaux	$5.78
Montana	Yellowstone	$11.55
Nebraska	Adams	$34.66
Nebraska	Antelope	$23.10
Nebraska	Arthur	$5.78
Nebraska	Banner	$5.78
Nebraska	Blaine	$5.78
Nebraska	Boone	$23.10
Nebraska	Box Butte	$11.55
Nebraska	Boyd	$11.55
Nebraska	Brown	$11.55
Nebraska	Buffalo	$34.66
Nebraska	Burt	$34.66
Nebraska	Butler	$46.21
Nebraska	Cass	$46.21
Nebraska	Cedar	$23.10
Nebraska	Chase	$23.10
Nebraska	Cherry	$5.78
Nebraska	Cheyenne	$11.55
Nebraska	Clay	$34.66
Nebraska	Colfax	$34.66
Nebraska	Cuming	$34.66
Nebraska	Custer	$11.55
Nebraska	Dakota	$34.66
Nebraska	Dawes	$11.55
Nebraska	Dawson	$23.10
Nebraska	Deuel	$11.55
Nebraska	Dixon	$23.10
Nebraska	Dodge	$46.21
Nebraska	Douglas	$115.52
Nebraska	Dundy	$11.55
Nebraska	Fillmore	$34.66
Nebraska	Franklin	$23.10
Nebraska	Frontier	$11.55
Nebraska	Furnas	$11.55
Nebraska	Gage	$23.10
Nebraska	Garden	$5.78
Nebraska	Garfield	$11.55
Nebraska	Gosper	$23.10
Nebraska	Grant	$5.78
Nebraska	Greeley	$23.10
Nebraska	Hall	$34.66
Nebraska	Hamilton	$34.66
Nebraska	Harlan	$23.10
Nebraska	Hayes	$11.55
Nebraska	Hitchcock	$11.55
Nebraska	Holt	$11.55
Nebraska	Hooker	$5.78
Nebraska	Howard	$23.10
Nebraska	Jefferson	$23.10
Nebraska	Johnson	$23.10
Nebraska	Kearney	$34.66
Nebraska	Keith	$11.55
Nebraska	Keya Paha	$11.55
Nebraska	Kimball	$5.78
Nebraska	Knox	$23.10
Nebraska	Lancaster	$46.21
Nebraska	Lincoln	$11.55
Nebraska	Logan	$5.78
Nebraska	Loup	$5.78
Nebraska	Madison	$34.66
Nebraska	McPherson	$5.78
Nebraska	Merrick	$34.66
Nebraska	Morrill	$11.55
Nebraska	Nance	$23.10
Nebraska	Nemaha	$34.66
Nebraska	Nuckolls	$23.10
Nebraska	Otoe	$34.66
Nebraska	Pawnee	$23.10
Nebraska	Perkins	$23.10

State	County	(Fee/acre/yr)
Nebraska	Phelps	$34.66
Nebraska	Pierce	$23.10
Nebraska	Platte	$34.66
Nebraska	Polk	$34.66
Nebraska	Red Willow	$11.55
Nebraska	Richardson	$23.10
Nebraska	Rock	$11.55
Nebraska	Saline	$34.66
Nebraska	Sarpy	$69.31
Nebraska	Saunders	$46.21
Nebraska	Scotts Bluff	$23.10
Nebraska	Seward	$34.66
Nebraska	Sheridan	$5.78
Nebraska	Sherman	$11.55
Nebraska	Sioux	$5.78
Nebraska	Stanton	$34.66
Nebraska	Thayer	$34.66
Nebraska	Thomas	$5.78
Nebraska	Thurston	$34.66
Nebraska	Valley	$23.10
Nebraska	Washington	$46.21
Nebraska	Wayne	$34.66
Nebraska	Webster	$23.10
Nebraska	Wheeler	$11.55
Nebraska	York	$46.21
Nevada	Carson City	$69.31
Nevada	Churchill	$34.66
Nevada	Clark	$69.31
Nevada	Douglas	$23.10
Nevada	Elko	$5.78
Nevada	Esmeralda	$23.10
Nevada	Eureka	$5.78
Nevada	Humboldt	$11.55
Nevada	Lander	$5.78
Nevada	Lincoln	$23.10
Nevada	Lyon	$34.66
Nevada	Mineral	$5.78
Nevada	Nye	$23.10
Nevada	Pershing	$23.10
Nevada	Storey	$693.08
Nevada	Washoe	$11.55
Nevada	White Pine	$11.55
New Hampshire.	Belknap	$69.31
New Hampshire.	Carroll	$69.31
New Hampshire.	Cheshire	$69.31
New Hampshire.	Coos	$23.10
New Hampshire.	Grafton	$46.21
New Hampshire.	Hillsborough	$115.52
New Hampshire.	Merrimack	$69.31
New Hampshire.	Rockingham	$231.02
New Hampshire.	Strafford	$69.31
New Hampshire.	Sullivan	$69.31
New Jersey	Atlantic	$115.52
New Jersey	Bergen	$1,155.13
New Jersey	Burlington	$231.02
New Jersey	Camden	$231.02
New Jersey	Cape May	$231.02
New Jersey	Cumberland	$115.52
New Jersey	Essex	$1,155.13
New Jersey	Gloucester	$231.02
New Jersey	Hudson*	$231.02
New Jersey	Hunterdon	$231.02
New Jersey	Mercer	$462.05
New Jersey	Middlesex	$462.05
New Jersey	Monmouth	$462.05
New Jersey	Morris	$693.08
New Jersey	Ocean	$462.05
New Jersey	Passaic	$693.08
New Jersey	Salem	$115.52
New Jersey	Somerset	$462.05
New Jersey	Sussex	$231.02
New Jersey	Union	$2,310.26
New Jersey	Warren	$231.02
New Mexico	Bernalillo	$11.55
New Mexico	Catron	$5.78
New Mexico	Chaves	$5.78
New Mexico	Cibola	$5.78
New Mexico	Colfax	$5.78
New Mexico	Curry	$11.55
New Mexico	De Baca	$5.78
New Mexico	Dona Ana	$34.66
New Mexico	Eddy	$5.78
New Mexico	Grant	$5.78
New Mexico	Guadalupe	$5.78
New Mexico	Harding*	$5.78
New Mexico	Hidalgo	$5.78
New Mexico	Lea	$5.78
New Mexico	Lincoln	$5.78
New Mexico	Los Alamos*	$5.78
New Mexico	Luna	$5.78
New Mexico	McKinley	$5.78
New Mexico	Mora	$5.78
New Mexico	Otero	$5.78
New Mexico	Quay	$5.78
New Mexico	Rio Arriba	$11.55
New Mexico	Roosevelt	$5.78
New Mexico	San Juan	$11.55
New Mexico	San Miguel	$5.78
New Mexico	Sandoval	$5.78
New Mexico	Santa Fe	$11.55
New Mexico	Sierra	$5.78
New Mexico	Socorro	$5.78
New Mexico	Taos	$11.55
New Mexico	Torrance	$5.78
New Mexico	Union	$5.78
New Mexico	Valencia	$23.10
New York	Albany	$69.31
New York	Allegany	$23.10
New York	Bronx*	$34.66
New York	Broome	$69.31
New York	Cattaraugus	$34.66
New York	Cayuga	$34.66
New York	Chautauqua	$34.66
New York	Chemung	$34.66
New York	Chenango	$23.10
New York	Clinton	$23.10
New York	Columbia	$69.31
New York	Cortland	$23.10
New York	Delaware	$34.66
New York	Dutchess	$231.02
New York	Erie	$34.66
New York	Essex	$34.66
New York	Franklin	$23.10
New York	Fulton	$34.66
New York	Genesee	$34.66
New York	Greene	$46.21
New York	Hamilton*	$34.66
New York	Herkimer	$23.10
New York	Jefferson	$23.10
New York	Kings*	$34.66
New York	Lewis	$23.10
New York	Livingston	$34.66
New York	Madison	$34.66
New York	Monroe	$46.21
New York	Montgomery	$34.66
New York	Nassau	$693.08
New York	New York	$231.02
New York	Niagara	$34.66
New York	Oneida	$23.10
New York	Onondaga	$34.66
New York	Ontario	$34.66
New York	Orange	$115.52
New York	Orleans	$23.10
New York	Oswego	$46.21
New York	Otsego	$34.66
New York	Putnam	$231.02
New York	Queens	$34.66
New York	Rensselaer	$69.31
New York	Richmond	$2,310.26
New York	Rockland	$693.08
New York	Saratoga	$69.31
New York	Schenectady	$46.21
New York	Schoharie	$34.66
New York	Schuyler	$34.66
New York	Seneca	$34.66
New York	St. Lawrence	$23.10
New York	Steuben	$23.10
New York	Suffolk	$462.05
New York	Sullivan	$69.31
New York	Tioga	$34.66
New York	Tompkins	$34.66
New York	Ulster	$69.31
New York	Warren	$69.31
New York	Washington	$34.66
New York	Wayne	$46.21
New York	Westchester	$462.05
New York	Wyoming	$34.66
New York	Yates	$34.66
North Carolina.	Alamance	$115.52
North Carolina.	Alexander	$115.52
North Carolina.	Alleghany	$69.31
North Carolina.	Anson	$69.31
North Carolina.	Ashe	$115.52
North Carolina.	Avery	$115.52
North Carolina.	Beaufort	$46.21
North Carolina.	Bertie	$46.21
North Carolina.	Bladen	$69.31
North Carolina.	Brunswick	$69.31
North Carolina.	Buncombe	$115.52
North Carolina.	Burke	$115.52
North Carolina.	Cabarrus	$115.52
North Carolina.	Caldwell	$115.52
North Carolina.	Camden	$46.21
North Carolina.	Carteret	$46.21
North Carolina.	Caswell	$69.31
North Carolina.	Catawba	$69.31
North Carolina.	Chatham	$69.31
North Carolina.	Cherokee	$115.52

State	County	(Fee/acre/yr)
North Carolina.	Chowan	$46.21
North Carolina.	Clay	$115.52
North Carolina.	Cleveland	$69.31
North Carolina.	Columbus	$46.21
North Carolina.	Craven	$46.21
North Carolina.	Cumberland	$69.31
North Carolina.	Currituck	$69.31
North Carolina.	Dare	$34.66
North Carolina.	Davidson	$115.52
North Carolina.	Davie	$115.52
North Carolina.	Duplin	$69.31
North Carolina.	Durham	$115.52
North Carolina.	Edgecombe	$46.21
North Carolina.	Forsyth	$115.52
North Carolina.	Franklin	$69.31
North Carolina.	Gaston	$115.52
North Carolina.	Gates	$34.66
North Carolina.	Graham	$69.31
North Carolina.	Granville	$69.31
North Carolina.	Greene	$69.31
North Carolina.	Guilford	$115.52
North Carolina.	Halifax	$34.66
North Carolina.	Harnett	$69.31
North Carolina.	Haywood	$115.52
North Carolina.	Henderson	$115.52
North Carolina.	Hertford	$46.21
North Carolina.	Hoke	$69.31
North Carolina.	Hyde	$34.66
North Carolina.	Iredell	$115.52
North Carolina.	Jackson	$115.52
North Carolina.	Johnston	$69.31
North Carolina.	Jones	$46.21
North Carolina.	Lee	$69.31
North Carolina.	Lenoir	$69.31
North Carolina.	Lincoln	$115.52
North Carolina.	Macon	$115.52
North Carolina.	Madison	$115.52
North Carolina.	Martin	$46.21
North Carolina.	McDowell	$69.31
North Carolina.	Mecklenburg	$231.02
North Carolina.	Mitchell	$115.52
North Carolina.	Montgomery	$69.31
North Carolina.	Moore	$69.31
North Carolina.	Nash	$69.31
North Carolina.	New Hanover	$231.02
North Carolina.	Northampton	$46.21
North Carolina.	Onslow	$69.31
North Carolina.	Orange	$115.52
North Carolina.	Pamlico	$46.21
North Carolina.	Pasquotank	$46.21
North Carolina.	Pender	$69.31
North Carolina.	Perquimans	$46.21
North Carolina.	Person	$46.21
North Carolina.	Pitt	$46.21
North Carolina.	Polk	$115.52
North Carolina.	Randolph	$115.52
North Carolina.	Richmond	$46.21
North Carolina.	Robeson	$46.21
North Carolina.	Rockingham	$69.31
North Carolina.	Rowan	$69.31
North Carolina.	Rutherford	$69.31
North Carolina.	Sampson	$69.31
North Carolina.	Scotland	$46.21
North Carolina.	Stanly	$69.31
North Carolina.	Stokes	$69.31
North Carolina.	Surry	$69.31
North Carolina.	Swain	$115.52
North Carolina.	Transylvania	$231.02
North Carolina.	Tyrrell	$34.66
North Carolina.	Union	$69.31
North Carolina.	Vance	$46.21
North Carolina.	Wake	$231.02
North Carolina.	Warren	$46.21
North Carolina.	Washington	$46.21
North Carolina.	Watauga	$115.52
North Carolina.	Wayne	$69.31
North Carolina.	Wilkes	$69.31
North Carolina.	Wilson	$46.21
North Carolina.	Yadkin	$69.31
North Carolina.	Yancey	$115.52
North Dakota	Adams	$5.78
North Dakota	Barnes	$11.55
North Dakota	Benson	$11.55
North Dakota	Billings	$5.78
North Dakota	Bottineau	$11.55
North Dakota	Bowman	$5.78
North Dakota	Burke	$5.78
North Dakota	Burleigh	$11.55
North Dakota	Cass	$23.10
North Dakota	Cavalier	$11.55
North Dakota	Dickey	$11.55
North Dakota	Divide	$5.78
North Dakota	Dunn	$5.78
North Dakota	Eddy	$11.55
North Dakota	Emmons	$5.78
North Dakota	Foster	$11.55
North Dakota	Golden Valley	$5.78
North Dakota	Grand Forks	$23.10
North Dakota	Grant	$5.78
North Dakota	Griggs	$11.55
North Dakota	Hettinger	$11.55
North Dakota	Kidder	$5.78
North Dakota	LaMoure	$11.55
North Dakota	Logan	$5.78
North Dakota	McHenry	$11.55
North Dakota	McIntosh	$5.78
North Dakota	McKenzie	$5.78
North Dakota	McLean	$11.55
North Dakota	Mercer	$5.78
North Dakota	Morton	$5.78
North Dakota	Mountrail	$5.78
North Dakota	Nelson	$11.55
North Dakota	Oliver	$5.78
North Dakota	Pembina	$23.10
North Dakota	Pierce	$11.55
North Dakota	Ramsey	$11.55
North Dakota	Ransom	$11.55
North Dakota	Renville	$11.55
North Dakota	Richland	$23.10
North Dakota	Rolette	$11.55
North Dakota	Sargent	$11.55
North Dakota	Sheridan	$5.78
North Dakota	Sioux	$5.78
North Dakota	Slope	$5.78
North Dakota	Stark	$11.55
North Dakota	Steele	$11.55
North Dakota	Stutsman	$11.55
North Dakota	Towner	$11.55
North Dakota	Traill	$23.10
North Dakota	Walsh	$23.10
North Dakota	Ward	$11.55
North Dakota	Wells	$11.55
North Dakota	Williams	$11.55
Ohio	Adams	$46.21
Ohio	Allen	$69.31
Ohio	Ashland	$69.31
Ohio	Ashtabula	$46.21

State	County	(Fee/acre/yr)
Ohio	Athens	$34.66
Ohio	Auglaize	$69.31
Ohio	Belmont	$34.66
Ohio	Brown	$46.21
Ohio	Butler	$115.52
Ohio	Carroll	$46.21
Ohio	Champaign	$69.31
Ohio	Clark	$69.31
Ohio	Clermont	$69.31
Ohio	Clinton	$69.31
Ohio	Columbiana	$69.31
Ohio	Coshocton	$46.21
Ohio	Crawford	$46.21
Ohio	Cuyahoga	$462.05
Ohio	Darke	$69.31
Ohio	Defiance	$46.21
Ohio	Delaware	$115.52
Ohio	Erie	$69.31
Ohio	Fairfield	$69.31
Ohio	Fayette	$46.21
Ohio	Franklin	$115.52
Ohio	Fulton	$69.31
Ohio	Gallia	$34.66
Ohio	Geauga	$115.52
Ohio	Greene	$69.31
Ohio	Guernsey	$46.21
Ohio	Hamilton	$115.52
Ohio	Hancock	$46.21
Ohio	Hardin	$46.21
Ohio	Harrison	$23.10
Ohio	Henry	$69.31
Ohio	Highland	$46.21
Ohio	Hocking	$69.31
Ohio	Holmes	$69.31
Ohio	Huron	$69.31
Ohio	Jackson	$34.66
Ohio	Jefferson	$34.66
Ohio	Knox	$69.31
Ohio	Lake	$231.02
Ohio	Lawrence	$34.66
Ohio	Licking	$69.31
Ohio	Logan	$46.21
Ohio	Lorain	$69.31
Ohio	Lucas	$69.31
Ohio	Madison	$69.31
Ohio	Mahoning	$69.31
Ohio	Marion	$46.21
Ohio	Medina	$115.52
Ohio	Meigs	$34.66
Ohio	Mercer	$69.31
Ohio	Miami	$69.31
Ohio	Monroe	$34.66
Ohio	Montgomery	$115.52
Ohio	Morgan	$34.66
Ohio	Morrow	$46.21
Ohio	Muskingum	$46.21
Ohio	Noble	$34.66
Ohio	Ottawa	$46.21
Ohio	Paulding	$46.21
Ohio	Perry	$46.21
Ohio	Pickaway	$69.31
Ohio	Pike	$34.66
Ohio	Portage	$115.52
Ohio	Preble	$69.31
Ohio	Putnam	$46.21
Ohio	Richland	$69.31
Ohio	Ross	$46.21
Ohio	Sandusky	$46.21
Ohio	Scioto	$34.66
Ohio	Seneca	$46.21
Ohio	Shelby	$69.31
Ohio	Stark	$115.52
Ohio	Summit	$115.52
Ohio	Trumbull	$69.31
Ohio	Tuscarawas	$69.31
Ohio	Union	$69.31
Ohio	Van Wert	$69.31
Ohio	Vinton	$46.21
Ohio	Warren	$115.52
Ohio	Washington	$46.21
Ohio	Wayne	$115.52
Ohio	Williams	$46.21
Ohio	Wood	$69.31
Ohio	Wyandot	$69.31
Oklahoma	Adair	$23.10
Oklahoma	Alfalfa	$23.10
Oklahoma	Atoka	$23.10
Oklahoma	Beaver	$11.55
Oklahoma	Beckham	$11.55
Oklahoma	Blaine	$11.55
Oklahoma	Bryan	$23.10
Oklahoma	Caddo	$11.55
Oklahoma	Canadian	$23.10
Oklahoma	Carter	$23.10
Oklahoma	Cherokee	$23.10
Oklahoma	Choctaw	$11.55
Oklahoma	Cimarron	$5.78
Oklahoma	Cleveland	$34.66
Oklahoma	Coal	$23.10
Oklahoma	Comanche	$23.10
Oklahoma	Cotton	$11.55
Oklahoma	Craig	$23.10
Oklahoma	Creek	$23.10
Oklahoma	Custer	$11.55
Oklahoma	Delaware	$34.66
Oklahoma	Dewey	$11.55
Oklahoma	Ellis	$11.55
Oklahoma	Garfield	$23.10
Oklahoma	Garvin	$23.10
Oklahoma	Grady	$23.10
Oklahoma	Grant	$11.55
Oklahoma	Greer	$11.55
Oklahoma	Harmon	$11.55
Oklahoma	Harper	$11.55
Oklahoma	Haskell	$23.10
Oklahoma	Hughes	$11.55
Oklahoma	Jackson	$11.55
Oklahoma	Jefferson	$11.55
Oklahoma	Johnston	$23.10
Oklahoma	Kay	$23.10
Oklahoma	Kingfisher	$23.10
Oklahoma	Kiowa	$11.55
Oklahoma	Latimer	$23.10
Oklahoma	Le Flore	$23.10
Oklahoma	Lincoln	$23.10
Oklahoma	Logan	$23.10
Oklahoma	Love	$23.10
Oklahoma	Major	$11.55
Oklahoma	Marshall	$23.10
Oklahoma	Mayes	$23.10
Oklahoma	McClain	$23.10
Oklahoma	McCurtain	$23.10
Oklahoma	McIntosh	$23.10
Oklahoma	Murray	$23.10
Oklahoma	Muskogee	$23.10
Oklahoma	Noble	$23.10
Oklahoma	Nowata	$23.10
Oklahoma	Okfuskee	$23.10
Oklahoma	Oklahoma	$46.21
Oklahoma	Okmulgee	$23.10
Oklahoma	Osage	$11.55
Oklahoma	Ottawa	$34.66
Oklahoma	Pawnee	$11.55
Oklahoma	Payne	$23.10
Oklahoma	Pittsburg	$23.10
Oklahoma	Pontotoc	$23.10
Oklahoma	Pottawatomie	$23.10
Oklahoma	Pushmataha	$11.55
Oklahoma	Roger Mills	$11.55
Oklahoma	Rogers	$34.66
Oklahoma	Seminole	$23.10
Oklahoma	Sequoyah	$34.66
Oklahoma	Stephens	$23.10
Oklahoma	Texas	$11.55
Oklahoma	Tillman	$11.55
Oklahoma	Tulsa	$46.21
Oklahoma	Wagoner	$34.66
Oklahoma	Washington	$23.10
Oklahoma	Washita	$11.55
Oklahoma	Woods	$11.55
Oklahoma	Woodward	$11.55
Oregon	Baker	$11.55
Oregon	Benton	$115.52
Oregon	Clackamas	$231.02
Oregon	Clatsop	$69.31
Oregon	Columbia	$115.52
Oregon	Coos	$69.31
Oregon	Crook	$11.55
Oregon	Curry	$46.21
Oregon	Deschutes	$115.52
Oregon	Douglas	$46.21
Oregon	Gilliam	$5.78
Oregon	Grant	$5.78
Oregon	Harney	$5.78
Oregon	Hood River	$231.02
Oregon	Jackson	$69.31
Oregon	Jefferson	$11.55
Oregon	Josephine	$115.52
Oregon	Klamath	$23.10
Oregon	Lake	$11.55
Oregon	Lane	$115.52
Oregon	Lincoln	$69.31
Oregon	Linn	$69.31
Oregon	Malheur	$11.55
Oregon	Marion	$115.52
Oregon	Morrow	$11.55
Oregon	Multnomah	$231.02
Oregon	Polk	$115.52
Oregon	Sherman	$11.55
Oregon	Tillamook	$115.52
Oregon	Umatilla	$23.10
Oregon	Union	$23.10
Oregon	Wallowa	$11.55
Oregon	Wasco	$11.55
Oregon	Washington	$231.02
Oregon	Wheeler	$5.78
Oregon	Yamhill	$231.02
Pennsylvania	Adams	$115.52
Pennsylvania	Allegheny	$115.52
Pennsylvania	Armstrong	$46.21
Pennsylvania	Beaver	$69.31
Pennsylvania	Bedford	$46.21
Pennsylvania	Berks	$115.52
Pennsylvania	Blair	$69.31
Pennsylvania	Bradford	$34.66
Pennsylvania	Bucks	$231.02
Pennsylvania	Butler	$115.52
Pennsylvania	Cambria	$69.31
Pennsylvania	Cameron	$46.21
Pennsylvania	Carbon	$115.52
Pennsylvania	Centre	$69.31
Pennsylvania	Chester	$231.02
Pennsylvania	Clarion	$34.66
Pennsylvania	Clearfield	$34.66
Pennsylvania	Clinton	$69.31
Pennsylvania	Columbia	$69.31
Pennsylvania	Crawford	$34.66
Pennsylvania	Cumberland	$115.52
Pennsylvania	Dauphin	$115.52

State	County	(Fee/acre/yr)
Pennsylvania	Delaware	$462.05
Pennsylvania	Elk	$69.31
Pennsylvania	Erie	$46.21
Pennsylvania	Fayette	$34.66
Pennsylvania	Forest	$46.21
Pennsylvania	Franklin	$115.52
Pennsylvania	Fulton	$46.21
Pennsylvania	Greene	$23.10
Pennsylvania	Huntingdon	$46.21
Pennsylvania	Indiana	$46.21
Pennsylvania	Jefferson	$34.66
Pennsylvania	Juniata	$69.31
Pennsylvania	Lackawanna	$69.31
Pennsylvania	Lancaster	$231.02
Pennsylvania	Lawrence	$46.21
Pennsylvania	Lebanon	$115.52
Pennsylvania	Lehigh	$115.52
Pennsylvania	Luzerne	$69.31
Pennsylvania	Lycoming	$46.21
Pennsylvania	McKean	$23.10
Pennsylvania	Mercer	$46.21
Pennsylvania	Mifflin	$69.31
Pennsylvania	Monroe	$115.52
Pennsylvania	Montgomery	$462.05
Pennsylvania	Montour	$69.31
Pennsylvania	Northampton	$115.52
Pennsylvania	Northumberland.	$69.31
Pennsylvania	Perry	$69.31
Pennsylvania	Philadelphia	$693.08
Pennsylvania	Pike	$69.31
Pennsylvania	Potter	$34.66
Pennsylvania	Schuylkill	$69.31
Pennsylvania	Snyder	$69.31
Pennsylvania	Somerset	$46.21
Pennsylvania	Sullivan	$46.21
Pennsylvania	Susquehanna	$46.21
Pennsylvania	Tioga	$46.21
Pennsylvania	Union	$115.52
Pennsylvania	Venango	$34.66
Pennsylvania	Warren	$34.66
Pennsylvania	Washington	$46.21
Pennsylvania	Wayne	$46.21
Pennsylvania	Westmoreland	$69.31
Pennsylvania	Wyoming	$46.21
Pennsylvania	York	$115.52
Puerto Rico	All Areas	$115.52
Rhode Island	Bristol	$462.05
Rhode Island	Kent	$231.02
Rhode Island	Newport	$462.05
Rhode Island	Providence	$231.02
Rhode Island	Washington	$231.02
South Carolina.	Abbeville	$46.21
South Carolina.	Aiken	$46.21
South Carolina.	Allendale	$34.66
South Carolina.	Anderson	$69.31
South Carolina.	Bamberg	$34.66
South Carolina.	Barnwell	$34.66
South Carolina.	Beaufort	$46.21
South Carolina.	Berkeley	$69.31
South Carolina.	Calhoun	$34.66
South Carolina.	Charleston	$115.52
South Carolina.	Cherokee	$46.21
South Carolina.	Chester	$46.21
South Carolina.	Chesterfield	$34.66
South Carolina.	Clarendon	$34.66
South Carolina.	Colleton	$34.66
South Carolina.	Darlington	$23.10
South Carolina.	Dillon	$34.66
South Carolina.	Dorchester	$46.21
South Carolina.	Edgefield	$46.21
South Carolina.	Fairfield	$34.66
South Carolina.	Florence	$34.66
South Carolina.	Georgetown	$46.21
South Carolina.	Greenville	$69.31
South Carolina.	Greenwood	$34.66
South Carolina.	Hampton	$34.66
South Carolina.	Horry	$46.21
South Carolina.	Jasper	$34.66
South Carolina.	Kershaw	$46.21
South Carolina.	Lancaster	$46.21
South Carolina.	Laurens	$46.21
South Carolina.	Lee	$34.66
South Carolina.	Lexington	$69.31
South Carolina.	Marion	$34.66
South Carolina.	Marlboro	$23.10
South Carolina.	McCormick	$69.31
South Carolina.	Newberry	$46.21
South Carolina.	Oconee	$115.52
South Carolina.	Orangeburg	$34.66
South Carolina.	Pickens	$115.52
South Carolina.	Richland	$69.31
South Carolina.	Saluda	$46.21
South Carolina.	Spartanburg	$115.52
South Carolina.	Sumter	$46.21
South Carolina.	Union	$34.66
South Carolina.	Williamsburg	$34.66
South Carolina.	York	$115.52
South Dakota	Aurora	$11.55
South Dakota	Beadle	$11.55
South Dakota	Bennett	$5.78
South Dakota	Bon Homme	$23.10
South Dakota	Brookings	$23.10
South Dakota	Brown	$23.10
South Dakota	Brule	$11.55
South Dakota	Buffalo	$5.78
South Dakota	Butte	$5.78
South Dakota	Campbell	$11.55
South Dakota	Charles Mix	$11.55
South Dakota	Clark	$23.10
South Dakota	Clay	$34.66
South Dakota	Codington	$23.10
South Dakota	Corson	$5.78
South Dakota	Custer	$11.55
South Dakota	Davison	$23.10
South Dakota	Day	$11.55
South Dakota	Deuel	$23.10
South Dakota	Dewey	$5.78
South Dakota	Douglas	$23.10
South Dakota	Edmunds	$11.55
South Dakota	Fall River	$5.78
South Dakota	Faulk	$11.55
South Dakota	Grant	$23.10
South Dakota	Gregory	$11.55
South Dakota	Haakon	$5.78
South Dakota	Hamlin	$23.10
South Dakota	Hand	$11.55
South Dakota	Hanson	$23.10
South Dakota	Harding	$5.78
South Dakota	Hughes	$11.55
South Dakota	Hutchinson	$23.10
South Dakota	Hyde	$5.78
South Dakota	Jackson	$5.78
South Dakota	Jerauld	$11.55
South Dakota	Jones	$5.78
South Dakota	Kingsbury	$23.10
South Dakota	Lake	$23.10
South Dakota	Lawrence	$23.10
South Dakota	Lincoln	$34.66
South Dakota	Lyman	$11.55
South Dakota	Marshall	$11.55
South Dakota	McCook	$23.10
South Dakota	McPherson	$11.55
South Dakota	Meade	$5.78
South Dakota	Mellette	$5.78
South Dakota	Miner	$23.10
South Dakota	Minnehaha	$34.66
South Dakota	Moody	$23.10
South Dakota	Pennington	$11.55
South Dakota	Perkins	$5.78
South Dakota	Potter	$11.55
South Dakota	Roberts	$23.10
South Dakota	Sanborn	$11.55
South Dakota	Shannon	$5.78
South Dakota	Spink	$11.55
South Dakota	Stanley	$5.78
South Dakota	Sully	$11.55
South Dakota	Todd	$5.78
South Dakota	Tripp	$11.55
South Dakota	Turner	$34.66
South Dakota	Union	$46.21
South Dakota	Walworth	$11.55
South Dakota	Yankton	$23.10
South Dakota	Ziebach	$5.78
Tennessee	Anderson	$115.52
Tennessee	Bedford	$46.21
Tennessee	Benton	$34.66
Tennessee	Bledsoe	$46.21
Tennessee	Blount	$115.52
Tennessee	Bradley	$115.52
Tennessee	Campbell	$46.21
Tennessee	Cannon	$69.31

State	County	(Fee/acre/yr)
Tennessee	Carroll	$34.66
Tennessee	Carter	$69.31
Tennessee	Cheatham	$69.31
Tennessee	Chester	$34.66
Tennessee	Claiborne	$34.66
Tennessee	Clay	$34.66
Tennessee	Cocke	$69.31
Tennessee	Coffee	$69.31
Tennessee	Crockett	$46.21
Tennessee	Cumberland	$69.31
Tennessee	Davidson	$231.02
Tennessee	Decatur	$34.66
Tennessee	DeKalb	$69.31
Tennessee	Dickson	$69.31
Tennessee	Dyer	$46.21
Tennessee	Fayette	$46.21
Tennessee	Fentress	$46.21
Tennessee	Franklin	$69.31
Tennessee	Gibson	$34.66
Tennessee	Giles	$46.21
Tennessee	Grainger	$46.21
Tennessee	Greene	$69.31
Tennessee	Grundy	$46.21
Tennessee	Hamblen	$115.52
Tennessee	Hamilton	$69.31
Tennessee	Hancock	$46.21
Tennessee	Hardeman	$23.10
Tennessee	Hardin	$34.66
Tennessee	Hawkins	$69.31
Tennessee	Haywood	$34.66
Tennessee	Henderson	$34.66
Tennessee	Henry	$34.66
Tennessee	Hickman	$34.66
Tennessee	Houston	$34.66
Tennessee	Humphreys	$34.66
Tennessee	Jackson	$34.66
Tennessee	Jefferson	$115.52
Tennessee	Johnson	$69.31
Tennessee	Knox	$115.52
Tennessee	Lake	$34.66
Tennessee	Lauderdale	$34.66
Tennessee	Lawrence	$34.66
Tennessee	Lewis	$46.21
Tennessee	Lincoln	$46.21
Tennessee	Loudon	$115.52
Tennessee	Macon	$69.31
Tennessee	Madison	$69.31
Tennessee	Marion	$46.21
Tennessee	Marshall	$46.21
Tennessee	Maury	$69.31
Tennessee	McMinn	$69.31
Tennessee	McNairy	$23.10
Tennessee	Meigs	$69.31
Tennessee	Monroe	$69.31
Tennessee	Montgomery	$46.21
Tennessee	Moore	$46.21
Tennessee	Morgan	$46.21
Tennessee	Obion	$34.66
Tennessee	Overton	$46.21
Tennessee	Perry	$34.66
Tennessee	Pickett	$46.21
Tennessee	Polk	$115.52
Tennessee	Putnam	$69.31
Tennessee	Rhea	$69.31
Tennessee	Roane	$69.31
Tennessee	Robertson	$69.31
Tennessee	Rutherford	$69.31
Tennessee	Scott	$46.21
Tennessee	Sequatchie	$46.21
Tennessee	Sevier	$115.52
Tennessee	Shelby	$115.52
Tennessee	Smith	$46.21
Tennessee	Stewart	$46.21
Tennessee	Sullivan	$69.31
Tennessee	Sumner	$69.31
Tennessee	Tipton	$46.21
Tennessee	Trousdale	$69.31
Tennessee	Unicoi	$231.02
Tennessee	Union	$69.31
Tennessee	Van Buren	$46.21
Tennessee	Warren	$46.21
Tennessee	Washington	$115.52
Tennessee	Wayne	$34.66
Tennessee	Weakley	$34.66
Tennessee	White	$69.31
Tennessee	Williamson	$115.52
Tennessee	Wilson	$69.31
Texas	Anderson	$23.10
Texas	Andrews	$5.78
Texas	Angelina	$46.21
Texas	Aransas	$23.10
Texas	Archer	$11.55
Texas	Armstrong	$11.55
Texas	Atascosa	$23.10
Texas	Austin	$46.21
Texas	Bailey	$11.55
Texas	Bandera	$34.66
Texas	Bastrop	$34.66
Texas	Baylor	$11.55
Texas	Bee	$23.10
Texas	Bell	$34.66
Texas	Bexar	$46.21
Texas	Blanco	$46.21
Texas	Borden	$11.55
Texas	Bosque	$34.66
Texas	Bowie	$34.66
Texas	Brazoria	$34.66
Texas	Brazos	$34.66
Texas	Brewster	$5.78
Texas	Briscoe	$5.78
Texas	Brooks	$11.55
Texas	Brown	$23.10
Texas	Burleson	$34.66
Texas	Burnet	$34.66
Texas	Caldwell	$34.66
Texas	Calhoun	$23.10
Texas	Callahan	$11.55
Texas	Cameron	$34.66
Texas	Camp	$46.21
Texas	Carson	$11.55
Texas	Cass	$34.66
Texas	Castro	$23.10
Texas	Chambers	$23.10
Texas	Cherokee	$34.66
Texas	Childress	$11.55
Texas	Clay	$23.10
Texas	Cochran	$11.55
Texas	Coke	$11.55
Texas	Coleman	$11.55
Texas	Collin	$69.31
Texas	Collingsworth	$11.55
Texas	Colorado	$34.66
Texas	Comal	$46.21
Texas	Comanche	$23.10
Texas	Concho	$11.55
Texas	Cooke	$34.66
Texas	Coryell	$23.10
Texas	Cottle	$5.78
Texas	Crane	$5.78
Texas	Crockett	$5.78
Texas	Crosby	$11.55
Texas	Culberson	$5.78
Texas	Dallam	$11.55
Texas	Dallas	$69.31
Texas	Dawson	$11.55
Texas	Deaf Smith	$11.55
Texas	Delta	$23.10
Texas	Denton	$69.31
Texas	DeWitt	$23.10
Texas	Dickens	$5.78
Texas	Dimmit	$11.55
Texas	Donley	$11.55
Texas	Duval	$23.10
Texas	Eastland	$23.10
Texas	Ector	$5.78
Texas	Edwards	$11.55
Texas	El Paso	$46.21
Texas	Ellis	$34.66
Texas	Erath	$34.66
Texas	Falls	$23.10
Texas	Fannin	$23.10
Texas	Fayette	$46.21
Texas	Fisher	$11.55
Texas	Floyd	$11.55
Texas	Foard	$11.55
Texas	Fort Bend	$46.21
Texas	Franklin	$23.10
Texas	Freestone	$23.10
Texas	Frio	$23.10
Texas	Gaines	$11.55
Texas	Galveston	$34.66
Texas	Garza	$5.78
Texas	Gillespie	$46.21
Texas	Glasscock	$11.55
Texas	Goliad	$23.10
Texas	Gonzales	$23.10
Texas	Gray	$11.55
Texas	Grayson	$46.21
Texas	Gregg	$34.66
Texas	Grimes	$34.66
Texas	Guadalupe	$46.21
Texas	Hale	$11.55
Texas	Hall	$5.78
Texas	Hamilton	$23.10
Texas	Hansford	$11.55
Texas	Hardeman	$11.55
Texas	Hardin	$34.66
Texas	Harris	$69.31
Texas	Harrison	$23.10
Texas	Hartley	$11.55
Texas	Haskell	$11.55
Texas	Hays	$69.31
Texas	Hemphill	$5.78
Texas	Henderson	$34.66
Texas	Hidalgo	$46.21
Texas	Hill	$23.10
Texas	Hockley	$11.55
Texas	Hood	$46.21
Texas	Hopkins	$34.66
Texas	Houston	$23.10
Texas	Howard	$11.55
Texas	Hudspeth	$5.78
Texas	Hunt	$34.66
Texas	Hutchinson	$5.78
Texas	Irion	$5.78
Texas	Jack	$23.10
Texas	Jackson	$23.10
Texas	Jasper	$34.66
Texas	Jeff Davis	$5.78
Texas	Jefferson	$23.10
Texas	Jim Hogg	$11.55
Texas	Jim Wells	$11.55
Texas	Johnson	$46.21
Texas	Jones	$11.55
Texas	Karnes	$23.10
Texas	Kaufman	$34.66
Texas	Kendall	$46.21
Texas	Kenedy	$11.55
Texas	Kent	$5.78

State	County	(Fee/acre/yr)
Texas	Kerr	$23.10
Texas	Kimble	$23.10
Texas	King	$5.78
Texas	Kinney	$11.55
Texas	Kleberg	$11.55
Texas	Knox	$5.78
Texas	La Salle	$11.55
Texas	Lamar	$23.10
Texas	Lamb	$11.55
Texas	Lampasas	$23.10
Texas	Lavaca	$34.66
Texas	Lee	$34.66
Texas	Leon	$23.10
Texas	Liberty	$34.66
Texas	Limestone	$23.10
Texas	Lipscomb	$11.55
Texas	Live Oak	$23.10
Texas	Llano	$34.66
Texas	Loving	$5.78
Texas	Lubbock	$23.10
Texas	Lynn	$11.55
Texas	Madison	$23.10
Texas	Marion	$23.10
Texas	Martin	$11.55
Texas	Mason	$23.10
Texas	Matagorda	$23.10
Texas	Maverick	$5.78
Texas	McCulloch	$23.10
Texas	McLennan	$23.10
Texas	McMullen	$23.10
Texas	Medina	$23.10
Texas	Menard	$11.55
Texas	Midland	$11.55
Texas	Milam	$23.10
Texas	Mills	$23.10
Texas	Mitchell	$11.55
Texas	Montague	$34.66
Texas	Montgomery	$69.31
Texas	Moore	$11.55
Texas	Morris	$23.10
Texas	Motley	$5.78
Texas	Nacogdoches	$34.66
Texas	Navarro	$23.10
Texas	Newton	$23.10
Texas	Nolan	$11.55
Texas	Nueces	$23.10
Texas	Ochiltree	$11.55
Texas	Oldham	$5.78
Texas	Orange	$34.66
Texas	Palo Pinto	$23.10
Texas	Panola	$23.10
Texas	Parker	$46.21
Texas	Parmer	$11.55
Texas	Pecos	$5.78
Texas	Polk	$34.66
Texas	Potter	$11.55
Texas	Presidio	$11.55
Texas	Rains	$34.66
Texas	Randall	$11.55
Texas	Reagan	$5.78
Texas	Real	$11.55
Texas	Red River	$23.10
Texas	Reeves	$5.78
Texas	Refugio	$11.55
Texas	Roberts	$5.78
Texas	Robertson	$23.10
Texas	Rockwall	$69.31
Texas	Runnels	$11.55
Texas	Rusk	$34.66
Texas	Sabine	$46.21
Texas	San Augustine	$34.66
Texas	San Jacinto	$46.21
Texas	San Patricio	$23.10
Texas	San Saba	$23.10
Texas	Schleicher	$11.55
Texas	Scurry	$11.55
Texas	Shackelford	$11.55
Texas	Shelby	$34.66
Texas	Sherman	$11.55
Texas	Smith	$34.66
Texas	Somervell	$34.66
Texas	Starr	$23.10
Texas	Stephens	$11.55
Texas	Sterling	$5.78
Texas	Stonewall	$5.78
Texas	Sutton	$11.55
Texas	Swisher	$11.55
Texas	Tarrant	$69.31
Texas	Taylor	$23.10
Texas	Terrell	$5.78
Texas	Terry	$11.55
Texas	Throckmorton	$11.55
Texas	Titus	$34.66
Texas	Tom Green	$23.10
Texas	Travis	$34.66
Texas	Trinity	$23.10
Texas	Tyler	$46.21
Texas	Upshur	$34.66
Texas	Upton	$5.78
Texas	Uvalde	$23.10
Texas	Val Verde	$5.78
Texas	Van Zandt	$34.66
Texas	Victoria	$23.10
Texas	Walker	$46.21
Texas	Waller	$69.31
Texas	Ward	$5.78
Texas	Washington	$46.21
Texas	Webb	$11.55
Texas	Wharton	$23.10
Texas	Wheeler	$11.55
Texas	Wichita	$23.10
Texas	Wilbarger	$11.55
Texas	Willacy	$23.10
Texas	Williamson	$46.21
Texas	Wilson	$34.66
Texas	Winkler	$5.78
Texas	Wise	$46.21
Texas	Wood	$34.66
Texas	Yoakum	$11.55
Texas	Young	$11.55
Texas	Zapata	$23.10
Texas	Zavala	$23.10
Utah	Beaver	$46.21
Utah	Box Elder	$11.55
Utah	Cache	$46.21
Utah	Carbon	$11.55
Utah	Daggett	$23.10
Utah	Davis	$115.52
Utah	Duchesne	$11.55
Utah	Emery	$23.10
Utah	Garfield	$34.66
Utah	Grand	$23.10
Utah	Iron	$23.10
Utah	Juab	$11.55
Utah	Kane	$11.55
Utah	Millard	$23.10
Utah	Morgan	$23.10
Utah	Piute	$34.66
Utah	Rich	$11.55
Utah	Salt Lake	$115.52
Utah	San Juan	$5.78
Utah	Sanpete	$23.10
Utah	Sevier	$34.66
Utah	Summit	$23.10
Utah	Tooele	$11.55
Utah	Uintah	$5.78
Utah	Utah	$69.31
Utah	Wasatch	$69.31
Utah	Washington	$34.66
Utah	Wayne	$34.66
Utah	Weber	$115.52
Vermont	Addison	$34.66
Vermont	Bennington	$34.66
Vermont	Caledonia	$46.21
Vermont	Chittenden	$46.21
Vermont	Essex	$34.66
Vermont	Franklin	$34.66
Vermont	Grand Isle	$69.31
Vermont	Lamoille	$46.21
Vermont	Orange	$34.66
Vermont	Orleans	$34.66
Vermont	Rutland	$69.31
Vermont	Washington	$46.21
Vermont	Windham	$46.21
Vermont	Windsor	$69.31
Virginia	Accomack	$46.21
Virginia	Albemarle	$115.52
Virginia	Alleghany	$46.21
Virginia	Amelia	$46.21
Virginia	Amherst	$46.21
Virginia	Appomattox	$34.66
Virginia	Arlington	$69.31
Virginia	Augusta	$69.31
Virginia	Bath	$46.21
Virginia	Bedford	$69.31
Virginia	Bland	$34.66
Virginia	Botetourt	$69.31
Virginia	Brunswick	$34.66
Virginia	Buchanan	$69.31
Virginia	Buckingham	$46.21
Virginia	Campbell	$34.66
Virginia	Caroline	$46.21
Virginia	Carroll	$69.31
Virginia	Charles City	$69.31
Virginia	Charlotte	$34.66
Virginia	Chesapeake City.	$69.31
Virginia	Chesterfield	$115.52
Virginia	Clarke	$115.52
Virginia	Craig	$46.21
Virginia	Culpeper	$115.52
Virginia	Cumberland	$46.21
Virginia	Dickenson	$34.66
Virginia	Dinwiddie	$34.66
Virginia	Essex	$46.21
Virginia	Fairfax	$231.02
Virginia	Fauquier	$115.52
Virginia	Floyd	$46.21
Virginia	Fluvanna	$46.21
Virginia	Franklin	$46.21
Virginia	Frederick	$69.31
Virginia	Giles	$46.21
Virginia	Gloucester	$69.31
Virginia	Goochland	$69.31
Virginia	Grayson	$69.31
Virginia	Greene	$115.52
Virginia	Greensville	$34.66
Virginia	Halifax	$34.66
Virginia	Hanover	$115.52
Virginia	Henrico	$115.52
Virginia	Henry	$34.66
Virginia	Highland	$46.21
Virginia	Isle of Wight	$46.21
Virginia	James City	$115.52
Virginia	King and Queen.	$46.21
Virginia	King George	$69.31
Virginia	King William	$46.21
Virginia	Lancaster	$46.21

State	County	(Fee/acre/yr)
Virginia	Lee	$34.66
Virginia	Loudoun	$231.02
Virginia	Louisa	$46.21
Virginia	Lunenburg	$34.66
Virginia	Madison	$69.31
Virginia	Mathews	$69.31
Virginia	Mecklenburg	$34.66
Virginia	Middlesex	$69.31
Virginia	Montgomery	$69.31
Virginia	Nelson	$46.21
Virginia	New Kent	$69.31
Virginia	Northampton	$46.21
Virginia	Northumberland.	$46.21
Virginia	Nottoway	$46.21
Virginia	Orange	$69.31
Virginia	Page	$115.52
Virginia	Patrick	$34.66
Virginia	Pittsylvania	$34.66
Virginia	Powhatan	$69.31
Virginia	Prince Edward	$34.66
Virginia	Prince George	$46.21
Virginia	Prince William	$231.02
Virginia	Pulaski	$46.21
Virginia	Rappahannock	$69.31
Virginia	Richmond	$34.66
Virginia	Roanoke	$69.31
Virginia	Rockbridge	$69.31
Virginia	Rockingham	$115.52
Virginia	Russell	$34.66
Virginia	Scott	$34.66
Virginia	Shenandoah	$69.31
Virginia	Smyth	$34.66
Virginia	Southampton	$46.21
Virginia	Spotsylvania	$115.52
Virginia	Stafford	$115.52
Virginia	Suffolk	$46.21
Virginia	Surry	$46.21
Virginia	Sussex	$34.66
Virginia	Tazewell	$34.66
Virginia	Virginia Beach City.	$69.31
Virginia	Warren	$115.52
Virginia	Washington	$46.21
Virginia	Westmoreland	$46.21
Virginia	Wise	$46.21
Virginia	Wythe	$46.21
Virginia	York	$1,155.13
Washington	Adams	$23.10
Washington	Asotin	$11.55
Washington	Benton	$34.66
Washington	Chelan	$231.02
Washington	Clallam	$231.02
Washington	Clark	$231.02
Washington	Columbia	$23.10
Washington	Cowlitz	$115.52
Washington	Douglas	$23.10
Washington	Ferry	$11.55
Washington	Franklin	$34.66
Washington	Garfield	$11.55
Washington	Grant	$46.21
Washington	Grays Harbor	$46.21
Washington	Island	$231.02
Washington	Jefferson	$115.52
Washington	King	$462.05
Washington	Kitsap	$462.05
Washington	Kittitas	$69.31
Washington	Klickitat	$23.10
Washington	Lewis	$69.31
Washington	Lincoln	$11.55
Washington	Mason	$115.52
Washington	Okanogan	$23.10
Washington	Pacific	$46.21
Washington	Pend Oreille	$34.66
Washington	Pierce	$231.02
Washington	San Juan	$231.02
Washington	Skagit	$115.52
Washington	Skamania	$115.52
Washington	Snohomish	$231.02
Washington	Spokane	$46.21
Washington	Stevens	$23.10
Washington	Thurston	$231.02
Washington	Wahkiakum	$69.31
Washington	Walla Walla	$34.66
Washington	Whatcom	$115.52
Washington	Whitman	$23.10
Washington	Yakima	$34.66
West Virginia	Barbour	$23.10
West Virginia	Berkeley	$69.31
West Virginia	Boone	$23.10
West Virginia	Braxton	$23.10
West Virginia	Brooke	$23.10
West Virginia	Cabell	$34.66
West Virginia	Calhoun	$23.10
West Virginia	Clay	$23.10
West Virginia	Doddridge	$23.10
West Virginia	Fayette	$34.66
West Virginia	Gilmer	$23.10
West Virginia	Grant	$34.66
West Virginia	Greenbrier	$34.66
West Virginia	Hampshire	$34.66
West Virginia	Hancock	$46.21
West Virginia	Hardy	$34.66
West Virginia	Harrison	$23.10
West Virginia	Jackson	$34.66
West Virginia	Jefferson	$69.31
West Virginia	Kanawha	$34.66
West Virginia	Lewis	$23.10
West Virginia	Lincoln	$23.10
West Virginia	Logan	$46.21
West Virginia	Marion	$34.66
West Virginia	Marshall	$23.10
West Virginia	Mason	$34.66
West Virginia	McDowell	$23.10
West Virginia	Mercer	$34.66
West Virginia	Mineral	$34.66
West Virginia	Mingo	$23.10
West Virginia	Monongalia	$34.66
West Virginia	Monroe	$34.66
West Virginia	Morgan	$46.21
West Virginia	Nicholas	$34.66
West Virginia	Ohio	$23.10
West Virginia	Pendleton	$23.10
West Virginia	Pleasants	$23.10
West Virginia	Pocahontas	$23.10
West Virginia	Preston	$34.66
West Virginia	Putnam	$34.66
West Virginia	Raleigh	$34.66
West Virginia	Randolph	$23.10
West Virginia	Ritchie	$23.10
West Virginia	Roane	$23.10
West Virginia	Summers	$23.10
West Virginia	Taylor	$34.66
West Virginia	Tucker	$23.10
West Virginia	Tyler	$23.10
West Virginia	Upshur	$23.10
West Virginia	Wayne	$23.10
West Virginia	Webster	$23.10
West Virginia	Wetzel	$23.10
West Virginia	Wirt	$23.10
West Virginia	Wood	$34.66
West Virginia	Wyoming	$23.10
Wisconsin	Adams	$46.21
Wisconsin	Ashland	$23.10
Wisconsin	Barron	$34.66
Wisconsin	Bayfield	$23.10
Wisconsin	Brown	$69.31
Wisconsin	Buffalo	$34.66
Wisconsin	Burnett	$34.66
Wisconsin	Calumet	$69.31
Wisconsin	Chippewa	$34.66
Wisconsin	Clark	$34.66
Wisconsin	Columbia	$69.31
Wisconsin	Crawford	$34.66
Wisconsin	Dane	$69.31
Wisconsin	Dodge	$46.21
Wisconsin	Door	$46.21
Wisconsin	Douglas	$23.10
Wisconsin	Dunn	$34.66
Wisconsin	Eau Claire	$34.66
Wisconsin	Florence	$34.66
Wisconsin	Fond du Lac	$46.21
Wisconsin	Forest	$34.66
Wisconsin	Grant	$46.21
Wisconsin	Green	$46.21
Wisconsin	Green Lake	$46.21
Wisconsin	Iowa	$46.21
Wisconsin	Iron	$23.10
Wisconsin	Jackson	$34.66
Wisconsin	Jefferson	$69.31
Wisconsin	Juneau	$34.66
Wisconsin	Kenosha	$115.52
Wisconsin	Kewaunee	$69.31
Wisconsin	La Crosse	$46.21
Wisconsin	Lafayette	$46.21
Wisconsin	Langlade	$34.66
Wisconsin	Lincoln	$34.66
Wisconsin	Manitowoc	$69.31
Wisconsin	Marathon	$34.66
Wisconsin	Marinette	$34.66
Wisconsin	Marquette	$46.21
Wisconsin	Menominee	$23.10
Wisconsin	Milwaukee	$231.02
Wisconsin	Monroe	$46.21
Wisconsin	Oconto	$46.21
Wisconsin	Oneida	$46.21
Wisconsin	Outagamie	$69.31
Wisconsin	Ozaukee	$115.52
Wisconsin	Pepin	$34.66
Wisconsin	Pierce	$46.21
Wisconsin	Polk	$46.21
Wisconsin	Portage	$69.31
Wisconsin	Price	$34.66
Wisconsin	Racine	$115.52
Wisconsin	Richland	$46.21
Wisconsin	Rock	$69.31
Wisconsin	Rusk	$46.21
Wisconsin	Sauk	$69.31
Wisconsin	Sawyer	$46.21
Wisconsin	Shawano	$69.31
Wisconsin	Sheboygan	$69.31
Wisconsin	St. Croix	$69.31
Wisconsin	Taylor	$34.66
Wisconsin	Trempealeau	$34.66
Wisconsin	Vernon	$34.66
Wisconsin	Vilas	$69.31
Wisconsin	Walworth	$115.52
Wisconsin	Washburn	$34.66
Wisconsin	Washington	$115.52
Wisconsin	Waukesha	$115.52
Wisconsin	Waupaca	$46.21
Wisconsin	Waushara	$69.31
Wisconsin	Winnebago	$69.31
Wisconsin	Wood	$34.66
Wyoming	Albany	$5.78
Wyoming	Big Horn	$23.10
Wyoming	Campbell	$5.78
Wyoming	Carbon	$5.78
Wyoming	Converse	$5.78

State	County	(Fee/acre/yr)
Wyoming	Crook	$11.55
Wyoming	Fremont	$5.78
Wyoming	Goshen	$11.55
Wyoming	Hot Springs	$5.78
Wyoming	Johnson	$5.78
Wyoming	Laramie	$5.78
Wyoming	Lincoln	$23.10
Wyoming	Natrona	$5.78
Wyoming	Niobrara	$5.78
Wyoming	Park	$23.10
Wyoming	Platte	$11.55
Wyoming	Sheridan	$11.55
Wyoming	Sublette	$23.10
Wyoming	Sweetwater	$5.78
Wyoming	Teton	$69.31
Wyoming	Uinta	$11.55
Wyoming	Washakie	$11.55
Wyoming	Weston	$5.78

* State-average Land and Building value used where no county-specific value is available.

** Land areas to be determined.

[FR Doc. E9–3788 Filed 2–23–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 17

[Docket No. FDA–2008–N–0561]

Maximum Civil Money Penalty Amounts and Compliance With the Federal Civil Penalties Inflation Adjustment Act; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of March 27, 2009, for the direct final rule that appeared in the **Federal Register** of November 12, 2008 (73 FR 66750). The direct final rule amends the agency's regulations to update the statutory citations regarding the new civil monetary penalties prescribed by the Food and Drug Administration Amendments Act of 2007 (FDAAA), amends the regulations to include the new FDAAA penalties, and adjusts the preceding maximum civil penalty amounts for inflation as prescribed by the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA). This document confirms the effective date of the direct final rule.

DATES: Effective date confirmed: March 27,2009.

FOR FURTHER INFORMATION CONTACT: Erik Mettler, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave, Bldg. 1, rm. 4305, Silver Spring, MD 20993, 301–796–4830.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 12, 2008 (73 FR 66750), FDA published the ''Maximum Civil Money Penalty Amounts and Compliance With the Federal Civil Penalties Inflation Adjustment Act'' direct final rule and solicited comments concerning the direct final rule for a 75-day period ending March 27, 2009. The direct final rule revises § 17.1 (21 CFR 17.1) to update the statutory citations regarding the new civil monetary penalties prescribed by FDAAA, and revises the table in § 17.2 (21 CFR 17.2) to include the new FDAAA penalties, and adjusts the preceding maximum civil penalty amounts for inflation as prescribed by the FCPIAA. This was accomplished by revising the list of statutory monetary penalties in § 17.1 to include the new penalties prescribed by the Federal Food, Drug, and Cosmetic Act, as amended by FDAAA in 2007. These new penalties have been added as new paragraphs (c) and (d). The table in § 17.2 also has been amended to include the new penalties, and the adjusted maximum penalty amounts for the pre-FDAAA penalties have been updated to account for the inflation between June 2004 (the year of the last adjustment) and June 2007 as prescribed by FCPIAA.

FDA also solicited comments concerning the changes for a 75-day period ending January 26, 2009, in a proposed rule published in the **Federal Register** of November 12, 2008 (73 FR 66811). FDA stated that the effective date of the direct final rule would be on March 27, 2009, 60 days after the end of the comment period, unless any significant adverse comment was submitted to FDA during the comment period. FDA did not receive any significant adverse comments.

Authority: Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 17 is amended. Accordingly, the amendments issued thereby are effective.

Dated: February 17, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–3831 Filed 2–23–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 54

[TD 9447]

RIN 1545–BG80

Automatic Contribution Arrangements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to automatic contribution arrangements. These regulations affect administrators of, employers maintaining, participants in, and beneficiaries of section 401(k) plans and other eligible plans that include an automatic contribution arrangement.

DATES: *Effective date:* These regulations are effective on February 24, 2009.

Applicability date: Except as provided in §§ 1.401(k)–3(j)(1)(i) and 1.401(m)–2(a)(6)(ii), the final regulations relating to qualified automatic contribution arrangements (§§ 1.401(k)–2, 1.401(k)–3, 1.401(m)–2, and 1.401(m)–3) apply to plan years beginning on or after January 1, 2008. The regulations relating to eligible automatic contribution arrangements (§§ 1.402(c)–2, 1.411(a)–4, 1.414(w)–1, and 54.4979–1) apply for plan years beginning on or after January 1, 2010.

FOR FURTHER INFORMATION CONTACT: R. Lisa Mojiri-Azad, Dana Barry, or William D. Gibbs at (202) 622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–2135 .

The collection of information in these final regulations is in §§ 1.401(k)–3 and 1.414(w)–1. The information in § 1.401(k)–3 is required to comply with the statutory notice requirements in sections 401(k)(13) and 401(m)(12), and is expected to be included in the notices currently provided to employees that inform them of their rights and benefits under the plan. The collection of information under § 1.414(w)–1 is required to comply with the statutory notice requirements of section 414(w) and is expected to be included in the notices currently provided to employees

that inform them of their rights and benefits under the plan.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to regulations under sections 401(k), 401(m), 402(c), 411(a), and 4979 of the Internal Revenue Code (Code) and new regulations under section 414(w) in order to reflect certain of the provisions of section 902 of the Pension Protection Act of 2006, Public Law 109–280 (PPA '06), taking into account certain of the changes made by section 109(b) of the Worker, Retiree, and Employer Recovery Act of 2008, Public Law 110–458 (WRERA).

Section 902 of PPA '06 added sections 401(k)(13), 401(m)(12), and 414(w) to the Code to facilitate automatic contribution arrangements (sometimes referred to as automatic enrollment) in qualified cash or deferred arrangements under section 401(k), as well as in similar arrangements under sections 403(b) and 457(b). An automatic contribution arrangement is a cash or deferred arrangement that provides that, in the absence of an affirmative election by an eligible employee, a default election applies under which the employee is treated as having made an election to have a specified contribution made on his or her behalf under the plan.

Section 401(k)(1) provides that a profit-sharing, stock bonus, pre-ERISA money purchase, or rural cooperative plan will not fail to qualify under section 401(a) merely because it contains a qualified cash or deferred arrangement. Section 1.401(k)–1(a)(2) defines a cash or deferred arrangement (CODA) as an arrangement under which an eligible employee may make a cash or deferred election with respect to contributions to, or accruals or other benefits under, a plan that is intended to satisfy the requirements of section 401(a). Section 1.401(k)–1(a)(3)(i) defines a cash or deferred election as any direct or indirect election (or modification of an earlier election) by an employee to have the employer either: (1) Provide an amount to the employee in the form of cash (or some other taxable benefit) that is not currently available; or (2) contribute an amount to a trust, or provide an accrual or other benefit, under a plan deferring the receipt of compensation. For purposes of determining whether an election is a cash or deferred election, § 1.401(k)–1(a)(3)(ii) provides that it is irrelevant whether the default that applies in the absence of an affirmative election is cash (or some other taxable benefit) or a contribution, an accrual, or other benefit under a plan deferring the receipt of compensation. Contributions that are made pursuant to a cash or deferred election under a qualified CODA are commonly referred to as elective contributions.

In order for a CODA to be a qualified CODA, it must satisfy a number of other requirements. Section 401(k)(2)(A) provides that the amount that each eligible employee under the arrangement may defer as an elective contribution must be available to the employee in cash. Section 1.401(k)–1(e)(2)(ii) provides that, in order for a CODA to satisfy this requirement, the arrangement must provide each eligible employee with an effective opportunity to make (or change) a cash or deferred election at least once during each plan year.

Section 401(k)(2)(B) provides that a qualified CODA must provide that elective contributions may only be distributed after certain events, including hardship and severance from employment. Similar distribution restrictions apply under sections 403(b)(7) and 403(b)(11). Section 457(d)(1)(A) includes distribution restrictions for eligible governmental deferred compensation plans.

Section 401(k)(3)(A)(ii) applies a special nondiscrimination test to the elective contributions of highly compensated employees, within the meaning of section 414(q) (HCEs). Under this test, called the actual deferral percentage (ADP) test, the average percentage of compensation deferred for HCEs is compared annually to the average percentage of compensation deferred for nonhighly compensated employees (NHCEs) eligible under the plan, and if certain limits are exceeded by the HCEs, corrective action must be taken. Pursuant to section 401(k)(8), one method of correction is distribution to HCEs of excess contributions made on their behalf.

Section 401(m) provides a parallel test for matching contributions and employee after-tax contributions under a defined contribution plan, called the actual contribution percentage (ACP) test. Pursuant to section 401(m)(6), one method of correction of the ACP test is distribution to HCEs of excess aggregate contributions made on their behalf.

Sections 401(k)(12) and 401(m)(11) provide a design-based safe harbor under which elective contributions under a CODA and any associated matching contributions are treated as satisfying the ADP and ACP tests if the arrangement meets certain contribution and notice requirements. Sections 1.401(k)–3 and 1.401(m)–3 provide guidance on the requirements for this design-based safe harbor.

Sections 401(k)(13) and 401(m)(12), added by PPA '06 and effective for plan years beginning on or after January 1, 2008, provide an alternative design-based safe harbor for a CODA that provides for automatic contributions at a specified level and meets certain employer contribution, notice, and other requirements. A CODA that satisfies these requirements, referred to as a qualified automatic contribution arrangement (QACA), is treated as satisfying the ADP test and ACP test with respect to matching contributions.

Section 414(w), added to the Code by section 902(d)(1) of PPA '06 and effective for plan years beginning on or after January 1, 2008, further facilitates automatic enrollment by providing limited relief from the distribution restrictions under section 401(k)(2)(B), 403(b)(7), 403(b)(11), or 457(d)(1)(A) in the case of an eligible automatic contribution arrangement (EACA).

Sections 414(w)(1) and 414(w)(2) provide that an applicable employer plan that contains an EACA is permitted to allow employees to elect to receive a distribution equal to the amount of default elective contributions (and attributable earnings) made with respect to the employee beginning with the first payroll period to which the EACA applies to the employee and ending with the effective date of the election. The election must be made within 90 days after the date of the first default elective contribution with respect to the employee under the arrangement. Sections 414(w)(1)(A) and 414(w)(1)(B) provide that the amount of the distribution is includible in gross income for the taxable year in which the distribution is made, but is not subject to the additional income tax under section 72(t).

Section 414(w)(3) defines an EACA as an arrangement under which: (1) A participant may elect to have the employer make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash; (2) the participant is treated as having elected to have the employer make such contributions in an

amount equal to a uniform percentage of compensation provided under the plan until the participant specifically elects not to have such contributions made (or specifically elects to have such contributions made at a different percentage); and (3) participants are provided a notice that satisfies the requirements of section 414(w)(4). Section 109(b)(4) of WRERA eliminated the provision previously found under section 414(w)(3)(C) that, in the absence of an investment election by the participant, default elective contributions must be invested in accordance with the regulations prescribed by the Secretary of Labor under section 404(c)(5) of the Employee Retirement Income Security Act of 1974 (ERISA).

Section 414(w)(4) requires that, within a reasonable period before each plan year, each employee to whom the arrangement applies for such year receive written notice of the employee's rights and obligations under the arrangement which is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations. Section 414(w)(4)(A)(ii) requires that the notice be written in a manner calculated to be understood by the average employee to whom the arrangement applies. Section 414(w)(4)(B) provides that the notice must explain: (1) The employee's rights under the arrangement to elect not to have elective contributions made on the employee's behalf or to elect to have contributions made at a different percentage; and (2) how contributions made under the automatic contribution arrangement will be invested in the absence of any investment decision by the employee. In addition, the employee must be given a reasonable period of time after receipt of the notice and before the first elective contribution is made to make an election with respect to contributions. In many respects, the notice under section 414(w)(4) is the same as the notice required under section 401(k)(13) for a QACA.

Section 414(w)(5), as amended by section 109(b)(5) of WRERA, defines an applicable employer plan as a trust described in section 401(a) that is exempt from tax under section 501(a), a plan described in section 403(b), a section 457(b) plan that is maintained by a governmental employer described in section 457(e)(1)(A), a simplified employee pension the terms of which provide for a salary reduction arrangement described in section 408(k)(6), or a SIMPLE described in section 408(p).

Section 414(w)(6) provides that a withdrawal described in section 414(w)(1) is not to be taken into account for purposes of the ADP test. Section 109(b)(6) of WRERA amended section 414(w)(6) to provide that a withdrawal described in section 414(w)(1) is not to be taken into account for purposes of applying the limitation under section 402(g)(1).

Section 411(a)(3)(G), as amended by section 902(d)(2) of PPA '06, provides that a matching contribution shall not be treated as forfeitable merely because the matching contribution is forfeitable if it relates to a contribution that is withdrawn under an automatic contribution arrangement that satisfies the requirements of section 414(w).

Section 4979 provides for an excise tax on excess contributions (within the meaning of section 401(k)(8)(B)) and excess aggregate contributions (within the meaning of section 401(m)(6)(B)) not distributed within 2½ months after the close of the plan year for which the contributions are made. Section 902 of PPA '06 amended section 4979 to lengthen this 2½ month correction period for excess contributions and excess aggregate contributions under an EACA to 6 months. Thus, in the case of an EACA that is part of a section 401(k) plan, the section 4979 excise tax does not apply to any excess contributions or excess aggregate contributions which, together with income allocable to the contributions, are distributed or forfeited (if forfeitable) within 6 months after the close of the plan year.

Section 902 of PPA '06 amended section 4979(f)(2) to provide that any distributions of excess contributions and excess aggregate contributions (whether or not under an EACA) are includible in the employee's gross income for the taxable year in which distributed. However, pursuant to sections 401(k)(8)(D) and 401(m)(7)(A), the distributions are not subject to the additional income tax under section 72(t). Section 902 of PPA '06 also amended sections 401(k)(8), 401(m)(6), and 4979(f)(1) to eliminate the requirement that distributions of excess contributions or excess aggregate contributions (whether or not under an EACA) include income allocable to the period after the end of the plan year (gap period income).

On November 8, 2007, proposed regulations under sections 401(k), 401(m), 402(c), 411(a), 414(w), and 4979(f) relating to automatic contribution arrangements were issued (72 FR 63144). Written public comments were received on the proposed regulations, and a public hearing was held on May 19, 2008. After consideration of the comments, these final regulations adopt the provisions of the proposed regulations with certain modifications, the most significant of which are highlighted in the Summary of Comments and Explanation of Revisions. In addition, these final regulations reflect the amendments to sections 401(k)(13) and 414(w) that were made by WRERA.

Summary of Comments and Explanation of Revisions

I. Qualified Automatic Contribution Arrangement Under Section 401(k)(13)

A. Minimum Percentage Requirement

Section 401(k)(13)(C)(iii) sets forth a series of minimum default contribution percentages that an automatic contribution arrangement must satisfy in order to be a qualified automatic contribution arrangement (QACA). The final regulations clarify that the minimum percentage for the initial period is based on when the employee first has contributions made pursuant to a default election under the QACA. Thus, if an employee makes an affirmative election before the default contribution would have begun, then the initial period does not begin for the employee. The minimum percentages are increased for plan years after the initial period.

Several commentators requested guidance on the application of the minimum percentage requirement in the case of a rehired employee. The final regulations provide that the minimum percentages are determined without regard to whether an employee has continued to be eligible to make contributions under the plan. Thus, the minimum percentage is generally determined based on the number of years since the date the employee first had default contributions made under the QACA. However, in response to recordkeeping concerns raised by commentators, the final regulations also provide that a plan is permitted to treat an employee who for an entire plan year did not have contributions made pursuant to a default election under the QACA as if the employee had not had such contributions for any prior plan year as well. For example, if an employee terminates in one plan year, remains terminated for a full plan year, and is rehired in a subsequent plan year, the plan is permitted to provide that a new initial period begins after the employee is rehired, regardless of whether the employee had in fact had contributions made pursuant to a default election under the QACA in some earlier plan year.

Other commentators asked whether plans are permitted to limit the duration of an affirmative election or to require

employees to make new elections. Under the final regulations, automatic enrollment applies for periods during which the affirmative election is not in effect. Accordingly, a plan could specifically provide that an affirmative election expires and, thus, require an employee to make a new affirmative election if he or she wants the prior rate of elective contribution to continue. In the absence of a second affirmative election, the employee will be automatically enrolled at the plan's default percentage (which must meet the minimum percentage requirement described in the preceding paragraph). For example, if an employer has a QACA beginning in 2009 and the plan provides that all affirmative elections in effect on December 31, 2010 expire on that date, then, if the QACA continues into 2011, all eligible employees who do not make a new affirmative election will be automatically enrolled under the QACA. Similarly, if an employee who made an affirmative election takes a hardship withdrawal under the plan and the plan suspends elective contributions for 6 months after receipt of the hardship distribution in accordance with § 1.401(k)–3(c)(6)(v)(B), then, if the plan does not reinstate the affirmative election at the end of the 6 months, the employer must automatically enroll the employee.

The final regulations provide that, for plan years beginning on or after January 1, 2010, compensation for purposes of determining default contributions means safe harbor compensation as defined in § 1.401(k)–3(b)(2).

B. Uniformity Requirement

Section 401(k)(13)(C)(iii) provides that the default percentage must be applied uniformly. The proposed regulations provided that a plan does not fail to satisfy this uniformity requirement merely because: the percentage varies based on the number of years an eligible employee has participated in the automatic contribution arrangement intended to be a QACA; the rate of elective contributions under a cash or deferred election that is in effect immediately prior to the effective date of the default percentage under the QACA is not reduced; the rate of elective contributions is limited so as not to exceed the limits of sections 401(a)(17), 402(g) (determined with or without catch-up contributions described in section 402(g)(1)(C) or 402(g)(7)), and 415; or the default election is not applied during the period an employee is not permitted to make elective contributions in order for the plan to satisfy the requirements of § 1.401(k)–3(c)(6)(v)(B).

Some commentators asked whether a QACA may provide for an increase in the default percentage in the middle of the plan year. These commentators suggested that some employers wanted to provide for such an increase to coincide with salary increases or performance evaluations.

To address this issue, the final regulations expand the exception to the uniformity requirement that allows variance based on the number of years since the date the employee first had contributions made pursuant to a default election under an arrangement that is intended to be a QACA. Under the final regulations, the default percentage may also vary based on the portions of years since that date. Thus, the plan may provide for the increase of the default percentage mid-year, as long as the percentage is uniform based on the number of years or portions of years since an employee first had contributions made pursuant to a default election and satisfies the minimum percentage requirement throughout the plan year.

C. Notice Timing Requirement

The proposed regulations provided that a QACA satisfies the notice requirement of section 401(k)(13)(E) only if the notice satisfies the notice requirements under section 401(k)(12) and satisfies the additional requirements found in section 401(k)(13)(E)(ii). Section 401(k)(12)(D) and section 401(k)(13)(E)(i) provide that the notice must be provided within a reasonable period before each plan year to each employee eligible to participate in the QACA.

The final regulations under section 401(k)(12) provide that the determination of whether the notice satisfies the timing requirement is based on all of the relevant facts and circumstances. The timing requirement is deemed satisfied if at least 30 days (and no more than 90 days) before the beginning of each plan year, the notice is provided to each eligible employee. In the case where an eligible employee is not provided the notice within this 30–90 day period because the employee becomes eligible after the 90th day before the beginning of the plan year, the timing requirement is deemed to be satisfied if the notice is provided no more than 90 days before the employee becomes eligible and no later than the date the employee becomes eligible.

The proposed regulations under section 401(k)(13) applied these same rules to the notice required under section 401(k)(13)(E)(i). In accordance with section 401(k)(13)(E)(ii), the proposed regulations also provided that the notice satisfies the timing requirements only if it is provided sufficiently early so that the employee has a reasonable period of time after receipt of the notice and before the first contribution is made pursuant to a default election under the arrangement to make an affirmative election to defer a different amount or percentage.

Some commentators raised a concern about meeting the notice requirement for employees who are eligible to participate in the plan immediately upon hire. Commentators suggested that employers be given a grace period to provide notice, such as 15 days after hire, as long as the employee has an effective opportunity to elect not to make contributions or make an affirmative election to defer a different amount or percentage of compensation prior to the first contribution made pursuant to a default election.

The final regulations modify the deemed satisfaction of timing requirement set forth in § 1.401(k)–3(d)(3)(ii). The regulations provide that if it is not practicable for the notice to be provided on or before the date specified in the plan that an employee becomes eligible, the notice will nonetheless be treated as provided timely if it is provided as soon as practicable after that date and the employee is permitted to elect to defer from all types of compensation that may be deferred under the plan earned beginning on that date. Thus, an employer is required to provide the notice to the employee prior to the pay date for the payroll period that includes the date the employee becomes eligible. This change applies to the safe harbor described in section 401(k)(12), as well as section 401(k)(13).

The final regulations provide rules for when the default election must first become effective. In accordance with section 401(k)(13)(E)(ii)(III), the final regulations provide that the default election must be effective no earlier than a reasonable period of time after the receipt of the notice (in order to provide the employee with a reasonable period of time to make an affirmative election). However, the final regulations provide that the default election must be effective no later than the earlier of the pay date for the second payroll period that begins after the date the notice is provided or the first pay date that occurs at least 30 days after the notice is provided. Notwithstanding any delay in when the first default contribution is made, nonelective contributions that are based on a full year's contributions and the rate of matching contributions that

varies based on compensation must be based on the safe harbor compensation earned since the participant was first eligible under the plan.

D. Exclusion of Current Affirmative Elections From Automatic Enrollment

The proposed regulations provided that an automatic contribution arrangement does not fail to be a QACA merely because the default election is not applied to an employee who was eligible under the cash or deferred arrangement (or a predecessor arrangement) immediately prior to the effective date of the QACA and on that effective date had an affirmative election in effect (that remains in effect) to have elective contributions made on his or her behalf (in a specified amount or percentage of compensation) or not have elective contributions made on his or her behalf.

Some commentators requested that employers be permitted to treat employees who did not affirmatively elect to make elective contributions under the plan as though they had affirmatively elected zero. These commentators stated that it would be administratively difficult to determine which employees had affirmative elections in effect prior to the effective date of the QACA.

The regulations do not expand the exception for automatically enrolling current employees to employees who have not made an affirmative election. Under section 401(k)(13)(C)(iv)(II), only those employees who had an affirmative election in effect immediately before the QACA became effective are permitted to be excluded from having a default election apply to them.

E. Other Topics

Commentators requested clarification as to whether the safe harbor nonelective and matching contributions made under a QACA are eligible for hardship withdrawal. The final regulations clarify that these safe harbor contributions are subject to the withdrawal restrictions found in § 1.401(k)–1(d) that apply to QNECs and QMACs. Thus, the maximum distributable amount under § 1.401(k)–1(d)(3)(ii) does not include earnings, QNECs, QMACs, or these safe harbor contributions.

A commentator asked whether safe harbor matching or nonelective contributions were required for all employees, including those eligible employees with affirmative elections in effect. The final regulations retain the requirement that all eligible employees must receive safe harbor matching contributions or nonelective contributions, whichever is applicable. The special treatment under section 401(k)(13)(C)(iv) for employees who have an affirmative election in effect does not affect whether safe harbor matching contributions or nonelective contributions are required to be made for those employees.

II. Eligible Automatic Contribution Arrangement Under Section 414(w)

A. Non-Universal Eligible Automatic Contribution Arrangements

The proposed regulations provided that an eligible automatic contribution arrangement (EACA) is an automatic contribution arrangement under an applicable employer plan that applies to each ''eligible employee.'' An eligible employee was defined as an employee who is eligible to make a cash or deferred election under the plan. Therefore, under the proposed regulations, an employer was required to apply automatic enrollment to all current and new employees eligible to make a deferral election under the applicable plan who did not have an affirmative election in effect.

Commentators requested flexibility in the implementation of an EACA by permitting an employer to apply automatic enrollment only to those employees who are hired on or after the effective date of the EACA.

The final regulations modify the rule in the proposed regulations to provide that the employees who must be subject to the automatic enrollment provisions under an EACA are only those employees who are specified in the plan as being covered employees under the EACA. Thus, automatic enrollment under an EACA need not apply to all employees eligible to make a deferral election under the applicable plan, but only to those employees who are covered by the EACA.

The final regulations provide that the plan document must specify the employees who are covered under the EACA and must state whether an employee who makes an affirmative election remains covered under the EACA. Under section 414(w)(4), the notice regarding an employee's rights and obligations under the arrangement need only be provided to those employees who are covered employees under the EACA as set forth in the plan. Thus, if a plan provides that an employee who makes an affirmative election is no longer a covered employee under the EACA, then the employee is not required to receive the notice after he or she makes an affirmative election.

With respect to the correction of excess contributions for a plan year beginning on or after January 1, 2010, the final regulations provide that a plan that contains an EACA is entitled to the extended 6-month period for correcting excess contributions and excess aggregate contributions without incurring an excise tax under section 4979, only if all eligible NHCEs and eligible HCEs are covered employees under the EACA for the entire plan year (or the portion of the plan year that the employees are eligible employees). Thus, if an EACA covers fewer than all the eligible employees under the plan, the employer will be unable to take advantage of the extension under section 4979.

B. Uniformity Requirement

The proposed regulations provided that an EACA must provide that the default elective contribution is a uniform percentage of compensation. The exceptions to the uniformity requirement for a QACA set forth in § 1.401(k)–3(j)(2)(iii) also applied to an EACA (without regard to whether the arrangement was intended to be a QACA).

Some commentators requested that the uniformity requirement be eased if the plan is a multiemployer plan or a multiple employer plan, or if the sponsor wants to have different default contributions for collectively bargained and non-collectively bargained employees. The final regulations do not specifically permit this. However, these plan sponsors can accomplish a similar goal by establishing separate EACAs for each of these separate groups. To address the possibility that a plan may contain more than one EACA, the final regulations provide that the requirement that the default elective contributions under an EACA be a uniform percentage of compensation is applied by aggregating all automatic contribution arrangements within the plan that are intended to be EACAs. For this purpose, in the case of a plan subject to section 410(b), the definition of plan is determined after applying the disaggregation rules of § 1.401(k)–1(b)(4). Thus, a plan that is subject to the rules of section 410(b) is permitted to provide for separate EACAs for different groups of collectively bargained employees or different employers in a multiple employer plan with a different default percentage for each EACA, but such a plan could not have different default percentages apply to different groups of employees that are in the same plan after application of the disaggregation rules of § 1.401(k)–1(b)(4).

C. Mid-Year Implementation of an Eligible Automatic Contribution Arrangement

Section 401(k)(12)(D) contains the notice requirement applicable to a plan that is relying on the safe harbor for nondiscrimination testing in section 401(k)(12). It requires that the notice be provided ''within a reasonable period before any year.'' The final regulations under section 401(k)(12) provide that the notice must be provided within a reasonable period of time before the plan year (or, in the first year that the employee becomes eligible, within a reasonable period of time before the employee becomes eligible). The final regulations further provide that whether this timing requirement is satisfied is based upon all of the relevant facts and circumstances and that the timing requirement is deemed to be satisfied if the notice is given at least 30 days (and no more than 90 days) before the beginning of each plan year. In the case of an employee who becomes eligible after the 90th day before the beginning of the plan year, the timing requirement is deemed to be satisfied if the notice is provided no more than 90 days before the employee becomes eligible for the cash or deferred arrangement (and no later than the date the employee becomes eligible).

Section 401(k)(13)(E), which contains the notice requirements applicable to a QACA, and section 414(w)(4), which contains the notice requirements applicable to an EACA, each require that the notice be provided ''within a reasonable period before each plan year.'' The proposed regulations interpreted these provisions in a manner consistent with the interpretation in the final regulations under section 401(k)(12) of the almost identical language in that section, including the requirement that the notice be provided within a reasonable period of time before each plan year, except that, for individuals who become eligible employees during the plan year, the notice need only be provided within a reasonable period before the employee becomes an eligible employee.

Some commentators noted that the notice timing requirement could be interpreted to preclude the establishment of an EACA in the middle of the plan year, in situations where the notice was not provided before the beginning of the plan year. They suggested that the statutory requirement to provide notice before the start of each plan year should not preclude starting an EACA in the middle of the plan year of an existing cash or deferred arrangement that is not an EACA, if notice is provided to each eligible employee within a reasonable period of time before the employee becomes eligible for the arrangement.

The final regulations do not adopt this suggestion. Instead, the final regulations generally retain the rule in the proposed regulations, which is consistent with the statutory requirements of section 414(w)(4) and with the interpretation of the identical language in section 401(k)(13) and the almost identical language in section 401(k)(12). The final regulations do, however, treat individuals who first become covered under an automatic contribution arrangement as a result of a change in employment status the same as individuals who first become eligible to make a cash or deferred election for purposes of the notice timing requirements.

Consistent with the revisions to the deemed timing rule for purposes of sections 401(k)(12) and 401(k)(13) described in this preamble, the final regulations provide that if it is not practicable for the notice to be provided on or before the date specified in the plan that an employee becomes eligible, the notice will nonetheless be treated as provided timely if it is provided as soon as practicable after that date and the employee is permitted to elect to defer from all types of compensation that may be deferred under the plan earned beginning on that date. Thus, an employer is required to provide the notice to the employee prior to the pay date for the payroll period that includes the date the employee becomes eligible.

D. Permissible Withdrawal

Section 414(w)(2) limits the period for the special election to withdraw default elective contributions to the first 90 days after the date of the first default contribution under the EACA. The proposed regulations provided that the date of the first default elective contribution is the date that the compensation that is subject to the cash or deferred election would otherwise have been included in gross income.

Some commentators suggested that the 90-day period start from the date the first contribution is received by the plan for the participant. The final regulations retain the rule in the proposed regulations that the 90-day period starts after the date the compensation would otherwise have been included in gross income. This date is used for other relevant Code provisions, such as the application of the section 402(g) limitation.

If an employer is concerned about inadvertently permitting withdrawal elections outside the 90-day period due to misidentifying the date of the first default elective contribution as defined under the regulations, the plan is permitted to limit the period during which the election can be made to less than 90 days. Under the final regulations, a plan is permitted to set an earlier deadline for the election to withdraw default elective contributions. However, if a plan offers a permissible withdrawal for covered employees, the election period for the covered employees must be at least 30 days.

The final regulations also provide that the date of the first default elective contribution must take into account any default elective contributions made under any EACA under the plan. For this purpose, all EACAs under the plan must be aggregated. However, if the plan provides for multiple EACAs to cover different employees in different portions of the plan and these portions of the plan are mandatorily disaggregated under section 410(b), then there is no requirement to aggregate those different EACAs. Thus, in the case where a plan that is subject to the rules of section 410(b) has separate EACAs for different groups of collectively bargained employees or different employers in a multiple employer plan, the date for determining the first default elective contribution is determined with respect to each EACA within the separate disaggregated plan. In addition, in response to comments, the final regulations provide that for purposes of determining the date of the first default elective contribution, a plan is permitted to treat an employee who for an entire plan year did not have default elective contributions made under the EACA as if the employee had not had such contributions for any prior plan year as well.

Commentators asked whether employers can restrict the permissible withdrawals based on subsequent affirmative elections made by employees. For example, one commentator requested that an employer be permitted to limit the permissible withdrawal election to those employees who are automatically enrolled and who do not make a subsequent affirmative election of an amount (other than zero) within the 90-day election period. Under a section 401(a) plan or a section 403(b) plan, an employer is not permitted to condition an employee's right to take a permissible withdrawal on the level of the employee's deferral election under the plan. Thus, an employee's permissible withdrawal rights may not be restricted based upon the employee's subsequent affirmative election.

The proposed regulations provided that the effective date of the permissible withdrawal election must be no later than the last day of the payroll period that begins after the date the election is made. This rule was included in the proposed regulations to limit section 414(w) withdrawals to default elective contributions made for short periods of time. In response to comments, the final regulations modify this rule to provide that the latest effective date of the permissible withdrawal election cannot be after the earlier of: (1) The pay date for the second payroll period beginning after the election is made, or (2) the first pay date that occurs at least 30 days after the election is made. Of course, a plan may permit an earlier effective date.

Commentators also requested that the IRS clarify when the permissible withdrawal amount must be distributed. The final regulations clarify that the permissible withdrawal distribution must be made in accordance with the plan's ordinary timing procedures for processing distributions and making distributions. Thus, the permissible withdrawal distribution should be processed and distributed no differently than any other distribution permitted under the plan.

The proposed regulations provided that a permissible withdrawal distribution may be reduced by any generally applicable fees, but specified that the plan may not charge a different fee for a distribution under section 414(w) than would apply to other distributions. In response to comments, the final regulations clarify that the plan cannot charge a higher fee for a distribution under section 414(w) than would apply to any other distributions of cash.

One commentator requested guidance with respect to the withholding treatment of permissible withdrawal amounts. These amounts are subject to section 3405(a).

E. Forfeiture of Employer Matching Contributions

The proposed regulations provided that matching contributions with respect to default elective contributions that had been distributed pursuant to a permissible withdrawal election must be forfeited. In response to comments, the final regulations clarify that the forfeiture applies to any matching contributions that have been allocated to the participant's account, adjusted for allocable gain or loss. The final regulations provide that the plan is permitted to provide that matching contributions will not be made with respect to any withdrawal made under § 1.414(w)–1(c) if the withdrawal has been made prior to the date as of which the matching contributions would otherwise be allocated.

III. Other Issues

A. Other Automatic Contribution Arrangements

Many employers have previously adopted automatic contribution arrangements as originally described in prior guidance, such as Rev. Rul. 2000–8, 2000–1 CB 617. This prior guidance, which was reflected in regulations under section 401(k) issued in 2004, permitted employers to automatically enroll employees in a section 401(k) plan. These final regulations do not affect any automatic contribution arrangement that is not intended to be a QACA or an EACA.

B. Other Issues Under Section 902 of PPA '06 and WRERA

These regulations also reflect the modification to the correction rules for excess contributions and excess aggregate contributions provided in section 902(e) of PPA'06. These provisions include: (1) the change in the year of inclusion in income for distributed excess contributions to the year of distribution; and (2) the elimination of the requirement to include gap period income for a distribution that is made to correct an ADP or ACP failure. However, these regulations do not reflect: (1) the change made by section 109(b)(3) of WRERA that eliminates the requirement to include gap period income for a distribution of an excess deferral under section 402(g); (2) the additional time to correct excess contributions under a SARSEP that includes an EACA; (3) the tax treatment of excess contributions and earnings thereon under a SARSEP; and (4) guidance on SIMPLE IRA plans that include an EACA.

Effective Date

Except as provided in §§ 1.401(k)–3(j)(1)(i) and 1.401(m)–2(a)(6)(ii), the final regulations relating to qualified automatic contribution arrangements (§§ 1.401(k)–2, 1.401(k)–3, 1.401(m)–2, and 1.401(m)–3) apply to plan years beginning on or after January 1, 2008. The regulations relating to eligible automatic contribution arrangements (§§ 1.402(c)–2, 1.411(a)–4, 1.414(w)–1, and 54.4979–1) apply for plan years beginning on or after January 1, 2010. For plan years that begin in 2008, a plan must operate in accordance with a good faith interpretation of section 414(w). For this purpose, a plan that operates in accordance with the proposed regulations under § 1.414(w)–1 or these final regulations will be treated as operating in accordance with a good faith interpretation of section 414(w).

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has been determined that 5 U.S.C. 533(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these final regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that most small entities that maintain plans that will be eligible for the safe harbor provisions of sections 401(k) and 401(m) or the distribution relief provisions of section 414(w) currently provide a similar notice with which this notice can be combined. Therefore, an analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small business.

Drafting Information

The principal authors of these regulations are Dana Barry, William D. Gibbs, and R. Lisa Mojiri-Azad, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in the development of these regulations.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 54 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended to read as follows:

Authority: 26 U.S.C. 401(m)(9) and 26 U.S.C. 7805 * * * Section 1.401(k)–3 is also issued under 26 U.S.C. 401(m)(9).

■ **Par. 2.** Section 1.401(k)–0 is amended in:

■ 1. The entry for § 1.401(k)–2 is amended by—

■ a. Adding the entry for § 1.401(k)–2(a)(5)(vi) and revising the entry for § 1.401(k)–2(b)(2)(iv)(D).

■ b. Revising entries for § 1.401(k)–2(b)(2)(vi)(A) and (b)(2)(vi)(B).

■ c. Adding an entry for § 1.401(k)–2(b)(5)(iii).

■ 2. The entry for § 1.401(k)–3 is amended by—

■ a. Adding entries for §§ 1.401(k)–3(a)(1), 1.401(k)–3(a)(2) and 1.401(k)–3(a)(3).

■ b. Adding an entry for § 1.401(k)–3(i).

■ c. Adding entries for §§ 1.401(k)–3(j)(1) and 1.401(k)–3(j)(2).

■ d. Adding entries for §§ 1.401(k)–3(k)(1), 1.401(k)–3(k)(2), 1.401(k)–3(k)(3) and 1.401(k)–3(k)(4).

The additions and revisions read as follows:

§ 1.401(k)–0 Table of Contents.

* * * * *

§ 1.401(k)–2 ADP test.
(a) * * *
(5) * * *
(vi) Default elective contributions pursuant to section 414(w).

* * * * *

(b) * * *
(2) * * *
(iv) * * *
(A) * * *

* * * * *

(D) Plan years before 2008.

* * * * *

(vi) * * *
(A) Corrective distributions for plan years beginning on or after January 1, 2008.
(B) Corrective distributions for plan years beginning before January 1, 2008.

* * * * *

(5) * * *
(iii) Special rule for eligible automatic contribution arrangements.

* * * * *

§ 1.401(k)–3 Safe harbor requirements.
(a) * * *
(1) Section 401(k)(12) safe harbor.
(2) Section 401(k)(13) safe harbor.
(3) Requirements applicable to safe harbor contributions.

* * * * *

(i) [Reserved].
(j) Qualified automatic contribution arrangement.
(1) Automatic contribution requirement.
(i) In general.
(ii) Automatic contribution arrangement.
(iii) Exception to automatic enrollment for certain current employees.
(2) Qualified percentage.
(i) In general.
(ii) Minimum percentage requirements.
(A) Initial-period requirement.
(B) Second-year requirement.
(C) Third-year requirement.
(D) Later years requirement.
(iii) Exception to uniform percentage requirement.
(iv) Treatment of periods without default contributions.
(k) Modifications to contribution requirements and notice requirements for automatic contribution safe harbor.
(1) In general.
(2) Lower matching requirement.
(3) Modified nonforfeiture requirement.
(4) Additional notice requirements.
(i) In general.
(ii) Additional information.
(iii) Timing requirements.

■ **Par. 3.** Section 1.401(k)–1 is amended by:

■ 1. Revising paragraph (b)(1)(ii)(C) and adding new paragraph (b)(1)(ii)(D).

■ 2. Adding a new sentence after the fifth sentence in paragraph (e)(7).

The additions and revisions to read as follows:

§ 1.401(k)–1 Certain cash or deferred arrangements.

* * * * *

(b) * * *
(1) * * *
(ii) * * *

(C) The ADP safe harbor provisions of section 401(k)(13) described in § 1.401(k)–3; or

(D) The SIMPLE 401(k) provisions of section 401(k)(11) described in § 1.401(k)–4.

* * * * *

(e) * * *

(7) *Plan provision requirement.* * * * In addition, a plan that uses the safe harbor method of section 401(k)(13), as described in paragraph (b)(1)(ii)(C) of this section, must specify the default percentages that apply for the plan year and whether the safe harbor contribution will be the nonelective safe harbor contribution or the matching safe harbor contribution, and is not permitted to provide that ADP testing will be used if the requirements for the safe harbor are not satisfied. * * *

* * * * *

■ **Par. 4.** Section 1.401(k)–2 is amended by:

■ 1. Adding paragraph (a)(5)(vi).

■ 2. Revising paragraphs (b)(2)(iv)(A) and (b)(2)(iv)(D).

■ 3. Removing paragraph (b)(2)(iv)(E).

■ 4. Revising paragraph (b)(2)(vi)(A).

■ 5. Revising the heading and adding a new first sentence to paragraph (b)(2)(vi)(B).

■ 6. Removing *Examples 3, 4,* and *5* of paragraph (b)(2)(viii).

■ 7. Revising paragraph (b)(4)(iii) and adding paragraph (b)(5)(iii).

The additions and revisions to read as follows:

§ 1.401(k)–2 ADP test.

(a) * * *

(5) * * *

(vi) *Default elective contributions pursuant to section 414(w).* Default elective contributions made under an eligible automatic contribution arrangement (within the meaning of § 1.414(w)–1(b)) that are distributed pursuant to § 1.414(w)–1(c) for plan years beginning on or after January 1, 2008, are not taken into account under paragraph (a)(4) of this section for the plan year for which the contributions are made, or for any other plan year.

* * * * *

(b) * * *

(2) * * *

(iv) *Income allocable to excess contributions*—(A) *General rule.* For plan years beginning on or after January 1, 2008, the income allocable to excess contributions is equal to the allocable gain or loss through the end of the plan year. See paragraph (b)(2)(iv)(D) of this section for rules that apply to plan years beginning before January 1, 2008.

* * * * *

(D) *Plan years before 2008.* For plan years beginning before January 1, 2008, the income allocable to excess contributions is determined under § 1.401(k)–2(b)(2)(iv) (as it appeared in the April 1, 2007, edition of 26 CFR part 1).

* * * * *

(vi) *Tax treatment of corrective distributions*—(A) *Corrective distributions for plan years beginning on or after January 1, 2008.* Except as provided in this paragraph (b)(2)(vi), for plan years beginning on or after January 1, 2008, a corrective distribution of excess contributions (and allocable income) is includible in the employee's gross income for the employee's taxable year in which distributed. In addition, the corrective distribution is not subject to the early distribution tax of section 72(t). See paragraph (b)(5) of this section for additional rules relating to the employer excise tax on amounts distributed more than 2½ months (6 months in the case of certain plans that include an eligible automatic contribution arrangement within the meaning of section 414(w)) after the end of the plan year. See also § 1.402(c)–2, A–4 for restrictions on rolling over distributions that are excess contributions.

(B) *Corrective distributions for plan years beginning before January 1, 2008.* The tax treatment of corrective distributions for plan years beginning before January 1, 2008, is determined under § 1.401(k)–2(b)(2)(vi) (as it

appeared in the April 1, 2007, edition of 26 CFR Part 1). * * *

* * * * *

(4) * * *

(iii) *Permitted forfeiture of QMAC.* Pursuant to section 401(k)(8)(E), a qualified matching contribution is not treated as forfeitable under § 1.401(k)–1(c) merely because under the plan it is forfeited in accordance with paragraph (b)(4)(ii) of this section or § 1.414(w)–1(d)(2).

* * * * *

(5) * * *

(iii) *Special rule for eligible automatic contribution arrangements.* In the case of excess contributions under a plan that includes an eligible automatic contribution arrangement within the meaning of section 414(w), 6 months is substituted for 2½ months in paragraph (b)(5)(i) of this section. The additional time described in this paragraph (b)(5)(iii) applies to a distribution of excess contributions for a plan year beginning on or after January 1, 2010 only where all the eligible NHCEs and eligible HCEs are covered employees under the eligible automatic contribution arrangement (within the meaning of § 1.414(w)–1(e)(3)) for the entire plan year (or for the portion of the plan year that the eligible NHCEs and eligible HCEs are eligible employees).

* * * * *

■ **Par. 5.** Section 1.401(k)–3 is amended by:

■ 1. Revising paragraph (a).

■ 2. Adding a new sentence at the end of paragraph (d)(3)(ii).

■ 3. Revising the first sentence of paragraph (e)(1).

■ 4. Revising the last sentence of paragraph (h)(2).

■ 5. Revising the first sentence of paragraph (h)(3).

■ 6. Adding paragraphs (i), (j), and (k).

The additions and revisions to read as follows:

§ 1.401(k)–3 Safe harbor requirements.

(a) *ADP test safe harbor*—(1) *Section 401(k)(12) safe harbor.* A cash or deferred arrangement satisfies the ADP safe harbor provision of section 401(k)(12) for a plan year if the arrangement satisfies the safe harbor contribution requirement of paragraph (b) or (c) of this section for the plan year, the notice requirement of paragraph (d) of this section, the plan year requirements of paragraph (e) of this section, and the additional rules of paragraphs (f), (g), and (h) of this section, as applicable.

(2) *Section 401(k)(13) safe harbor.* For plan years beginning on or after January 1, 2008, a cash or deferred arrangement satisfies the ADP safe harbor provision of section 401(k)(13) for a plan year if the arrangement is described in paragraph (j) of this section and satisfies the safe harbor contribution requirement of paragraph (k) of this section for the plan year, the notice requirement of paragraph (d) of this section (modified to include the information set forth in paragraph (k)(4) of this section), the plan year requirements of paragraph (e) of this section, and the additional rules of paragraphs (f), (g), and (h) of this section, as applicable. A cash or deferred arrangement that satisfies the requirements of this paragraph (a)(2) is referred to as a qualified automatic contribution arrangement.

(3) *Requirements applicable to safe harbor contributions.* Pursuant to section 401(k)(12)(E)(ii) and section 401(k)(13)(D)(iv), the safe harbor contribution requirement of paragraph (b), (c), or (k) of this section must be satisfied without regard to section 401(l). The contributions made under paragraph (b) or (c) of this section (and the corresponding contributions under paragraph (k) of this section) are referred to as safe harbor nonelective contributions and safe harbor matching contributions.

* * * * *

(d) * * *

(3) * * *

(ii) *Deemed satisfaction of timing requirement.* * * * If it is not practicable for the notice to be provided on or before the date specified in the plan that an employee becomes eligible, the notice will nonetheless be treated as provided timely if it is provided as soon as practicable after that date and the employee is permitted to elect to defer from all types of compensation that may be deferred under the plan earned beginning on the date the employee becomes eligible.

(e) *Plan year requirement*—(1) *General rule.* Except as provided in this paragraph (e) or in paragraph (f) of this section, a plan will fail to satisfy the requirements of sections 401(k)(12), 401(k)(13), and this section unless plan provisions that satisfy the rules of this section are adopted before the first day of the plan year and remain in effect for an entire 12-month plan year. * * *

* * * * *

(h) * * *

(2) *Use of safe harbor nonelective contributions to satisfy other discrimination tests.* * * * However, pursuant to section 401(k)(12)(E)(ii) and section 401(k)(13)(D)(iv), to the extent they are needed to satisfy the safe harbor contribution requirement of paragraph (b) of this section, safe harbor nonelective contributions may not be taken into account under any plan for purposes of section 401(l) (including the imputation of permitted disparity under § 1.401(a)(4)–7).

(3) *Early participation rules.* Section 401(k)(3)(F) and § 1.401(k)–2(a)(1)(iii)(A), which provide an alternative nondiscrimination rule for certain plans that provide for early participation, do not apply for purposes of section 401(k)(12), section 401(k)(13), and this section. * * *

* * * * *

(i) [Reserved].

(j) *Qualified automatic contribution arrangement*—(1) *Automatic contribution requirement*—(i) *In general.* A cash or deferred arrangement is described in this paragraph (j) if it is an automatic contribution arrangement described in paragraph (j)(1)(ii) of this section where the default election under that arrangement is a contribution equal to the qualified percentage described in paragraph (j)(2) of this section multiplied by the eligible employee's compensation from which elective contributions are permitted to be made under the cash or deferred arrangement. For plan years beginning on or after January 1, 2010, the compensation used for this purpose must be safe harbor compensation as defined under paragraph (b)(2) of this section.

(ii) *Automatic contribution arrangement.* An automatic contribution arrangement is a cash or deferred arrangement within the meaning of § 1.401(k)–1(a)(2) that provides that, in the absence of an eligible employee's affirmative election, a default election applies under which the employee is treated as having made an election to have a specified contribution made on his or her behalf under the plan. The default election begins to apply with respect to an eligible employee no earlier than a reasonable period of time after receipt of the notice describing the automatic contribution arrangement. The default election ceases to apply with respect to an eligible employee for periods of time with respect to which the employee has an affirmative election that is currently in effect to—

(A) Have elective contributions made in a different amount on his or her behalf (in a specified amount or percentage of compensation); or

(B) Not have any elective contributions made on his or her behalf.

(iii) *Exception to automatic enrollment for certain current employees.* An automatic contribution arrangement will not fail to be a qualified automatic contribution arrangement merely because the default

election provided under paragraph (j)(1)(i) of this section is not applied to an employee who was an eligible employee under the cash or deferred arrangement (or a predecessor arrangement) immediately prior to the effective date of the qualified automatic contribution arrangement and on that effective date had an affirmative election in effect (that remains in effect) to—

(A) Have elective contributions made on his or her behalf (in a specified amount or percentage of compensation); or

(B) Not have elective contributions made on his or her behalf.

(2) *Qualified percentage*—(i) *In general.* A percentage is a qualified percentage only if it—

(A) Is uniform for all employees (except to the extent provided in paragraph (j)(2)(iii) of this section);

(B) Does not exceed 10 percent; and

(C) Satisfies the minimum percentage requirements of paragraph (j)(2)(ii) of this section.

(ii) *Minimum percentage requirements*—(A) *Initial-period requirement.* The minimum percentage requirement of this paragraph (j)(2)(ii)(A) is satisfied only if the percentage that applies for the initial period is at least 3 percent. For this purpose, the initial period begins when the employee first has contributions made pursuant to a default election under an arrangement that is intended to be a qualified automatic contribution arrangement for a plan year and ends on the last day of the following plan year.

(B) *Second-year requirement.* The minimum percentage requirement of this paragraph (j)(2)(ii)(B) is satisfied only if the percentage that applies for the plan year immediately following the last day described in paragraph (j)(2)(ii)(A) of this section is at least 4 percent.

(C) *Third-year requirement.* The minimum percentage requirement of this paragraph (j)(2)(ii)(C) is satisfied only if the percentage that applies for the plan year immediately following the plan year described in paragraph (j)(2)(ii)(B) of this section is at least 5 percent.

(D) *Later years requirement.* A percentage satisfies the minimum percentage requirement of this paragraph (j)(2)(ii)(D) only if the percentage that applies for all plan years following the plan year described in paragraph (j)(2)(ii)(C) of this section is at least 6 percent.

(iii) *Exception to uniform percentage requirement.* A plan does not fail to satisfy the uniform percentage requirement of paragraph (j)(2)(i)(A) of this section merely because—

(A) The percentage varies based on the number of years (or portions of years) since the beginning of the initial period for an eligible employee;

(B) The rate of elective contributions under a cash or deferred election that is in effect for an employee immediately prior to the effective date of the default percentage under the qualified automatic contribution arrangement is not reduced;

(C) The rate of elective contributions is limited so as not to exceed the limits of sections 401(a)(17), 402(g) (determined with or without catch-up contributions described in section 402(g)(1)(C) or 402(g)(7)), and 415; or

(D) The default election provided under paragraph (j)(1)(i) of this section is not applied during the period an employee is not permitted to make elective contributions in order for the plan to satisfy the requirements of § 1.401(k)–3(c)(6)(v)(B).

(iv) *Treatment of periods without default contributions.* The minimum percentages described in paragraph (j)(2)(ii) of this section are based on the date the initial period begins, regardless of whether the employee is eligible to make elective contributions under the plan after that date. Thus, for example, if an employee is ineligible to make contributions under the plan for 6 months because the employee had a hardship withdrawal and the 6-month period includes a date as of which the default minimum percentage is increased, then the default percentage must reflect that increase when the employee is permitted to resume contributions. However, for purposes of determining the date the initial period described in paragraph (j)(2)(ii)(A) of this section begins, a plan is permitted to treat an employee who for an entire plan year did not have contributions made pursuant to a default election under the qualified automatic contribution arrangement as if the employee had not had such contributions made for any prior plan year as well.

(k) *Modifications to contribution requirements and notice requirements for automatic contribution safe harbor*—(1) *In general.* A cash or deferred arrangement satisfies the contribution requirements of this paragraph (k) only if it satisfies the contribution requirements of either paragraph (b) or (c) of this section, as modified by the rules of paragraphs (k)(2) and (k)(3) of this section. In addition, a cash or deferred arrangement satisfies the notice requirement of section 401(k)(13)(E) only if the notice satisfies the additional requirements of paragraph (k)(4) of this section.

(2) *Lower matching requirement.* In applying the requirement of paragraph (c) of this section in the case of a cash or deferred arrangement, the basic matching formula is modified so that each eligible NHCE must receive the sum of—

(i) 100 percent of the employee's elective contributions that do not exceed 1 percent of the employee's safe harbor compensation; and

(ii) 50 percent of the employee's elective contributions that exceed 1 percent of the employee's safe harbor compensation but that do not exceed 6 percent of the employee's safe harbor compensation.

(3) *Modified nonforfeiture requirement.* A cash or deferred arrangement described in paragraph (j) of this section will not fail to satisfy the requirements of paragraph (b) or (c) of this section, as applicable, merely because the safe harbor contributions are not qualified nonelective contributions or qualified matching contributions provided that—

(i) The contributions are subject to the withdrawal restrictions that apply to QNECs and QMACs, as set forth in § 1.401(k)–1(d); and

(ii) Any employee who has completed 2 years of service (within the meaning of section 411(a)) has a nonforfeitable right to the account balance attributable to the safe harbor contributions.

(4) *Additional notice requirements*—(i) *In general.* A notice satisfies the requirements of this paragraph (k)(4) only if it includes the additional information described in paragraph (k)(4)(ii) of this section and satisfies the timing requirements of paragraph (k)(4)(iii) of this section.

(ii) *Additional information.* A notice satisfies the additional information requirement of this paragraph (k)(4)(ii) only if it explains—

(A) The level of elective contributions which will be made on the employee's behalf if the employee does not make an affirmative election;

(B) The employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf (or to elect to have such contributions made in a different amount or percentage of compensation); and

(C) How contributions under the arrangement will be invested (including, in the case of an arrangement under which the employee may elect among 2 or more investment options, how contributions will be invested in the absence of an investment election by the employee).

(iii) *Timing requirements.* A notice satisfies the timing requirements of this paragraph (k)(4)(iii) only if it is provided sufficiently early so that the employee has a reasonable period of time after receipt of the notice to make the elections described under paragraph (k)(4)(ii)(B) and (C) of this section. However, the requirement in the preceding sentence that an employee have a reasonable period of time after receipt of the notice to make an alternative election does not permit a plan to make the default election effective any later than the earlier of—

(A) The pay date for the second payroll period that begins after the date the notice is provided; and

(B) The first pay date that occurs at least 30 days after the notice is provided.

■ **Par. 6.** Section 1.401(k)–6 is amended by revising the last sentence in the definition of ''qualified matching contributions (QMACs)'' to read as follows:

§ 1.401(k)–6 Definitions.

* * * * *

Qualified matching contributions (QMACs). * * * See also § 1.401(k)–2(b)(4)(iii) for a rule providing that a matching contribution does not fail to qualify as a QMAC solely because it is forfeitable under section 411(a)(3)(G) as a result of being a matching contribution with respect to an excess deferral, excess contribution, or excess aggregate contribution, or it is forfeitable under § 1.414(w)–1(d)(2).

* * * * *

■ **Par. 7.** Section 1.401(m)–0 is amended in:

■ 1. The entry for § 1.401(m)–2 by—

■ a. Revising § 1.401(m)–2(b)(2)(iv)(D).

■ b. Adding an entry for § 1.401(m)–2(b)(4)(iii).

■ c. Revising the entries for § 1.401(m)–2(b)(2)(vi)(A) and (b)(2)(vi)(B).

■ d. Adding an entry for § 1.401(m)–2(b)(4)(iii).

■ 2. The entry for § 1.401(m)–3 by revising the entries for §§ 1.401(m)–3(a)(1), 1.401(m)–3(a)(2) and 1.401(m)–3(a)(3).

The additions and revisions read as follows:

§ 1.401(m)–0 Table of Contents.

* * * * *

§ 1.401(m)–2 ACP Test.

* * * * *

(b) * * *

(2) * * *

(iv) * * *

(A) * * *

* * * * *

(D) Plan years before 2008.

(E) Allocable income for recharacterized elective contributions.

* * * * *

(vi) * * *

(A) Corrective distributions for plan years beginning on or after January 1, 2008.

(B) Corrective distributions for plan years beginning before January 1, 2008.

* * * * *

(4) * * *

(iii) Special rule for eligible automatic contribution arrangements.

* * * * *

§ 1.401(m)–3 Safe Harbor Requirements.

(a) * * *

(1) Section 401(m)(11) safe harbor.

(2) Section 401(m)(12) safe harbor.

(3) Requirements applicable to safe harbor contributions.

* * * * *

■ **Par. 8.** Section 1.401(m)–1 is amended by:

■ 1. Revising paragraph (b)(1)(iii) and adding paragraph (b)(1)(iv).

■ 2. Revising the last sentence of paragraph (b)(4)(iii)(B).

■ 3. Revising the fifth sentence of paragraph (c)(2).

The additions and revisions read as follows:

§ 1.401(m)–1 Employee contributions and matching contributions.

* * * * *

(b) * * *

(1) * * *

(iii) The ACP safe harbor provisions of section 401(m)(12) described in § 1.401(m)–3; or

(iv) The SIMPLE 401(k) provisions of sections 401(k)(11) and 401(m)(10) described in § 1.401(k)–4.

* * * * *

(4) * * *

(iii) * * *

(B) *Arrangements with inconsistent ACP testing methods.* * * * Similarly, an employer may not aggregate a plan (within the meaning of § 1.410(b)–7) that is using the ACP safe harbor provisions of section 401(m)(11) or 401(m)(12) and another plan that is using the ACP test of section 401(m)(2).

* * * * *

(c) * * *

(2) *Plan provision requirement.* * * * Similarly, a plan that uses the safe harbor method of section 401(m)(11) or 401(m)(12), as described in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section, must specify the default percentages that apply for the plan year and whether the safe harbor contribution will be the nonelective safe harbor contribution or the matching safe harbor contribution, and is not permitted to provide that ACP testing will be used if the requirements for the safe harbor are not satisfied. * * *

* * * * *

■ **Par. 9.** Section 1.401(m)–2 is amended by:

■ 1. Revising the first and second sentences of paragraph (a)(5)(iv).

■ 2. Revising paragraph (a)(5)(v).

■ 3. Adding a new sentence at the end of paragraph (a)(6)(ii).

■ 4. Revising paragraphs (b)(2)(iv)(A) and (b)(2)(iv)(D).

■ 5. Removing paragraph (b)(2)(iv)(E).

■ 6. Redesignating paragraph (b)(2)(iv)(F) as paragraph (b)(2)(iv)(E).

■ 7. Revising paragraph (b)(2)(vi)(A).

■ 8. Adding a new sentence to the beginning of paragraph (b)(2)(vi)(B).

■ 9. Adding paragraph (b)(4)(iii).

The additions and revisions read as follows:

§ 1.401(m)–2 ACP test.

(a) * * *

(5) * * *

(iv) *Matching contributions taken into account.* A plan that satisfies the ACP safe harbor requirements of section 401(m)(11) or 401(m)(12) for a plan year but nonetheless must satisfy the requirements of this section because it provides for employee contributions for such plan year is permitted to apply this section disregarding all matching contributions with respect to all eligible employees. In addition, a plan that satisfies the ADP safe harbor requirements of § 1.401(k)–3 for a plan year using qualified matching contributions but does not satisfy the ACP safe harbor requirements of section 401(m)(11) or 401(m)(12) for such plan year is permitted to apply this section by excluding matching contributions with respect to all eligible employees that do not exceed 4 percent (3½ percent in the case of a plan that satisfies the ADP safe harbor under section 401(k)(13)) of each employee's compensation. * * *

(v) *Treatment of forfeited matching contributions.* A matching contribution that is forfeited because the contribution to which it relates is treated as an excess contribution, excess deferral, excess aggregate contribution, or default elective contribution that is distributed under section 414(w), is not taken into account for purposes of this section.

* * * * *

(6) * * * * *

(ii) *Elective contributions taken into account under the ACP test.* * * * In addition, for plan years ending on or after November 8, 2007, elective contributions which are not permitted to be taken into account for the ADP test for the plan year under § 1.401(k)–

2(a)(5)(ii), (iii), (v), or (vi) are not permitted to be taken into account for the ACP test.

* * * * *

(b) * * * * *

(2) * * * * *

(iv) *Income allocable to excess aggregate contributions*—(A) *General rule.* For plan years beginning on or after January 1, 2008, the income allocable to excess aggregate contributions is equal to the allocable gain or loss through the end of the plan year. See paragraph (b)(2)(iv)(D) of this section for rules that apply to plan years beginning before January 1, 2008.

* * * * *

(D) *Plan years before 2008.* For plan years beginning before January 1, 2008, the income allocable to excess aggregate contributions is determined under § 1.401(m)–2(b)(2)(iv) (as it appeared in the April 1, 2007 edition of 26 CFR part 1).

* * * * *

(vi) *Tax treatment of corrective distributions*—(A) *Corrective distributions for plan years beginning on or after January 1, 2008.* Except as otherwise provided in this paragraph (b)(2)(vi), for plan years beginning on or after January 1, 2008, a corrective distribution of excess aggregate contributions (and allocable income) is includible in the employee's gross income in the taxable year of the employee in which distributed. The portion of the distribution that is treated as an investment in the contract and is therefore not subject to tax under section 72 is determined without regard to any plan contributions other than those distributed as excess aggregate contributions. Regardless of when the corrective distribution is made, it is not subject to the early distribution tax of section 72(t). See paragraph (b)(4) of this section for additional rules relating to the employer excise tax on amounts distributed more than 2½ months (6 months in the case of certain plans that include an eligible automatic contribution arrangement within the meaning of section 414(w)) after the end of the plan year. See also § 1.402(c)–2, A–4, prohibiting rollover of distributions that are excess aggregate contributions.

(B) *Corrective distributions for plan years beginning before January 1, 2008.* The tax treatment of corrective distributions for plan years beginning before January 1, 2008, is determined under § 1.401(m)–2(b)(2)(vi) (as it appeared in the April 1, 2007, edition of 26 CFR Part 1). * * *

(4) * * *

(iii) *Special rule for eligible automatic contribution arrangements.* In the case of excess aggregate contributions under a plan that includes an eligible automatic contribution arrangement (within the meaning of section 414(w)), 6 months is substituted for 2½ months in paragraph (b)(4)(i) of this section. The additional time described in this paragraph (b)(4)(iii) applies to a distribution of excess aggregate contributions for a plan year beginning on or after January 1, 2010 only where all the eligible NHCEs and eligible HCEs are covered employees under the eligible automatic contribution arrangement (within the meaning of § 1.414(w)–1(e)(3)) for the entire plan year (or for the portion of the plan year that the eligible NHCEs and eligible HCEs are eligible employees).

* * * * *

■ **Par. 10.** Section 1.401(m)–3 is amended by:

■ 1. Revising paragraph (a).

■ 2. Revising the first sentences of paragraphs (f)(1) and (j)(3).

The revisions read as follows:

§ 1.401(m)–3 Safe harbor requirements.

(a) *ACP test safe harbor*—(1) *Section 401(m)(11) safe harbor.* Matching contributions under a plan satisfy the ACP safe harbor provisions of section 401(m)(11) for a plan year if the plan satisfies the safe harbor contribution requirement of paragraph (b) or (c) of this section for the plan year, the limitations on matching contributions of paragraph (d) of this section, the notice requirement of paragraph (e) of this section, the plan year requirements of paragraph (f) of this section, and the additional rules of paragraphs (g), (h) and (j) of this section, as applicable.

(2) *Section 401(m)(12) safe harbor.* For a plan year beginning on or after January 1, 2008, matching contributions under a plan satisfy the ACP safe harbor provisions of section 401(m)(12) for a plan year if the matching contributions are made with respect to an automatic contribution arrangement described in paragraph § 1.401(k)–3(j) that satisfies the safe harbor requirements of § 1.401(k)–3, the limitations on matching contributions of paragraph (d) of this section, the notice requirement of paragraph (e) of this section, the plan year requirements of paragraph (f) of this section, and the additional rules of paragraphs (g), (h) and (j) of this section, as applicable.

(3) *Requirements applicable to safe harbor contributions.* Pursuant to sections 401(k)(12)(E)(ii) and 401(k)(13)(D)(iv), the safe harbor contribution requirement of paragraph (b) or (c) of this section and § 1.401(k)–3(k) must be satisfied without regard to section 401(l). The contributions made under paragraphs (b) and (c) of this section and § 1.401(k)–3(k) are referred to as safe harbor nonelective contributions and safe harbor matching contributions.

* * * * *

(f) *Plan year requirement*—(1) *General rule.* Except as provided in this paragraph (f) or in paragraph (g) of this section, a plan will fail to satisfy the requirements of section 401(m)(11), section 401(m)(12), and this section unless plan provisions that satisfy the rules of this section are adopted before the first day of that plan year and remain in effect for an entire 12-month plan year. * * *

* * * * *

(j) * * *

(3) *Early participation rules.* Section 401(m)(5)(C) and § 1.401(m)–2(a)(1)(iii)(A), which provide an alternative nondiscrimination rule for certain plans that provide for early participation, do not apply for purposes of section 401(m)(11), section 401(m)(12), and this section. * * *

* * * * *

■ **Par. 11.** Section 1.402(c)–2, A–4, is amended by redesignating paragraph (h) as (j), adding a new paragraph (h), and adding and reserving paragraph (i) to read as follows:

§ 1.402(c)–2 Eligible rollover distributions, questions and answers.

* * * * *

A–4 * * *

(h) A distribution that is a permissible withdrawal from an eligible automatic contribution arrangement within the meaning of section 414(w).

(i) [Reserved]

* * * * *

■ **Par. 12.** Section 1.411(a)–4 is amended by revising paragraph (b)(7) to read as follows:

§ 1.411(a)–4 Forfeitures, suspensions, etc.

* * * * *

(b) * * *

(7) *Certain matching contributions.* A matching contribution (within the meaning of section 401(m)(4)(A) and § 1.401(m)–1(a)(2)) is not treated as forfeitable even if under the plan it may be forfeited under § 1.401(m)–2(b)(1) because the contribution to which it relates is treated as an excess contribution (within the meaning of §§ 1.401(k)–2(b)(2)(ii) and 1.401(k)–6), excess deferral (within the meaning of § 1.402(g)–1(e)(1)(iii)), excess aggregate contribution (within the meaning of § 1.401(m)–5), or a default elective

contribution (within the meaning of § 1.414(w)–1(e)) that is withdrawn in accordance with the requirements of § 1.414(w)–1(c).

* * * * *

■ **Par. 13.** Section 1.414(w)–1 is added to read as follows:

§ 1.414(w)–1 Permissible Withdrawals From Eligible Automatic Contribution Arrangements.

(a) *Overview*. Section 414(w) provides rules under which certain employees are permitted to elect to make a withdrawal of default elective contributions from an eligible automatic contribution arrangement. This section sets forth the rules applicable to permissible withdrawals from an eligible automatic contribution arrangement within the meaning of section 414(w). Paragraph (b) of this section defines an eligible automatic contribution arrangement. Paragraph (c) of this section describes a permissible withdrawal and addresses which employees are eligible to elect a withdrawal, the timing of the withdrawal election, and the amount of the withdrawal. Paragraph (d) of this section describes the tax and other consequences of the withdrawal. Paragraph (e) of this section includes the definitions applicable to this section.

(b) *Eligible automatic contribution arrangement*—(1) *In general*. An eligible automatic contribution arrangement is an automatic contribution arrangement under an applicable employer plan that is intended to be an eligible automatic contribution arrangement for the plan year and that satisfies the uniformity requirement under paragraph (b)(2) of this section, and the notice requirement under paragraph (b)(3) of this section. An eligible automatic contribution arrangement need not cover all employees who are eligible to elect to have contributions made on their behalf under the applicable employer plan.

(2) *Uniformity requirement*—(i) *In general*. An eligible automatic contribution arrangement must provide that the default elective contribution is a uniform percentage of compensation.

(ii) *Exception to uniform percentage requirement*. An arrangement does not violate the uniformity requirement of paragraph (b)(2)(i) of this section merely because the percentage varies in a manner that is permitted under § 1.401(k)–3(j)(2)(iii), except that the rule of § 1.401(k)–3(j)(2)(iii)(B) is applied without regard to whether the arrangement is intended to be a qualified automatic contribution arrangement.

(iii) *Rules of application*. For purposes of this paragraph (b)(2), all automatic contribution arrangements that are intended to be eligible automatic contribution arrangements within a plan (or within the disaggregated plan under § 1.410(b)–7, in the case of a plan subject to section 410(b)) are aggregated. Thus, for example, if a single plan within the meaning of section 414(l) covering employees in two separate divisions has two different automatic contribution arrangements that are intended to be eligible automatic contributions arrangements, the two automatic contribution arrangements can constitute eligible automatic contribution arrangements only if the default elective contributions under the arrangements are the same percentage of compensation. However, if the different automatic contribution arrangements cover employees in portions of the plan that are mandatorily disaggregated under the rules of section 410(b), then there is no requirement to aggregate those automatic contribution arrangements under the uniformity requirements of this paragraph (b)(2).

(3) *Notice requirement*—(i) *General rule*. The notice requirement of this paragraph (b)(3) is satisfied for a plan year if each covered employee is given notice of the employee's rights and obligations under the arrangement. The notice must be sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and be written in a manner calculated to be understood by the average employee to whom the arrangement applies. The notice must be in writing; however, see § 1.401(a)–21 for rules permitting the use of electronic media to provide applicable notices.

(ii) *Content requirement*. The notice must include the provisions found in § 1.401(k)–3(d)(2)(ii) to the extent those provisions apply to the arrangement. A notice is not considered sufficiently accurate and comprehensive unless the notice accurately describes—

(A) The level of the default elective contributions which will be made on the employee's behalf if the employee does not make an affirmative election;

(B) The employee's rights to elect not to have default elective contributions made to the plan on his or her behalf or to have a different percentage of compensation or different amount of contribution made to the plan on his or her behalf;

(C) How contributions made under the arrangement will be invested in the absence of any investment election by the employee; and

(D) The employee's rights to make a permissible withdrawal, if applicable, and the procedures to elect such a withdrawal.

(iii) *Timing*—(A) *General rule*. The timing requirement of this paragraph (b)(3)(iii) is satisfied if the notice is provided within a reasonable period before the beginning of each plan year or, in the plan year the employee is first eligible to make a cash or deferred election (or first becomes covered under the automatic contribution arrangement as a result of a change in employment status), within a reasonable period before the employee becomes a covered employee. In addition, a notice satisfies the timing requirements of paragraph (b)(3) of this section only if it is provided sufficiently early so that the employee has a reasonable period of time after receipt of the notice in order to make the election described under paragraph (e)(2)(i) or (e)(2)(ii) of this section.

(B) *Deemed satisfaction of timing requirement*. The timing requirement of this paragraph (b)(3)(iii) is satisfied if at least 30 days (and no more than 90 days) before the beginning of each plan year, the notice is given to each employee covered under the automatic contribution arrangement for the plan year. In the case of an employee who does not receive the notice within the period described in the previous sentence because the employee becomes eligible to make a cash or deferred election (or becomes covered under the automatic contribution arrangement as a result of a change in employment status) after the 90th day before the beginning of the plan year, the timing requirement is deemed to be satisfied if the notice is provided no more than 90 days before the employee becomes eligible to make a cash or deferred election (or becomes covered under the automatic contribution arrangement as a result of a change in employment status), and no later than the date that affords the employee a reasonable period of time after receipt of the notice to make the election described under paragraph (e)(2)(i) or (e)(2)(ii) of this section. If it is not practicable for the notice to be provided on or before the date specified in the plan that an employee becomes eligible to make a cash or deferred election, the notice will nonetheless be treated as provided timely if it is provided as soon as practicable after that date and the employee is permitted to elect to defer from all types of compensation that may be deferred under the plan earned beginning on that date.

(c) *Permissible withdrawal*—(1) *In general*. If the plan so provides, any

employee who has default elective contributions made under the eligible automatic contribution arrangement may elect to make a withdrawal of such contributions (and earnings attributable thereto) in accordance with the requirements of this paragraph (c). An applicable employer plan that includes an eligible automatic contribution arrangement will not fail to satisfy the prohibition on in-service withdrawals under section 401(k)(2)(B), 403(b)(7), 403(b)(11), or 457(d)(1) merely because it permits withdrawals that satisfy the timing requirement of paragraph (c)(2) of this section and the amount requirement of paragraph (c)(3) of this section.

(2) *Timing*—(i) *Last date to make election.* A covered employee's election to withdraw default elective contributions must be made no later than 90 days after the date of the first default elective contribution under the eligible automatic contribution arrangement and must be effective no later than the date set forth in paragraph (c)(2)(iii) of this section. A plan is permitted to set an earlier deadline for making this election, but if a plan provides that a covered employee may withdraw default elective contributions, then the election period for the covered employee must be at least 30 days.

(ii) *Determination of date of first default elective contribution.* For purposes of this paragraph (c)(2), the date of the first default elective contribution is the date that the compensation that is subject to the cash or deferred election would otherwise have been included in gross income.

(iii) *Latest effective date of the election.* The effective date of an election described in this paragraph (c)(2) cannot be after the earlier of—

(A) The pay date for the second payroll period that begins after the date the election is made; and

(B) The first pay date that occurs at least 30 days after the election is made.

(iv) *Special rules*—(A) *Treatment of periods without default elective contributions.* For purposes of determining the date of the first default elective contribution under the eligible automatic contribution arrangement, a plan is permitted to treat an employee who for an entire plan year did not have default elective contributions made under the eligible automatic contribution arrangement as if the employee had not had such contributions for any prior plan year as well.

(B) *Treatment relating to aggregation of arrangements.* The determination of whether an election is made no later than 90 days after the date of the first default elective contribution under the eligible automatic contribution arrangement must take into account any other eligible automatic contribution arrangement that is required to be aggregated with the eligible automatic contribution arrangement under the rules of paragraph (b)(2)(iii) of this section.

(3) *Amount and timing of distributions*—(i) *In general.* A distribution satisfies the requirement of this paragraph (c)(3) if the distribution is equal to the amount of default elective contributions made under the eligible automatic contribution arrangement through the effective date of the election described in paragraph (c)(2) of this section (adjusted for allocable gains and losses to the date of distribution). If default elective contributions are separately accounted for in the participant's account, the amount of the distribution will be the total amount in that account. However, if default elective contributions are not separately accounted for under the plan, the amount of the allocable gains and losses will be determined under rules similar to those provided under § 1.401(k)–2(b)(2)(iv) for the distribution of excess contributions.

(ii) *Fees.* The distribution amount as determined under this paragraph (c)(3) may be reduced by any generally applicable fees. However, the plan may not charge a higher fee for a distribution under section 414(w) than would apply to any other distributions of cash.

(iii) *Date of distribution.* The distribution must be made in accordance with the plan's ordinary timing procedures for processing distributions and making distributions.

(d) *Consequences of the withdrawal*—(1) *Income tax consequences*—(i) *Year of inclusion.* The amount of the withdrawal is includible in the eligible employee's gross income for the taxable year in which the distribution is made. However, any portion of the distribution consisting of designated Roth contributions is not included in an employee's gross income a second time. The portion of the withdrawal that is treated as an investment in the contract is determined without regard to any plan contributions other than those distributed as a withdrawal of default elective contributions.

(ii) *No additional tax on early distributions from qualified retirement plans.* The withdrawal is not subject to the additional tax under section 72(t).

(iii) *Reporting.* The amount of the withdrawal is reported on Form 1099–R, ''Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.,'' as described in the applicable instructions.

(iv) *Disregarded for purposes of section 402(g).* The amount of the withdrawal is not taken into account in determining the limitation on elective deferrals under section 402(g).

(2) *Forfeiture of matching contributions.* In the case of any withdrawal made under paragraph (c) of this section, employer matching contributions with respect to the amount withdrawn that have been allocated to the participant's account (adjusted for allocable gains and losses) must be forfeited. A plan is permitted to provide that employer matching contributions will not be made with respect to any withdrawal made under paragraph (c) of this section if the withdrawal has been made prior to the date as of which the match would otherwise be allocated.

(3) *Consent rules.* A withdrawal made under paragraph (c) of this section may be made without regard to any notice or consent otherwise required under section 401(a)(11) or 417.

(e) *Definitions.* Unless indicated otherwise, the following definitions apply for purposes of section 414(w) and this section.

(1) *Applicable employer plan.* An applicable employer plan means a plan that—

(i) Is qualified under section 401(a);

(ii) Satisfies the requirements of section 403(b);

(iii) Is a section 457(b) eligible governmental plan described in § 1.457–2(f);

(iv) Is a simplified employee pension the terms of which provide for a salary reduction arrangement described in section 408(k)(6); or

(v) Is a SIMPLE described in section 408(p).

(2) *Automatic contribution arrangement.* An automatic contribution arrangement means an arrangement that provides for a cash or deferred election and which specifies that, in the absence of a covered employee's affirmative election, a default election applies under which the employee is treated as having elected to have default elective contributions made on his or her behalf under the plan. The default election begins to apply with respect to an eligible employee no earlier than a reasonable period of time after receipt of the notice describing the automatic contribution arrangement. This default election ceases to apply with respect to an eligible employee for periods of time with respect to which the employee has an affirmative election that is currently in effect to—

(i) Not have any default elective contributions made on his or her behalf; or

(ii) Have contributions made in a different amount or percentage of compensation.

(3) *Covered employee.* Covered employee means an employee who is covered under the automatic contribution arrangement, determined under the terms of the plan. A plan must provide whether an employee who makes an affirmative election remains a covered employee. If a plan provides that an employee who makes an affirmative election described in paragraph (e)(2)(i) or (e)(2)(ii) of this section remains a covered employee, then the employee must continue to receive the notice described in paragraph (b)(3) of this section and the plan may be eligible for the excise tax relief with respect to excess amounts distributed within 6 months after the end of the plan year under section 4979(f)(1). Such an employee will also have the default election reapply if the plan provides that the employee's prior affirmative election no longer remains in effect and the employee does not make a new affirmative election.

(4) *Default elective contributions.* Default elective contributions means the contributions that are made at a specified level or amount under an automatic contribution arrangement in the absence of a covered employee's affirmative election that are—

(i) Contributions described in section 402(g)(3); or

(ii) Contributions made to an eligible governmental plan within the meaning of § 1.457–2(f) that would be elective contributions if they were made under a qualified plan.

(f) *Effective/applicability date*—(1) *Statutory effective date.* Section 414(w) applies to plan years beginning on or after January 1, 2008.

(2) *Regulatory effective date.* This section applies to plan years beginning on or after January 1, 2010. For plan years that begin in 2008, a plan must operate in accordance with a good faith interpretation of section 414(w). For this purpose, a plan that operates in accordance with this section will be treated as operating in accordance with a good faith interpretation of section 414(w).

PART 54—PENSION EXCISE TAXES

■ **Par. 14.** The authority citation for part 54 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 15.** Section 54.4979–1, paragraph (c)(1) is revised to read as follows:

§ 54.4979–1 Excise tax on certain excess contributions and excess aggregate contributions.

* * * * *

(c) *No tax when excess distributed within 2½ months after close of year or additional employer contributions made*—(1) *General rule.* No tax is imposed under this section on any excess contribution or excess aggregate contribution, as the case may be, to the extent the contribution (together with any income allocable thereto) is corrected before the close of the first 2½ months of the following plan year (6 months in the case of a plan that includes an eligible automatic contribution arrangement within the meaning of section 414(w)). The extension to 6 months applies to a distribution of excess contributions or excess aggregate contributions for a plan year beginning on or after January 1, 2010, only where all the eligible NHCEs and eligible HCEs (both as defined in § 1.401(k)–6 of this Chapter) are covered employees under an eligible automatic contribution arrangement within the meaning of section 414(w) for the entire plan year (or the portion of the plan year that the eligible NHCEs and eligible HCEs are eligible employees under the plan)). Qualified nonelective contributions and qualified matching contributions taken into account under § 1.401(k)–2(a)(6) of this Chapter or qualified nonelective contributions or elective contributions taken into account under § 1.401(m)–2(a)(6) of this Chapter for a plan year may permit a plan to avoid excess contributions or excess aggregate contributions, respectively, even if made after the close of the 2½ month (or 6 month) period for distributing excess contributions or excess aggregate contributions without the excise tax. See § 1.401(k)–2(b)(1)(i) and (5)(i) of this Chapter for methods to avoid excess contributions, and § 1.401(m)–2(b)(1)(i) of the Chapter for methods to avoid excess aggregate contributions.

* * * * *

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement,

Approved: January 16, 2009.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E9–3716 Filed 2–23–09; 8:45 am]

BILLING CODE 4830–01–P

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Revisions of Regulations Concerning Procedures for Electronic Filing; Correction

AGENCY: National Labor Relations Board.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the Summary and Supplementary Information to the Final Rule that was published in the **Federal Register** on Friday, January 30, 2009 (74 FR 5618) regarding the Board's amendment of regulations concerning the procedures for filing documents with the Agency electronically.

DATES: This correction is effective upon publication in the **Federal Register**, and is applicable on January 30, 2009.

FOR FURTHER INFORMATION CONTACT: Lester A. Heltzer, Executive Secretary, 202–273–1067.

SUPPLEMENTARY INFORMATION:

Background

The Final Rule that is the subject of this document applies to Section 102.114 of the Agency's Rules and Regulations.

Need for Correction

As published, the **SUMMARY** and **SUPPLEMENTARY INFORMATION** to the Final Rule contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the Final Rule, which was the subject of FR Doc. E9–1832, is corrected as follows:

1. On page 5619, column 1, in the Summary, the first paragraph of the column, last sentence in the paragraph the language ''If electronic service is not possible, the other party shall be notified by telephone of the substance of the transmitted document and a copy of the document shall be served personally, or by registered mail, certified mail, regular mail, or private delivery service, or, with the consent of the other party, by facsimile transmission.'' is corrected to read ''If service by e-mail is not possible, the e-filing party must call the other party to notify them of the substance of the e-filed document and then serve a copy of the document, no later than the next day, by personal service, by overnight delivery service, or, with permission of the party receiving the document, by facsimile transmission.''

2. On page 5619, column 2, in the Supplementary Information, second paragraph of the column, fifth to eleventh lines of the paragraph, the language ''the Board has now decided to allow parties to serve documents upon each other electronically, using e-mail, and to eliminate the expedited service requirements that have proven to be an unnecessary burden.'' is corrected to read ''the Board will now require that service of e-filed documents on other parties to a proceeding be effectuated by e-mail whenever possible.''

3. On page 5619, column 2, in the Supplementary Information, second paragraph of the column, third and fourth lines from the bottom of the paragraph, the language ''followed by service by traditional means,'' is corrected to read ''followed by expedited service,''.

Dated: February 19, 2009.

Lester A. Heltzer,

Executive Secretary.

[FR Doc. E9–3892 Filed 2–23–09; 8:45 am]

BILLING CODE 7545–01–P

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 633

RIN 0702–AA61

[Docket No. USA–2009–0004]

Individual Requests for Access or Amendment of CID Reports of Investigation

AGENCY: Department of the Army, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Army is amending its rule on Individual Requests for Access or Amendment of CID Reports of Investigation to correct the mailing address. The address for submitting requests for access to, or amendment of, USACIDC investigative reports has changed.

DATES: *Effective Date:* This rule is effective February 24, 2009.

FOR FURTHER INFORMATION CONTACT: SGM David K. Schumann, 703–806–0272, e-mail: *david.schumann@us.army.mil.*

SUPPLEMENTARY INFORMATION:

A. Background

In the July 27, 1979, issue of the **Federal Register** (44 FR 44156), the Department of the Army issued a final rule. This final rule corrects the mailing address for USACIDC. The U.S. Army Crime Records Center moved to Fort Belvoir in May 1995.

B. Regulatory Flexibility Act

The Department of the Army has determined that the Regulatory Flexibility Act does not apply because the rule change does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

C. Unfunded Mandates Reform Act

The Department of the Army has determined that the Unfunded Mandates Reform Act does not apply because the rule change does not include a mandate that may result in estimated costs to State, local or tribal governments in the aggregate, or the private sector, of $100 million or more.

D. National Environmental Policy Act

The Department of the Army has determined that the National Environmental Policy Act does not apply because the rule change does not have an adverse impact on the environment.

E. Paperwork Reduction Act

The Department of the Army has determined that the Paperwork Reduction Act does not apply because the rule change does not involve collection of information from the public.

F. Executive Order 12630 (Government Actions and Interference With Constitutionally Protected Property Rights)

The Department of the Army has determined that Executive Order 12630 does not apply because the rule change does not impair private property rights.

G. Executive Order 12866 (Regulatory Planning and Review)

The Department of the Army has determined that according to the criteria defined in Executive Order 12866 this rule change is not a significant regulatory action.

H. Executive Order 13045 (Protection of Children From Environmental Health Risk and Safety Risks)

The Department of the Army has determined that according to the criteria defined in Executive Order 13045 that Executive Order does not apply.

I. Executive Order 13132 (Federalism)

The Department of the Army has determined that according to the criteria defined in Executive Order 13132 that Executive Order does not apply because the rule change will not have a substantial 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.

Phillip J. McGuire,

Director, U.S. Army Crime Records Center.

List of Subjects in 32 CFR Part 633

Freedom of information, Investigation, Privacy.

■ For reasons stated in the preamble 32 CFR part 633 is amended as follows:

PART 633—INDIVIDUAL REQUESTS FOR ACCESS OR AMENDMENT OF CID REPORTS OF INVESTIGATION

■ 1. The authority citation for part 633 continues to read as follows:

Authority: Sec. 3012, 70A Stat. 157; 10 U.S.C. 3012.

■ 2. Section 633.13 is revised to read as follows:

§ 633.13 Submission of requests.

Requests for access to, or amendment of, USACIDC investigative reports will be forwarded to the Director, U.S. Army Crime Records Center (CICR–FP), 6010 6th Street, Fort Belvoir, VA 22060–5585.

[FR Doc. E9–3883 Filed 2–23–09; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910091344–9056–02]

RIN 0648–XN42

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is reopening directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA). This action is necessary to fully use the A season allowance of the 2009 total allowable catch (TAC) of pollock specified for Statistical Area 610 of the GOA.

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

1200 hrs, A.l.t., March 10, 2009. Comments must be received at the following address no later than 4:30 p.m., A.l.t., March 6, 2009.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by ''RIN 0648–XN42,'' by any one of the following methods:

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

• Mail: P. O. Box 21668, Juneau, AK 99802.

• Fax: (907) 586–7557.

• Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

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

NMFS will accept anonymous comments. Enter ''N/A'' in the required fields, if you wish to remain anonymous. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

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

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

NMFS closed the directed fishery for pollock in Statistical Area 610 of the GOA under § 679.20(d)(1)(iii) on January 22, 2009 (74 FR 5625, January 30, 2009).

NMFS has determined that approximately 3,105 mt of pollock remain in the directed fishing allowance in Statistical Area 610 of the GOA. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C) and (a)(2)(iii)(D), and to fully utilize the A season allowance of the 2009 TAC of pollock in Statistical Area 610, NMFS is terminating the previous closure and is reopening directed fishing for pollock in Statistical Area 610 of the GOA.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of pollock in Statistical Area 610 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 13, 2009. The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the TAC of pollock in Statistical Area 610 of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until March 6, 2009.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: February 17, 2009.

Emily H. Menashes,

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

[FR Doc. E9–3919 Filed 2–19–09; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0810141351–9087–02]

RIN 0648–XN38

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closures and openings.

SUMMARY: NMFS is announcing the opening and closing dates of the Atka mackerel directed fisheries within the harvest limit area (HLA) in Statistical Area 542. This action is necessary to fully use the 2009 A season HLA limits of Atka mackerel in Statistical Area 542 of the Bering Sea and Aleutian Islands.

DATES: The effective dates are provided in Table 1 under the **SUPPLEMENTARY INFORMATION** section of this temporary action. Comments must be received at the following address no later than 4:30 p.m., A.l.t., March 6, 2009.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648–XN38, by any one of the following methods:

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

• Mail: P. O. Box 21668, Juneau, AK 99802.

• Fax: (907) 586–7557.

• Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

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

NMFS will accept anonymous comments. Enter ''N/A'' in the required fields, if you wish to remain anonymous. Attachments to electronic comments will be accepted in Microsoft

Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

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

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

In accordance with the final 2009 and 2010 harvest specifications for groundfish in the BSAI (74 FR 7359, February 17, 2009), and § 679.20(a)(8)(ii)(C)(*1*), the HLA limits of the A season allowance of the 2009 TAC in area 542 is 5,039 metric tons (mt) for vessels participating in the Amendment 80 limited access fishery and 3,314 mt for Amendment 80 cooperative.

NMFS previously announced the opening and closing dates of the first and second directed fisheries within the HLA in Statistical Areas 542 and 543 (74 FR 5625, January 30, 2009). NMFS has determined that approximately 1,930 mt of Atka mackerel remain in the A season HLA limit in area 542 for vessels participating in the Amendment 80 limited access fishery. NMFS has also determined that approximately 2,367 mt of Atka mackerel remain in the A season HLA limit in area 542 for vessels participating in the Amendment 80 cooperative. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C) and (a)(2)(iii)(D), and to fully utilize the A season HLA limits of Atka mackerel in area 542, NMFS is terminating the previous closures and is opening directed fishing for Atka mackerel in the HLA of area 542 in accordance with the periods listed under Table 1 of this notice.

In accordance with § 679.20(a)(8)(iii)(E), the Regional Administrator has established the closure dates of the Atka mackerel directed fisheries in the HLA for area 542 based on the amount of the harvest limit and the estimated fishing capacity of the vessels assigned to the respective fisheries. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the HLA of area 542 in accordance with the dates and times listed in Table 1 of this notice.

TABLE 1. EFFECTIVE DATES AND TIMES

Action	Area	Effective Date[1]	
		From	To
Opening the directed fishery in the HLA for the Amendment 80 limited access vessels authorized to participate in the second HLA fishery in Area 542	542	1200 hrs, February 18, 2009	1200 hrs, February 27, 2009
Opening the directed fishery in the HLA for the Amendment 80 cooperative vessel authorized to participate in the second HLA fishery in Area 542	542	1200 hrs, February 18, 2009	1200 hrs, February 27, 2009

[1]Alaska local time

After the effective dates of these closures, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the the opening and closing of the fisheries for the HLA limits established for area 542 pursuant to the 2009 Atka mackerel TAC. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 14, 2009. The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until March 6, 2009.

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

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

Dated: February 19, 2009.

James P. Burgess,

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

[FR Doc. E9–3920 Filed 2–19–09; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 35
Tuesday, February 24, 2009

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–1230; Airspace Docket No. 08–ACE–1]

Proposed Amendment of Class E Airspace; Fulton, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend Class E airspace at Fulton, MO. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Elton Hensley Memorial Airport, Fulton, MO. This action also would adjust the geographic coordinates of Elton Hensley Memorial Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) aircraft operations at Elton Hensley Memorial Airport.

DATES: 0901 UTC. Comments must be received on or before April 10, 2009.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2008–1230/Airspace Docket No. 08–ACE–1, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76193–0530; telephone: (817) 321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2008–1230/Airspace Docket No. 08–ACE–1.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by adding additional Class E airspace for SIAPs operations at Elton Hensley Memorial Airport, Fulton, MO, and adjusting the geographic coordinates of the airport. The area would be depicted on appropriate aeronautical charts.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9S, dated October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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 U.S. Code. Subtitle 1, 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 would add additional controlled airspace at Elton Hensley Memorial Airport, Fulton, MO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIRWAYS; 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 7400.9S, Airspace Designations and Reporting Points, dated October 3, 2008, and effective October 31, 2008, is amended as follows:

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

* * * * *

ACE MO E5 Fulton, MO [Amended]

Fulton, Elton Hensley Memorial Airport, MO
(Lat. 38°50′17″ N., long. 92°00′09″ W.)
Guthrie NDB (FTT)
(Lat. 38°50′34″ N., long. 92°00′17″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Elton Hensley Memorial Airport and within 2.6 miles each side of the 069° bearing from the Guthrie NDB extending from the 6.5-mile radius of the airport to 7 miles northeast of the NDB, and within 2.6 miles each side of the 229° bearing from the NDB extending from the 6.5-mile radius of the airport to 7 miles southwest of the NDB.

* * * * *

Issued in Fort Worth, TX on February 12, 2009.

Roger M. Trevino,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–3819 Filed 2–23–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–1139; Airspace Docket No. 08–ASW–23]

Proposed Amendment of Class E Airspace; Coleman, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Coleman, TX. Controlled airspace is necessary to accommodate Standard Instrument Approach Procedures (SIAPs) at Coleman Municipal Airport, Coleman, TX. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) aircraft operations at Coleman Municipal Airport.

DATE: 0901 UTC. Comments must be received on or before April 10, 2009.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2008–1139/Airspace Docket No. 08–ASW–23, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76193–0530; telephone: (817) 321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2008–1139/Airspace Docket No. 08–ASW–23.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by amending Class E airspace at Coleman Municipal Airport, Coleman, TX. The Coleman RBN has been removed making it necessary to realign controlled airspace for existing SIAPs operations at the airport. The area would be depicted on appropriate aeronautical charts.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9S, dated October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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 U.S. Code. Subtitle 1, 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 would add additional controlled airspace at Coleman Municipal Airport, Coleman, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIRWAYS; 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 7400.9S, Airspace Designations and Reporting Points, dated October 3, 2008, and effective October 31, 2008, is amended as follows:

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

* * * * *

ASW TX E5 Coleman, TX [Amended]

Coleman Municipal Airport, TX

(Lat. 31°50′32″ N., long. 99°24′14″ W.)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Coleman Municipal Airport.

* * * * *

Issued in Fort Worth, TX on February 12, 2009.

Roger M. Trevino,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–3815 Filed 2–23–09; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

RIN 3038–AC38

Commodity Pool Operator Periodic Account Statements and Annual Financial Reports

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is proposing to amend its regulations governing the periodic account statements that commodity pool operators (''CPOs'') are required to provide to commodity pool participants and the annual financial reports that CPOs are required to provide to commodity pool participants and file with the National Futures Association (''NFA''). The proposed amendments would: Specify detailed information that must be included in the periodic account statements and annual reports for commodity pools with more than one series or class of ownership interest; clarify that the periodic account statements must disclose either the net asset value per outstanding participation unit in the pool, or the total value of a participant's interest or share in the pool; extend the time period for filing and distributing annual reports of commodity pools that invest in other funds; codify existing Commission staff interpretations regarding the proper accounting treatment and financial statement presentation of certain income and expense items in the periodic account statements and annual reports; streamline annual reporting requirements for pools ceasing operation; and clarify and update several other requirements for periodic and annual reports prepared and distributed by CPOs.

DATES: Comments must be received on or before March 26, 2009.

ADDRESSES: You may submit comments, identified by RIN 3038–AC38 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov/search/index.jsp.* Follow the instructions for submitting comments.
- *E-mail: secretary@cftc.gov.* Include ''Commodity Pool Operator Periodic and Annual Reports'' in the subject line of the message.
- *Fax:* (202) 418–5521.
- *Mail:* Send to David Stawick, Secretary, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.
- *Courier:* Same as Mail above.

All comments received will be posted without change to *http://www.cftc.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Eileen R. Chotiner, Futures Trading Specialist, at (202) 418–5467, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Electronic mail: *echotiner@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Commission Regulation 4.22(a) [1] requires a registered CPO to distribute an account statement to each participant in each commodity pool that it operates within 30 days of the end of the reporting period.[2] Regulation 4.22(c) requires a CPO to file with NFA, and to provide to each participant, an annual financial report, audited by an independent public accountant, for each commodity pool that it operates within 90 days of the end of the pool's fiscal year or the permanent cessation of the pool's trading.[3]

CPOs operating pools offered solely to qualified eligible persons (''QEPs'') pursuant to Regulation 4.7 may claim relief from certain reporting requirements.[4] In this regard, a CPO that has claimed an exemption from certain regulatory requirements pursuant to Regulation 4.7 must distribute periodic account statements to each participant of an exempt pool at least quarterly, and also must file with NFA and distribute to participants in the exempt pool an annual report within 90 days of the end

[1] The regulations of the Commission cited in this release may be found at 17 CFR Ch. I (2008).

[2] Pursuant to Regulation 4.22(b), account statements must be provided monthly for pools with net asset values greater than $500,000 at the beginning of the pool's fiscal year; otherwise, account statements may be provided quarterly.

[3] NFA is a registered futures association pursuant to Section 17 of the Commodity Exchange Act (''Act''), 7 U.S.C. 21.

[4] Regulation 4.7(a) defines ''qualified eligible person'' to include participants that meet certain eligibility criteria regarding their net worth, income, and investments.

of the pool's fiscal year or the permanent cessation of the pool's trading. Annual reports for Regulation 4.7 exempt pools are not required to be audited by an independent public accountant.[5]

II. Proposed Changes to Periodic Account Statements and Annual Financial Reports

A. Periodic Account Statements for Regulation 4.7—Exempt Pools

Regulation 4.7(b)(2) requires the CPO of a Regulation 4.7-exempt commodity pool to provide each participant in the pool with an account statement that must indicate: (1) The net asset value of the exempt pool as of the end of the reporting period; (2) the change in net asset value of the exempt pool from the end of the previous reporting period; and (3) the net asset value per outstanding unit of participation in the exempt pool as of the end of the reporting period. The account statement must be prepared in accordance with generally accepted accounting principles (''GAAP''), signed and affirmed by the CPO, and distributed to pool participants no less frequently than quarterly within 30 calendar days of the end of the reporting period.

The Commission is proposing to amend Regulation 4.7(b)(2) to clarify that the periodic account statement provided to each pool participant must disclose either the net asset value per outstanding participation unit, or the total value of the participant's interest or share, in the commodity pool as of the end of the reporting period. The proposal is intended to ensure that pool participants receive sufficient information to determine the value of their investments in the commodity pool from the periodic account statement. Furthermore, the proposal is consistent with the comparable provision of Regulation 4.22(a) for pools that are not Regulation 4.7-exempt, which specifies that either the net asset value per outstanding participation unit or the total value of the participant's interest or share in the pool be included in an account statement.

B. Series Pools and Pools With Multiple Classes of Ownership Interests

A commodity pool may contain an organizational structure that includes more than one series or class of ownership interest. Different ownership series or classes may exist due to differences in fees and expenses, currency denomination, trading, cash management strategies, and other aspects of the operation of the pool.

GAAP provides guidance regarding the presentation of financial statements for series funds[6] and for investment funds with multiple ownership classes,[7] and pool financial statements prepared pursuant to both Regulation 4.22(c) and Regulation 4.7(b)(3) must be in accordance with GAAP. Commission staff has received many questions from CPOs, their attorneys and accountants, and NFA regarding the proper presentation of periodic account statements and annual financial reports for series funds and multi-class pools. Therefore, the Commission is proposing to amend Regulations 4.7(b)(2) and 4.22(a) to specify that, for series funds structured with a limitation on liability among the different series, the periodic account statement may include only the information for the series being reported, although additional information on other series may be provided; however, for other series funds and for multi-class funds, net asset value and other information required by the regulations must be presented for both the pool as a whole as well as for each series or class of ownership interest.

The Commission also is proposing to amend Regulations 4.7(b)(3) and 4.22(c) to clarify that, for series funds structured with a limitation on liability among the different series, the annual report may include only the information for the series being reported. For both periodic account statements and annual financial reports, CPOs of series funds with a limitation on liability among the different series are not precluded by these amendments from providing financial information to participants for other series or classes of the pool.

C. Changes to Extension Provisions Under Regulation 4.22(f)

Regulations 4.7(b)(3) and 4.22(c) require a CPO to provide to each participant in each commodity pool that the CPO operates an annual report for the commodity pool within 90 calendar days of the end of the pool's fiscal year. The CPO is further required to submit a copy of the annual report electronically to NFA.

Regulation 4.22(f)(2) permits a CPO of a commodity pool that invests in other funds (referred to as a ''fund of funds'') to claim up to an additional 60 days to distribute the pool's annual report to pool participants and to file a copy with NFA. CPOs may claim the Regulation 4.22(f)(2) fund of funds 60-day extension by filing with NFA an initial notice, containing specified representations, in advance of the annual report's due date for the first year the extension is claimed. In subsequent years, the CPO may confirm that the circumstances necessitating the relief continue to apply by restating certain representations in a statement filed at the same time as the pool's annual report.

Regulation 4.22(f)(2) currently is applicable only to CPOs that distribute annual reports that are audited by independent public accountants. CPOs of commodity pools that are permitted to distribute unaudited annual financial reports to participants pursuant to Regulation 4.7(b)(3) may request from NFA up to a 90-day extension of the filing deadline under Regulation 4.22(f)(1).

In adopting Regulation 4.22(f)(2), the Commission anticipated, based upon its experience, that a substantial majority of the CPOs of funds of funds would be able to distribute to the participants and to file with NFA the pools' annual reports within 150 days of the end of the respective commodity pool's fiscal year.[8] The Commission further noted that CPOs that could not meet the 150-day filing timeframe under Regulation 4.22(f)(2) could continue to request an extension of time to distribute and to file the pools' annual reports pursuant to Regulation 4.22(f)(1).[9]

In recent years, however, the number of CPOs that have requested additional extensions under Regulation 4.22(f)(1) after having claimed the 60-day extension under Regulation 4.22(f)(2) has increased significantly. According to data provided by NFA for pool annual reports with a fiscal year ending in 2006, CPOs claimed the 60-day fund of funds extension under Regulation 4.22(f)(2) for over 650 commodity pools. Subsequently, CPOs of approximately 50 percent of such pools filed requests with NFA for an additional extension of up to 30 calendar days pursuant to Regulation 4.22(f)(1). Similarly, for

[5] Regulation 4.7(b)(3) permits the CPO of a Regulation 4.7-qualifying pool to claim exemption from the specific annual report content requirements and annual report certification requirements, respectively, of Regulations 4.22(c) and (d).

[6] American Institute of Certified Public Accountants (''AICPA'') Audit and Accounting Guide, Investment Companies paragraph 7.03.

[7] AICPA Audit and Accounting Guide, Investment Companies, Chapter 5, *Complex Capital Structures*.

[8] 65 FR 81333 at 81334 (December 26, 2000).

[9] However, the CPO of a commodity pool that operated as a fund of funds and claimed an automatic extension of 60 days pursuant to Regulation 4.22(f)(2) for the filing of the pool's annual report would be limited to requesting no more than an additional 30-day extension under Regulation 4.22(f)(1). Thus, under Regulations 4.22(f)(1) and (2), all pool annual reports must be distributed to pool participants and filed with NFA within 180 days of the end of the pool's fiscal year.

pools with fiscal years ending in 2007, CPOs claimed the 60-day filing extension under Regulation 4.22(f)(2) for over 500 commodity pools. Subsequently, CPOs of approximately 45 percent of such pools filed requests with NFA for an additional extension of up to 30 calendar days under Regulation 4.22(f)(1).

To address this issue, the Commission is proposing to extend from 60 to 90 days the maximum amount of additional time that a CPO that operates a commodity pool that invests in other funds may claim under Regulation 4.22(f)(2). Therefore, under the proposal, annual financial reports for funds of funds may be distributed to pool participants and filed with NFA a maximum of 180 days from the end of a qualifying pool's fiscal year. This amendment would eliminate the need for CPOs to file an additional request under Regulation 4.22(f)(1), and also would reduce the administrative burden to NFA of processing these additional requests. The Commission, however, expects CPOs to distribute pool annual reports to participants as soon after the end of the pool's fiscal year-end as possible, notwithstanding the availability of the additional extension.[10]

The 180-day timeframe for CPOs of funds of funds to prepare and to distribute pool annual reports also would be consistent with the timeframe within which registered investment advisers distribute annual reports to investors in funds of funds under the Securities and Exchange Commission's (''SEC's'') custody rule.[11] Registered investment advisers are not required to comply with certain provisions of the SEC's custody rule with respect to the accounts of limited partnerships, limited liability companies, or other pooled investment vehicles that are subject to audit at least annually and for which the audited financial statements are distributed to partners, members or other beneficial owners within 120 days of the fund's fiscal year-end or, in the case of a fund of funds, within 180 days of the end of its fiscal year.

The Commission also is proposing to extend the application of Regulation 4.22(f)(2) to CPOs that operate Regulation 4.7-exempt commodity pools that do not prepare audited financial statements certified by independent public accountants. As previously noted, a CPO operating a pool that meets the criteria of Regulation 4.7 may claim exemption from certain annual reporting requirements, including the requirement of Regulation 4.22(d) that the financial statements contained in the annual report be audited by an independent public accountant.

Regulation 4.22(f)(2) was adopted, in large part, to address difficulties that CPOs experience in obtaining timely information about their pools' investments in other funds in order for the pools' public accountants to prepare audited financial statements. Annual reports that are not audited, however, are still required to be prepared in accordance with GAAP. The CPOs of unaudited funds of funds have explained that they often experience difficulties in obtaining the information necessary from investee funds to complete the preparation of the pools' financial statements by the time specified in Regulation 4.22(c). In order to complete the financial statements of the pools, the CPOs need information establishing the value of the pools' material investments from the investee funds. These investments may be in a number of investee funds, such as other commodity pools, securities funds, or hedge funds, both domestic and offshore. The information that the CPOs require frequently is unavailable until the investee funds complete their own audited financial statements. Thus, in many cases, the CPOs cannot obtain the information they require about the investee funds in time for the annual financial reports of the pools to be prepared and distributed by the due date. Under the proposed amendment, CPOs of funds of funds for which unaudited annual reports are prepared also would be able to claim the extension under Regulation 4.22(f)(2).

In addition, the Commission is proposing to remove the requirement that a CPO that has filed a claim of extension under Regulation 4.22(f)(2) for a particular pool must restate certain representations in a statement filed with the pool's annual reports in subsequent years. Instead, having filed the initial claim, the CPO will be presumed to operate the pool as a fund of funds and otherwise continue to qualify for the automatic extension; however, if the pool no longer operates as a fund of funds, then its CPO must provide NFA with notice of the change in the pool's status and must file the pool's annual report within 90 days of the pool's fiscal year-end, as required by Regulation 4.22(c).

If the proposed extension of the time period under Regulation 4.22(f)(2) is adopted, CPOs that have claimed the fund of funds extension will not need to file new notices with NFA in order to claim the additional 30 days to file and to distribute their qualifying pools' annual reports. As noted previously, however, the Commission expects CPOs to file and to distribute their pools' annual reports as soon as possible after the pools' fiscal year-ends to ensure that participants obtain information that is as current as possible.

D. Streamlined Filing Procedures for Liquidating Pools

Regulation 4.22(c) requires a CPO of a commodity pool that has ceased operation to distribute a final annual report to commodity pool participants and to file a copy with NFA within 90 days of the pool's permanent cessation of trading, but in no event longer than 90 days after funds are returned to pool participants. Due to confusion created by the reference in Regulation 4.22(c) to two possible timeframes for filing a final annual report, the Commission is proposing to amend this regulation to specify that the final annual report must be filed no later than 90 days after the pool ceases trading. A CPO that has not distributed all funds to participants by the date that the report is issued must provide information about the return of funds to pool participants, including an estimate of the value of funds remaining to be distributed and the anticipated timeframe of when those funds are expected to be returned. When the remaining funds are returned to participants, the CPO should send a notice to all participants and to NFA.

The Commission further acknowledges that the cost of preparing audited financial statements, which may reduce significantly the amount of funds available to return to participants, particularly where the pool has ceased operation due to material trading and investment losses, may exceed the benefits to the pool participants. In these situations, the most significant information for participants is disclosure of the factors that led to the decline in the pool's value, the fees and expenses attributable to the pool leading up to the liquidation, the manner in which the pool's operations were concluded, and when and how much of the participants' investment has been, or will be, returned.

The Commission therefore is proposing to simplify the reporting requirements for CPOs of pools ceasing operation in order to assist them in providing participants with the most timely and meaningful information.

[10] In this regard, the Commission would expect that pool annual financial reports would be issued to the pool's participants shortly after the completion of the reports by the independent public accountant or, for unaudited annual financial reports, by the CPO.

[11] 17 CFR 275.206(4)–2(b)(3). ''Fund of funds'' is defined for purposes of the custody rule at 275.206(4)–2(b)(3)(c)(4).

This information would include a Statement of Operations and a Statement of Changes in Net Assets since the last fiscal year-end annual report, an explanation of the winding down of the pool's operations, and a written disclosure that all interests in, and assets of, the pool have been redeemed, distributed, or transferred on behalf of the participants. If the report would otherwise be required to be audited pursuant to Regulation 4.22(d), the CPO may prepare an unaudited annual report provided that the CPO obtains from all participants, and files with NFA, written waivers of each of the participant's rights to receive an audited annual report. This latter provision is consistent with case-by-case exemptions that Commission staff has provided to CPOs of pools that have ceased operation.

In order to clarify that the requirement to file an annual financial report upon the permanent cessation of trading applies to Regulation 4.7-exempt pools, the Commission proposes to add to the introductory text of Regulation 4.7(b)(3) the language that appears in the introductory text of Regulation 4.22(c) to this effect, subject to the clarification proposed above. Commission staff has confirmed that Regulation 4.7-exempt pools are subject to the same requirements as non-exempt pools with respect to their final annual reports in the annual report guidance letter issued to CPOs each year by Commission staff.[12]

E. Codifying Existing Policies Regarding Special Allocations of Ownership Equity, Unrealized Gains and Losses, and Investee Funds' Income and Expenses

1. Special Allocations of Ownership Interests

CFTC Interpretative Letter No. 94–3, Special Allocations of Investment Partnership Equity,[13] describes the procedures for reporting in a pool's annual financial report special allocations of partnership equity from limited partners to the general partner.[14] These special allocations must be recognized in the financial statements in the same reporting period as the net income, interest income, or other basis of computation of the special allocation; classified in the Statement of Operations as either an expense or a special allocation of net income; separately reported in the Statement of Partnership Equity; and deducted in the computation of the GAAP-required disclosures.

At the time Interpretative Letter 94–3 was issued, no specific accounting standard existed to address special allocations of partnership equity. Subsequently, the AICPA issued the Audit and Accounting Guide, *Audits of Investment Companies*, which contains a provision stating that special allocations of investment partnership equity can be accounted for in one of two ways. Pursuant to the Audit and Accounting Guide, the amounts of any special allocations may be presented in either the Statement of Operations or the Statement of Changes in Partners' Capital in accordance with the partnership agreement, and the method of computing such payments or allocations should be described in the notes to the financial statements.[15]

Commission staff has consistently taken the position that requiring a CPO to report a special allocation in a pool's Statement of Operations provides the pool's participants with more complete information of the impact of a distribution of a special allocation to their respective capital accounts, notwithstanding the flexibility provided by the Audit and Accounting Guide.[16] The Commission, therefore, is proposing to amend Regulation 4.22(e) to incorporate the requirements currently detailed in Interpretative Letter No. 94–3. CPOs may continue to use the sample financial statement reporting formats set forth in the Interpretative Letter.

2. Combining Gains and Losses on Regulated Futures Transactions With Gains and Losses on Non-CFTC Regulated Transactions in the Statement of Operations

Regulation 4.22(e) provides that a commodity pool's Statement of Operations must itemize the pool's total realized net gain or loss from commodity interest trading and the change in unrealized net gain or loss in commodity interest positions during the pool's fiscal year. Regulation 4.22(e) does not provide explicitly for separate disclosure on the Statement of Operations of realized and unrealized gains and losses on non-commodity interest trading activities.

In 1995, Commission staff issued an interpretation of the requirements for itemization of realized and unrealized gains or losses in the commodity pool's Statement of Operations.[17] The interpretation noted that trading is often done by commodity pools using strategies that combine financial instruments from different types of markets, and, to reflect meaningfully the results of such trading strategies, permits the separate reporting of realized and unrealized gains and losses that combines the results of commodity interest trading and non-commodity interest trading that are part of the same trading strategy. The interpretation further noted that reporting realized and unrealized gains and/or losses for commodity interest transactions separately from other financial instruments that are part of the pool's trading strategy may be misleading to pool participants as the separate reporting may distort the real results of the pool's trading strategies.

In order to formally establish staff's interpretation, the Commission is proposing to amend Regulation 4.22(e) to state that realized and unrealized gains and losses on regulated commodities transactions presented in the Statement of Operations of a commodity pool may be combined with realized or unrealized gains and losses, respectively, from non-commodity interest trading, provided that the gains and losses to be combined are part of a related trading strategy. Furthermore, gains or losses from foreign currency translations and conversions also may be included with the related trading strategy, or reported separately.[18]

3. Fees and Expenses of Investee Funds

Commission Regulation 4.22(e) requires a CPO to itemize in the Statement of Operations brokerage commissions, management fees, advisory fees, incentive fees, interest income and expense, total realized net gain or loss from commodity interest trading, and change in unrealized net gain or loss on commodity interest positions during the pool's fiscal year directly incurred by the pool during the course of the reporting period. A purpose of this provision is to ensure

[12] CPO guidance letters issued by the Commission's Division of Clearing and Intermediary Oversight (''DCIO'') are available at *http://www.cftc.gov/industryoversight/intermediaries/guidancecporeports.html.*

[13] Available at *http://www.cftc.gov/tm/tm94-03.htm.*

[14] ''Special allocations'' are generally distributions of profits or transfers of equity that exceed a class's proportionate share of profits based upon the class's proportionate capital contribution to the pool. As noted in Interpretative Letter No. 94–3, a partnership agreement may often provide that a special allocation is to be made for the advisory services provided by the general partner, and that the amount of the allocation is based upon a percentage of the partnership's net income.

[15] AICPA Audit and Accounting Guide, Investment Companies, paragraph 7.49.

[16] This position has been stated in DCIO's annual CPO guidance letters.

[17] CFTC Letter No. 95–52, Comm. Fut. L. Rep. (CCH) ¶ 26,421.

[18] The proposed treatment of gains or losses from foreign currency translation is consistent with AICPA Audit and Accounting Guide, Audits of Investment Companies, paragraphs 7.51 and 7.54.

that pool participants receive a detailed listing of the fees and other expenses incurred by the pool for the reporting period.

For over a decade, consistent with the policy of detailed disclosure of material fees and expenses set forth in Regulation 4.22(e), Commission staff has encouraged CPOs to disclose separately in pool annual reports income received from, and fees paid to, investee pools.[19] Specifically, CPOs were encouraged to disclose in the notes to the financial statements the amounts of management and incentive fees and expenses indirectly incurred as a result of investing in any fund where the investment in the fund exceeded five percent of the pool's net asset value. Commission staff took the position that such income, fees, and expenses should be disclosed separately for each fund in which a CPO invested five or more percent of a pool's net asset value. Income, fees, and expenses incurred from investments in one or more funds where each investment in a fund represented less than five percent of the pool's net asset value could be combined and reported in the aggregate; the total income on the detail schedule should agree with the amount of income reported for the income from investments in other funds in the pool's Statement of Operations.[20] The rationale for this disclosure is that such information is material for pool participants to comprehend fully the investment strategy and fee structure of a commodity pool. In addition, the five percent threshold is consistent with the reporting thresholds set forth in the relevant accounting requirements regarding disclosure of investments in other funds.[21]

Accordingly, the Commission is proposing that information on the amounts of income and expenses associated with a pool's investments in investee funds, and identifying by name the investee funds in which investments exceed five percent of the pool's net assets, be required in annual reports for pools prepared under both Regulation 4.22(c) and Regulation 4.7(b)(3).

F. Use of GAAP

1. Regulations 4.22(c) and 4.7(b)(3)

Commission regulations require that audited and unaudited financial statements, as well as periodic account statements, be presented and computed in accordance with GAAP. This provision consistently has been interpreted by Commission staff to mean GAAP as established in the United States (''U.S. GAAP''). Nevertheless, Commission staff has, on a case-by-case basis, provided limited relief to CPOs that operate commodity pools organized under the laws of a foreign jurisdiction by allowing the financial statements of such pools to be prepared and presented in accordance with International Financial Reporting Standards (''IFRS'') instead of U.S. GAAP.[22] In cases where staff has provided relief, the relief was conditioned upon the offshore pool following certain key elements of U.S. GAAP standards, including preparing a condensed Schedule of Investments;[23] reporting special allocations of partnership equity in accordance with CFTC Interpretative Letter 94–3, proposed to be codified as Regulation 4.22(e)(2); and, in the event that IFRS would require consolidated financial statements for the pool, adequately reporting results of operations and financial position specific to each class of the pool's investors. In addition, using accounting standards other than U.S. GAAP must not conflict with any representations made to participants or potential participants in the pool.

Because these criteria under which CPOs have been granted relief from the requirement to prepare pool financial reports in accordance with U.S. GAAP have remained constant, the Commission is proposing that CPOs be permitted to claim relief to prepare financial statements pursuant to IFRS by filing a notice that includes representations regarding the operations of their offshore pools, the preparation of the pools' financial statements in accordance with IFRS, and the additional information that will be included in the reports in order for the financial statements to be consistent with U.S. GAAP. If IFRS would require consolidated financial statements for a pool, such as those with complex capital structures (for example, master-feeder structures or funds of funds), such financial statements must contain disclosures that adequately report results of operations and financial position specific to each class of the pool's investors.

Under the proposal, the notice must be filed with NFA prior to the due date for the report, and the CPO can continue to prepare annual reports for future years in accordance with IFRS as long as all representations made in the initial notice remain in effect. A single notice may be filed for more than one pool operated by the CPO as long as all the representations in the notice apply to each of the pools named therein.

Commission staff also has provided relief on a case-by-case basis to CPOs operating offshore commodity pools permitting the use of accounting standards established in other jurisdictions, including the United Kingdom, Ireland, and Luxembourg. However, the Commission currently is proposing to establish the notice procedure solely for pools that are following IFRS, due to IFRS's global nature and the various efforts under way in the U.S. and other countries to achieve convergence between IFRS and local accounting standards.[24] CPOs of offshore pools that meet the criteria specified in proposed Regulation 4.22(d)(2) but are using accounting standards other than IFRS may continue to seek case-by-case relief from the U.S. GAAP requirement by filing relief requests with Commission staff.

2. GAAP Requirement in Regulation 4.13

Regulation 4.13 provides an exemption from registration for CPOs that operate only one pool at a time, for which no advertising is done and no compensation is received; or that operate pools that include no more than 15 participants each, and the aggregate subscriptions to all pools do not exceed $400,000. In 2003, the Commission adopted additional registration exemptions for CPOs of pools whose participants are SEC ''accredited investors''[25] and that limit their trading of commodity interests to a *de minimis* amount, or that limit participation to certain highly sophisticated investors. In proposing the Regulation 4.13(a)(3) and (4) exemptions that were adopted in 2003, the Commission stated that ''this relief is intended to encourage and

[19] Commission staff has discussed these disclosures in the annual CPO guidance letters.

[20] Fees and expenses are generally reported net of any income by the investee fund to the CPO.

[21] AICPA Statement of Position (''SOP'') 03–04, Reporting Financial Highlights and Schedule of Investments by Nonregistered Investment Partnerships: An Amendment to the Audit and Accounting Guide, Audits of Investment Companies.

[22] The annual CPO guidance letters issued by Commission staff have discussed the conditions under which such exemptions may be granted and the procedure for making exemption requests. See, *e.g.*, Section III of the January 16, 2008 annual guidance letter at *http://www.cftc.gov/stellent/groups/public/@iointermediaries/documents/generic/cpoannualguidanceletter2007.pdf*.

[23] As required by AICPA SOP 95–2, subsequently amended by SOP 01–1 and SOP 03–4.

[24] See, e.g., the February 27, 2006 Memorandum of Understanding between the Financial Accounting Standards Board and the International Accounting Standards Board on convergence of IFRS and U.S. GAAP: *http://www.fasb.org/intl/mou_02-27-06.pdf*.

[25] 17 CFR 230.501(a) (2008).

facilitate participation in the commodity interest markets by additional collective investment vehicles and their advisers, with the added benefit to all market participants of increased liquidity.'' [26]

Regulation 4.13(c) specifies that, if a CPO that has claimed an exemption from registration under Regulation 4.13 distributes an annual report to pool participants, the annual report must be presented and computed in accordance with GAAP and, if audited by an independent public accountant, certified in accordance with Regulation 1.16. The Commission has reconsidered this requirement and determined that it does not need to prescribe the form of an annual report that is not required by its regulations to be prepared, distributed, or filed. Accordingly, the Commission is proposing to remove the requirement in Regulation 4.13(c) that an annual report distributed to participants in a pool for which exemption under Regulation 4.13 has been claimed must be prepared in accordance with GAAP. The Commission expects, however, that CPOs will prepare their pools' reports pursuant to the terms of the pools' operating documents.

III. Updating References to Financial Schedules

The Commission is proposing to update both the periodic and annual reporting provisions of Part 4 to conform with current accounting practices with respect to the references to various financial schedules. These changes would delete references to the Statement of Changes in Financial Position, which no longer exists; rename the Statement of Income (Loss) as the Statement of Operations; and rename the Statement of Changes in Net Asset Value as the Statement of Changes in Net Assets.

IV. Related Matters

Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing regulations, consider the impact of those regulations on small businesses. The Commission previously has established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its regulations on such entities in accordance with the RFA.[27] The Commission has determined previously that registered CPOs are not small entities for the purpose of the RFA.[28] The proposed amendments to Regulation 4.7 and Regulation 4.22 would apply only to registered CPOs. With respect to CPOs exempt from registration, the Commission has previously determined that a CPO is a small entity if it meets the criteria for exemption from registration under current Regulation 4.13(a)(2). The proposed amendment to Regulation 4.13 would remove an existing requirement and does not impose any significant burdens. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action proposed to be taken herein will not have a significant economic impact on a substantial number of small entities.

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'') [29] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. Pursuant to the PRA, the Commission has submitted a copy of this section to the Office of Management and Budget (''OMB'') for its review.

Collection of Information. (Rules Relating to the Operations and Activities of Commodity Pool Operators and Commodity Trading Advisors and to Monthly Reporting by Futures Commission Merchants, OMB Control Number 3038–0005.)

The proposed amendments will not require a new collection of information on the part of any entities subject to the proposed amendments. Specifically, the proposed amendments will modify existing regulatory requirements by clarifying information that must be included in required periodic and annual reports. The expected effect of the proposed amended regulations will be to increase slightly the burden for this collection of information due to including specific fee and expense information in annual reports for funds of funds. This increase affects only annual reports for pools that invest in other funds and therefore are required to include the additional fee and expense information, and does not affect reports for pools that do not invest in other funds. In addition, because the previous submission of this collection contained a calculation error with respect to the total number of respondents, the burden has been recalculated and the corrected numbers are included in the current estimate. The Commission estimates the burden of this collection of information as follows:

Estimated Annual Reporting Burden:
Number of Respondents: 9,200.
Total Annual Responses: 28,275.
Total Annual Hours: 167,550.

The Commission considers comments by the public on this proposed collection of information in—

Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhancing the quality, utility, and clarity of the information to be collected; and

Minimizing 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.

Organizations and individuals desiring to submit comments on the information collection should contact the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Desk Officer of the Commodity Futures Commission. OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 90 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed regulations. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581 or (202) 418–5160.

B. Cost-Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the regulation outweigh its costs. Rather, Section 15(a) simply requires the

[26] 68 FR 12625 (March 17, 2003).
[27] 47 FR 18618 (April 30, 1982).
[28] 47 FR at 18619.
[29] 44 U.S.C. 3507(d).

Commission to ''consider the costs and benefits'' of its action.

Section 15(a) of the Act further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular regulation was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Commission has considered the costs and benefits of this proposed regulation in light of the specific provisions of Section 15(a) of the Act, as follows:

1. Protection of market participants and the public. The proposed amendments should not affect the protection of market participants and the public as they primarily clarify existing reporting requirements for commodity pools.

2. Efficiency and competition. The Commission anticipates that the proposed amendments will benefit efficiency by streamlining the annual report filing process for funds of funds and pools ceasing operation. The proposal will also reduce the number of requests for additional extensions for funds of funds that must be processed by NFA. The proposed amendments are considered by the Commission as benefiting efficiency and not impacting competition.

3. Financial integrity of futures markets and price discovery. The proposed amendments should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity of futures markets or the price discovery function of such markets.

4. Sound risk management practices. The proposed amendments should have no effect, from the standpoint of imposing costs or creating benefits, on sound risk management practices.

5. Other public interest considerations. The Commission believes that the proposed clarification of requirements for periodic reporting of multi-class or series pools is beneficial in that it results in the provision of more meaningful information to participants in those pools.

After considering these factors, the Commission has determined to propose the amendments discussed above. The Commission invites public comment on its application of the cost-benefit provision. Commenters also are invited to submit any data that they may have quantifying the costs and benefits of the proposal with their comment letters.

List of Subjects in 17 CFR Part 4

Advertising, Commodity futures, Commodity pool operators, Consumer protection, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Commission proposes to amend 17 CFR part 4 as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

2. Amend § 4.7 to revise paragraphs (b)(2)(iii), (b)(3)(i) introductory text, (b)(3)(i)(B), and (b)(3)(i)(C), and to add paragraph (b)(3)(i)(D) to read as follows:

§ 4.7 Exemption from certain part 4 requirements for commodity pool operators with respect to offerings to qualified eligible persons and for commodity trading advisors with respect to advising qualified eligible persons.

* * * * *

(b) * * *

(2) * * *

(iii)(A) Either the net asset value per outstanding participation unit in the exempt pool as of the end of the reporting period, or

(B) The total value of the participant's interest or share in the exempt pool as of the end of the reporting period;

(C) Where the pool is comprised of more than one ownership class or series, the net asset value of the series or class on which the account statement is reporting, and the net asset value per unit or value of the participant's share, also must be included in the statement required by this paragraph (b)(2); except that, for a pool that is a series fund structured with a limitation on liability among the different series, the account statement required by this paragraph (b)(2) is not required to include the consolidated net asset value of all series of the pool.

(3) *Annual report relief.* (i) Exemption from the specific requirements of §§ 4.22(c) and (d); *Provided*, That within 90 calendar days after the end of the exempt pool's fiscal year or the permanent cessation of trading, whichever is earlier, the commodity pool operator electronically files with the National Futures Association and distributes to each participant in lieu of the financial information and statements specified by those sections, an annual report for the exempt pool, affirmed in accordance with § 4.22(h) which contains, at a minimum:

* * * * *

(B) A Statement of Operations for that year;

(C) Appropriate footnote disclosure and such further material information as may be necessary to make the required statements not misleading. For a pool that invests in other funds, this information must include, but is not limited to, separately disclosing the amounts of income and expenses associated with each investment in an investee fund that exceeds five percent of the pool's net assets. The income and expenses associated with an investment in an investee fund that is less than five percent of the pool's net assets may be combined and reported in the aggregate with the income and expenses of other investee funds that, individually, represent an investment of less than five percent of the pool's net assets;

(D) Where the pool is comprised of more than one ownership class or series, information for the series or class on which the financial statements are reporting should be presented in addition to the information presented for the pool as a whole; except that, for a pool that is a series fund structured with a limitation on liability among the different series, the financial statements are not required to include consolidated information for all series.

* * * * *

§ 4.22 [Amended]

3. Amend § 4.13 by removing paragraph (c)(2) and redesignating paragraph (c)(3) as (c)(2).

4. Amend § 4.22 to revise paragraphs (a) introductory text, (a)(1) introductory text, (a)(2) introductory text, (c) introductory text, (c)(4), (c)(5), (d), (e) and (f)(2), and to add paragraphs (a)(2)(vii) and (c)(7) to read as follows:

§ 4.22 Reporting to pool participants.

(a) Except as provided in paragraph (a)(4) of this section, each commodity pool operator registered or required to be registered under the Act must periodically distribute to each participant in each pool that it operates, within 30 calendar days after the last date of the reporting period prescribed in paragraph (b) of this section, an Account Statement, which shall be presented in the form of a Statement of Operations and a Statement of Changes

in Net Assets, for the prescribed period. These financial statements must be presented and computed in accordance with generally accepted accounting principles consistently applied. The Account Statement must be signed in accordance with paragraph (h) of this section.

(1) The portion of the Account Statement which must be presented in the form of a Statement of Operations must separately itemize the following information:

* * * * *

(2) The portion of the Account Statement that must be presented in the form of a Statement of Changes in Net Assets must separately itemize the following information:

* * * * *

(vii) Where the pool is comprised of more than one ownership class or series, information for the series or class on which the account statement is reporting should be presented in addition to the information presented for the pool as a whole; except that, for a pool that is a series fund structured with a limitation on liability among the different series, the account statement is not required to include consolidated information for all series.

* * * * *

(c) Except as provided in paragraph (c)(6) of this section, each commodity pool operator registered or required to be registered under the Act must distribute an Annual Report to each participant in each pool that it operates, and must electronically submit a copy of the Report and key financial balances from the Report to the National Futures Association pursuant to the electronic filing procedures of the National Futures Association, within 90 calendar days after the end of the pool's fiscal year or the permanent cessation of trading, whichever is earlier; *Provided, however,* that if during any calendar year the commodity pool operator did not operate a commodity pool, the pool operator must so notify the National Futures Association within 30 calendar days after the end of such calendar year. The Annual Report must be affirmed pursuant to paragraph (h) of this section and must contain the following:

* * * * *

(4) Statements of Operations, and Changes in Net Assets, for the period between:

(i) The later of:

(A) The date of the most recent Statement of Financial Condition delivered to the National Futures Association pursuant to this paragraph (c), or

(B) The date of the formation of the pool, and

(ii) The close of the pool's fiscal year, together with Statements of Operations, and Changes in Net Assets for the corresponding period of the previous fiscal year.

(5) Appropriate footnote disclosure and such further material information as may be necessary to make the required statements not misleading.

(i) For a pool that invests in other funds, this information must include, but is not limited to, separately disclosing the amounts of income and expenses associated with each investment in an investee fund that exceeds five percent of the pool's net assets. The income and expenses associated with an investment in an investee fund that is less than five percent of the pool's net assets may be combined and reported in the aggregate with the income and expenses of other investee funds that, individually, represent an investment of less than five percent of the pool's net assets;

(ii) Where the pool is comprised of more than one ownership class or series, information for the series or class on which the financial statements are reporting should be presented in addition to the information presented for the pool as a whole; except that, for a pool that is a series fund structured with a limitation on liability among the different series, the financial statements are not required to include consolidated information for all series.

* * * * *

(7) For a pool that has ceased operation prior to, or as of, the end of the fiscal year, the commodity pool operator may provide the following in lieu of the annual report that would otherwise be required by § 4.22(c) or § 4.7(b)(3):

(i) Statements of Operations and Changes in Net Assets for the period between:

(A) The later of:

(*1*) The date of the most recent Statement of Financial Condition filed with the National Futures Association pursuant to this paragraph (c), or

(*2*) The date of the formation of the pool; and

(B) The close of the pool's fiscal year or the date of the cessation of trading, whichever is earlier,

(ii)(A) An explanation of the winding down of the pool's operations and written disclosure that all interests in, and assets of, the pool have been redeemed, distributed or transferred on behalf of the participants;

(B) If all funds have not yet been distributed or transferred to participants by the time that the final report is issued, disclosure of the value of assets remaining to be distributed and an approximate time frame of when the distribution will occur. At the time of the final distribution of the pool's assets, the commodity pool operator must provide written notice to each participant and to the National Futures Association that all interests in, and assets of, the pool have been redeemed, distributed or transferred on behalf of the participants.

(iii) A report filed pursuant to paragraph (c)(7) of this section that would otherwise be required by § 4.22(c) is not required to be certified in accordance with paragraph (d) of this section if the commodity pool operator obtains from all participants, and files with the National Futures Association no later than the time that the commodity pool operator files the Annual Report, written waivers of their rights to receive an audited Annual Report.

* * * * *

(d)(1) The financial statements in the Annual Report must be presented and computed in accordance with generally accepted accounting principles consistently applied and must be certified by an independent public accountant. The requirements of § 1.16(g) of this chapter shall apply with respect to the engagement of such independent public accountants, except that any related notifications to be made may be made solely to the National Futures Association, and the certification must be in accordance with § 1.16 of this chapter, except that the following requirements of that section shall not apply:

(i) The audit objectives of § 1.16(d)(1) of this chapter concerning the periodic computation of minimum capital and property in segregation;

(ii) All other references in § 1.16 of this chapter to the segregation requirements; and

(iii) Sections 1.16(c)(5), (d)(2), (e)(2), and (f) of this chapter.

(2)(i) The financial statements in the Annual Report required by this section or by § 4.7(b)(3) may be presented and computed in accordance with International Financial Reporting Standards issued by the International Accounting Standards Board if the following conditions are met:

(A) The pool is organized under the laws of a foreign jurisdiction;

(B) The Annual Report will include a condensed schedule of investments, or, if required by the alternate accounting standards, a full schedule of investments;

(C) The preparation of the pool's financial statements under International Financial Reporting Standards is not inconsistent with representations set forth in the pool's offering memorandum or similar document;

(D) Special allocations of ownership equity will be reported in accordance with § 4.22(e)(2); and

(E) In the event that the International Financial Reporting Standards require consolidated financial statements for the pool, such financial statements must contain disclosures that adequately report results of operations and financial position specific to each class of the pool's investors.

(ii) The commodity pool operator of a pool that meets the conditions specified in paragraph (d)(2) of this section may claim relief from the requirement in paragraph (d)(1) of this section by filing a notice with the National Futures Association, within 90 calendar days of the end of the pool's fiscal year.

(A) The notice must contain the name, main business address, main telephone number and the National Futures Association registration identification number of the commodity pool operator, and name and the identification number of the commodity pool.

(B) The notice must include representations regarding the pool's compliance with each of the conditions specified in § 4.22(d)(2)(i)(A) through (D), and, if applicable, (d)(2)(i)(E); and

(C) The notice must be signed by the commodity pool operator in accordance with paragraph (h) of this section.

(e)(1) The Statement of Operations required by this section must itemize brokerage commissions, management fees, advisory fees, incentive fees, interest income and expense, total realized net gain or loss from commodity interest trading, and change in unrealized net gain or loss on commodity interest positions during the pool's fiscal year. Gains and losses on commodity interests need not be itemized by commodity or by specific delivery or expiration date.

(2)(i) Any share of a pool's profits or transfer of a pool's equity which exceeds the general partner's or any other class's share of profits computed on the general partner's or other class's pro rata capital contribution are ''special allocations.'' Special allocations of partnership equity or other interests must be recognized in the pool's Statement of Operations in the same period as the net income, interest income, or other basis of computation of the special allocation is recognized. Special allocations must be recognized and classified either as an expense of the pool or, if not recognized as an expense of the pool, presented in the Statement of Operations as a separate, itemized allocation of the pool's net income to arrive at net income available for pro rata distribution to all partners.

(ii) Special allocations of ownership interest also must be reported separately in the Statement of Partners' Equity, in addition to the pro-rata allocations of net income, as to each class of ownership interest.

(3) Realized gains or losses on regulated commodities transactions presented in the Statement of Operations of a commodity pool may be combined with realized gains or losses from trading in non-commodity interest transactions, provided that the gains or losses to be combined are part of a related trading strategy. Unrealized gains or losses on open regulated commodity positions presented in the Statement of Operations of a commodity pool may be combined with unrealized gains or losses from open positions in non-commodity positions, provided that the gains or losses to be combined are part of a related trading strategy.

(f) * * *

(2) In the event a commodity pool operator finds that it cannot obtain information necessary to prepare annual financial statements for a pool that it operates within the time specified in either paragraph (c) of this section or § 4.7(b)(3)(i), as a result of the pool investing in another collective investment vehicle, it may claim an extension of time under the following conditions:

(i) The commodity pool operator must, within 90 calendar days of the end of the pool's fiscal year, file a notice with the National Futures Association, except as provided in paragraph (f)(2)(v) of this section.

(ii) The notice must contain the name, main business address, main telephone number and the National Futures Association registration identification number of the commodity pool operator, and name and the identification number of the commodity pool.

(iii) The notice must state the date by which the Annual Report will be distributed and filed (the ''Extended Date''), which must be no more than 180 calendar days after the end of the pool's fiscal year. The Annual Report must be distributed and filed by the Extended Date.

(iv) The notice must include representations by the commodity pool operator that:

(A) The pool for which the Annual Report is being prepared has investments in one or more collective investment vehicles (the ''Investments'');

(B) For all reports prepared under paragraph (c) of this section and for reports prepared under § 4.7(b)(3)(i) that are certified by an independent public accountant, the commodity pool operator has been informed by the certified public accountant engaged to audit the commodity pool's financial statements that specified information required to complete the pool's annual report is necessary in order for the accountant to render an opinion on the commodity pool's financial statements. The notice must include the name, main business address, main telephone number, and contact person of the accountant; and

(C) The information specified by the accountant cannot be obtained in sufficient time for the Annual Report to be prepared, audited, and distributed before the Extended Date.

(D) For unaudited reports prepared under § 4.7(b)(3)(i), the commodity pool operator has been informed by the operators of the Investments that specified information required to complete the pool's annual report cannot be obtained in sufficient time for the Annual Report to be prepared and distributed before the Extended Date.

(v) For each fiscal year following the filing of the notice described in paragraph (f)(2)(i) of this section, for a particular pool, it shall be presumed that the particular pool continues to invest in another collective investment vehicle and the commodity pool operator may claim the extension of time; provided, however, that if the particular pool is no longer investing in another collective investment vehicle, then the commodity pool operator must file electronically with the National Futures Association an Annual Report within 90 days after the pool's fiscal year-end accompanied by a notice indicating the change in the pool's status.

(vi) Any notice or statement filed pursuant to paragraph (f)(2) of this section must be signed by the commodity pool operator in accordance with paragraph (h) of this section.

* * * * *

Issued in Washington, DC, on February 18, 2009 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E9–3840 Filed 2–23–09; 8:45 am]

BILLING CODE 6351–01–P

Notices

Federal Register
Vol. 74, No. 35
Tuesday, February 24, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

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 Danisco A/S of Copenhagen, Denmark, an exclusive license to U.S. Patent No. 6,989,370, ''Bacteriocins and Novel Bacterial Strains'', issued on January 24, 2006; U.S. Patent No. 7,132,102, ''Bacteriocins and Novel Bacterial Strains'', issued on November 7, 2006; U.S. Patent No. 7,321,024, ''Bacteriocins and Novel Bacterial Strains'', issued on January 22, 2008; U.S. Patent No. 7,354,904, ''Bacteriocin Inducer Peptides'', issued on April 8, 2008; U.S. Patent No. 7,452,544, ''Bacteriocins and Novel Bacterial Strains'', issued on November 18, 2008; U.S. Patent Application Serial No. 11/099,456, ''Novel Enterococcus and Streptococcus Strains and Bacteriocins'', filed on April 5, 2005; U.S. Patent Application Serial No. 11/782,223, ''Bacteriocin Inducer Peptides'', filed on July 24, 2007; and U.S. Patent Application Serial No. 11/859,166, ''Bacteriocins and Novel Bacterial Strains'', filed on September 9, 2007.

DATES: Comments must be received by March 26, 2009.

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 these inventions are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license these inventions as Danisco A/S of Copenhagen, Denmark 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. E9–3848 Filed 2–23–09; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2009–0001]

Codex Alimentarius Commission: Meeting of the Codex Committee on Contaminants in Foods

AGENCY: Office of the Acting Deputy Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Acting Deputy Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services (HHS), are sponsoring a public meeting on March 5, 2009. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States positions that will be discussed at the 3rd Session of the Codex Committee on Contaminants in Foods (CCCF) of the Codex Alimentarius Commission (Codex), which will be held in Rotterdam, The Netherlands, from March 23–27, 2009.

The Acting Deputy Under Secretary for Food Safety and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 3rd Session of the CCCF and to address items that will be on the agenda.

DATES: The public meeting is scheduled for Thursday, March 5, 2009, from 1 to 3 p.m.

ADDRESSES: The public meeting will be held in the Harvey Wiley Federal Building, Room 1A–001, FDA, Center for Food Safety and Applied Nutrition (CFSAN), 5100 Paint Branch Parkway, College Park, MD 20740. Codex documents related to the 3rd Session of the CCCF are accessible via the World Wide Web at the following address: *http://www.codexaliment;arius.net/current.asp*.

The U.S. Delegate to the CCCF, Dr. Nega Beru, invites interested U.S. parties to submit their comments electronically to the following e-mail address: *henry.kim@fda.hhs.gov*.

Registration: Register electronically to the same e-mail address above. Early registration is encouraged because it will expedite entry into the building and its parking area. If you require parking, please include the vehicle make and tag number, if known, when you register. Because the meeting will be held in a Federal building, you should also bring photo identification and plan for adequate time to pass through security screening systems.

FOR FURTHER INFORMATION ABOUT THE 3RD SESSION OF THE CCCF CONTACT: Dr. Henry Kim, Office of Food Safety, CFSAN, FDA, 5100 Paint Branch Parkway (HFS–317), College Park, MD 20740, Phone: (301) 436–2023, Fax: (301) 436–2651, e-mail: *henry.kim@fda.hhs.gov*.

FOR FURTHER INFORMATION ABOUT THE PUBLIC MEETING CONTACT: Paulo Almeida, Associate Manager, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, Phone: (202) 205–7760, Fax: (202) 720–3157, e-mail: *USCodex@fsis.usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission (Codex) was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex

seeks to protect the health of consumers and ensure that fair practices are used in trade.

The CCCF was established by Codex in 2006 as a separate Committee to establish or endorse maximum levels for contaminants and naturally occurring toxicants in food and feed; to prepare priority lists of contaminants and naturally occurring toxicants for risk assessment by the Joint FAO/WHO Expert Committee on Food Additives (JECFA); to consider methods of analysis and sampling for determination of contaminants and naturally occurring toxicants in food and feed; to consider and elaborate standards or codes of practice for related subjects; and to consider other matters assigned to it by the Commission in relation to contaminants and naturally occurring toxicants in food and feed. The Committee is hosted by The Netherlands.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 3rd Session of the CCCF will be discussed during the public meeting:

- Matters Referred to the Committee from other Codex bodies.
- Matters of interest arising from FAO and WHO (including JECFA).
- Draft Revision of the Preamble of the General Standard for Contaminants and Toxins in Food (GSCTF) (N04–2006).
- Draft Code of Practice for the Reduction of Acrylamide in Food (N06–2006).
- Draft Code of Practice for the Reduction of Contamination of Food with Polycyclic Aromatic Hydrocarbons (PAH) from Smoking and Direct Drying Processes (N07–2006).
- Proposed Draft Maximum Levels for Total Aflatoxins in Brazil Nuts (N11–2008).
- Proposed Draft Code of Practice for the Prevention and Reduction of Ochratoxin A Contamination in Coffee (N12–2008).
- Discussion Paper on Fumonisins.
- Discussion Paper on Benzene in Soft Drinks.
- Discussion Paper on Cyanogenic Glycosides.
- Discussion Paper on Mycotoxins in Sorghum.
- Discussion Paper on Ethyl Carbamate on Alcoholic Beverages.
- Priority List of Contaminants and Naturally Occurring Toxicants Proposed for Evaluation by the JECFA.

Each item listed above will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the March 23–27, 2009, meeting in Rotterdam. Members of the public may access copies of these documents at *http://www.codexalimentarius.net/current.asp*.

Public Meeting

At the March 5, 2009, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to Dr. Henry Kim at *henry.kim@fda.hhs.gov*. Written comments should state that they relate to activities of the 3rd Session of the CCCF.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, USDA will announce it online via its Food Safety and Inspection Service (FSIS) Web page located at *http://www.fsis.usda.gov/regulations/2009_Notices_Index/*. FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/*. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on February 18, 2009.

Barbara McNiff,

Acting U.S. Manager for Codex Alimentarius.

[FR Doc. E9–3847 Filed 2–23–09; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XN37

Endangered Species; File No. 14249

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Ronald Smolowitz, Coonamessett Farm Foundation, Inc., 277 Hatchville Road, East Falmouth, MA 02536, has applied in due form for a permit to take loggerhead (*Caretta caretta*), leatherback (*Dermochelys coriacea*), Kemp's ridley (*Lepidochelys kempii*), green (*Chelonia mydas*), hawksbill (*Eretmochelys imbricata*), and olive ridley (*Lepidochelys olivacea*) sea turtles for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before March 26, 2009.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the Features box on the Applications and Permits for Protected Species (APPS) home page, *http://www.apps.nmfs.noaa.gov/index.cfm*, and then selecting File No. 14249 from the list of available applications. These documents are also available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978)281–9300; fax (978)281–9333.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for

providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 14249.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Kate Swails, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant proposes to evaluate modifications to scallop dredge gear that may reduce the probability of turtle injuries due to interactions with gear. The applicant also proposes to study sea turtle behavior so that behavior can be factored into bycatch reduction strategies and collect biological and animal health information to improve NMFS' ability to assess stocks and the impact of anthropogenic activities. Up to 17 loggerhead and 6 leatherback, hawksbill, olive ridley, green, or Kemp's ridley in any combination, would be taken during the dredge gear study annually. All of these takes could result in injury or mortality. Up to 100 loggerheads would be followed by a remotely operated vehicle annually during the behavior study. Up to 10 loggerheads would be captured annually by hoop net and have a satellite transmitter or Crittercam attached to their carapace. All animals that are handled in these studies would be measured, flipper and passive integrated transponder tagged, tissue sampled, cloacal swabbed, nasal swabbed, photographed, weighed, and released. Dead animals could be salvaged for scientific purposes. The applicant requests a 5 year permit and research activities would occur in the Atlantic Ocean off the coast of the northeastern United States.

Dated: February 17, 2009.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–3935 Filed 2–23–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Draft Management Plan and Environmental Assessment for Thunder Bay National Marine Sanctuary: Notice of Public Availability and Meetings

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public availability and meetings.

SUMMARY: In accordance with section 304(e) of the National Marine Sanctuaries Act (NMSA), as amended, NOAA is soliciting public comment on the draft management plan and draft environmental assessment for Thunder Bay National Marine Sanctuary.

DATES: *Comments:* Comments on the draft management plan and draft environmental assessment will be considered if received on or before April 10, 2009.

Public meetings: See **SUPPLEMENTARY INFORMATION** section below for the dates and locations for the public meetings.

ADDRESSES: *To obtain a copy:* For a copy of the draft management plan and draft environmental assessment, contact the Management Plan Review Coordinator, Thunder Bay National Marine Sanctuary, 500 W. Fletcher Street, Alpena, MI 49707. Copies can also be downloaded from the Thunder Bay National Marine Sanctuary (TBNMS) website at *http://www.thunderbay.noaa.gov*.

To submit comments: Comments on the draft management plan and draft environmental assessment may be submitted by one of the following methods:

1. In writing to the Thunder Bay NMS Management Plan Review Coordinator (see *to obtain a copy* section above);
2. By e-mail to *TBMPR@noaa.gov*; or
3. By providing comments (oral or written) at one of the public meetings (see public meetings section below).

Instructions: All comments received are a part of the public record and will be generally posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NOAA will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Public meetings: See **SUPPLEMENTARY INFORMATION** section for the dates and locations for the public meetings.

FOR FURTHER INFORMATION CONTACT: Tera Panknin at (989) 356–8805 ext. 38 or via e-mail at *TBMPR@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background Information

On October 7, 2000, the National Oceanic and Atmospheric Administration (NOAA) designated TBNMS as the nation's thirteenth national marine sanctuary (NMS). At that time, NOAA prepared and released a management plan for the new sanctuary. TBNMS is jointly managed by NOAA and the State of Michigan. The sanctuary's mission is to preserve nationally significant shipwrecks and regional maritime landscape through resource protection, education, and research. The sanctuary also promotes appreciation and responsible use of Thunder Bay, the Great Lakes, and the oceans.

NOAA is now undergoing the first review of the 1999 TBNMS management plan pursuant to section 304(e) of the NMSA. The draft revised management plan (2009) was prepared by NOAA and the State of Michigan's Department of History, Arts and Libraries in cooperation with the Thunder Bay Sanctuary Advisory Council and with input from the public, local governments, State and Federal agencies, and other stakeholders. The draft revised plan is comprised of four action plans (resource protection, education and outreach, research, and operations). It sets priorities to guide sanctuary programs and operations and provides the public with a better understanding of the sanctuary's strategies to protect Thunder Bay's resources.

The draft environmental assessment analyzes the environmental impacts of the revised management plan pursuant to the National Environmental Policy Act. In doing so, it analyzes two alternatives: the status quo (no change to the 1999 management plan) and the preferred alternative (revising the 1999 management plan).

Public Meetings

Public meetings will be held at the following locations and dates:

March 18, 6:30 p.m	Rogers City, MI	Presque Isle District Library, 181 East Erie Street, Rogers City, MI 49779.
March 19, 6:30 p.m	Harrisville, MI	Harrisville Courthouse, 106 North 5th Street, Harrisville, MI 48740.
March 20, 2 p.m	Lansing, MI	Michigan Historical Center, 702 West Kalamazoo Street, Lansing, MI 48909.
March 24, 6:30 p.m	Alpena, MI	Great Lakes Maritime Heritage Center, 500 West Fletcher Street, Alpena, MI 49707.

Dated: February 17, 2009.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries.

[FR Doc. E9–3720 Filed 2–23–09; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE37

Marine Mammals; File No. 473–1700–02

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

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that Janice Straley, University of Alaska, 1332 Seward Ave, Sitka, AK 99835, has been issued an amendment to Permit No. 473–1700–01 to conduct research on marine mammals.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: On December 26, 2007, notice was published in the **Federal Register** (72 FR 72997) that a request for a scientific research permit amendment to take sperm whales and killer whales had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The researchers previous permit, 473–1700–01, authorized research on humpback whales (*Megaptera novaeangliae*), gray whales (*Eschrichtius robustus*) , minke whales (*Balaenoptera acustorostrata*), sperm whales (*Physeter macrocephalus*) , fin whales (*Balaenoptera physalus*), and killer whales (*Orcinus orca*). Incidental harassment of harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*P. dalli*), Atlantic white-sided dolphins (*Lagenorhynchus obliquidens*), Steller sea lions (*Eumetopias jubatus*), harbor seals (*Phoca vitulina*) and Northern fur seals (*Callorhinus ursinus*) is also authorized. Research methods include photo-identification, passive acoustic recording, behavioral observations, suction-cup tagging (including Crittercam), and biopsy. The permit amendment includes those activities and the following: an increase in the number of sperm whales that may be suction-cup tagged to 50 (an increase of 25 animals); attachment of satellite tags to 20 sperm whales and 20 killer whales; and modification to operations of fishing vessel methods, which could result in the taking of 40 sperm whales by Level B harassment, annually. All research will be conducted in the Gulf of Alaska. The permit amendment also extends the expiration date by one year, to June 30, 2010.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a supplemental environmental assessment was prepared analyzing the effects of the permitted activities. After a Finding of No Significant Impact, the determination was made that it was not necessary to prepare an environmental impact statement.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: February 18, 2009.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–3923 Filed 2–23–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XN28

Pacific Halibut Fishery; Guideline Harvest Levels for the Charter Vessel Fishery for Halibut

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

ACTION: Notice of guideline harvest level.

SUMMARY: NMFS provides notice of Pacific halibut guideline harvest levels (GHLs) for the guided sport charter vessel fishery in the International Pacific Halibut Commission (IPHC) regulatory areas 2C and 3A. The GHLs are benchmark harvest levels for participants in the charter vessel fishery for halibut in each area. This notice is necessary to meet the management and regulatory requirements for the GHLs and to inform the public about the 2009 GHLs for the charter halibut fishery.

DATES: The GHLs are effective beginning February 1, 2009, through December 31, 2009. This period is specified by the IPHC as the sport fishing season in all waters of Alaska.

FOR FURTHER INFORMATION CONTACT: Peggy Murphy, (907) 586–7228, or email at *peggy.murphy@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS implemented a final rule to establish GHLs in IPHC regulatory areas 2C and 3A for the harvest of Pacific halibut (*Hippoglossus stenolepis*) by the charter vessel fishery on August 8, 2003 (68 FR 47256). A correcting amendment was published May 28, 2008 (73 FR 30504) to correct the GHL table at 50 CFR 300.65(c)(1) that lists GHLs corresponding to different levels of the total constant exploitation yield (CEY) because of non–substantive errors in

conversions from pounds to metric tons, and rounding errors for some metric equivalents. The GHLs are intended to serve as benchmark harvest levels for participants in the charter vessel halibut fishery.

This announcement is consistent with 50 CFR 300.65(c)(2), which requires that GHLs for IPHC regulatory areas 2C and 3A be specified by NMFS and announced by publication in the **Federal Register** no later than 30 days after receiving information from the IPHC. The IPHC annually establishes the total CEY for halibut in IPHC regulatory areas 2C and 3A. Regulations at § 300.65(c)(1) establish the GHLs based on the total CEY that is established annually by the IPHC. The total CEY established by the IPHC for 2009 is 5,570,000 lb (2,526.5 mt) in Area 2C and 28,010,000 lb (12,705.2 mt) in Area 3A. The corresponding GHLs are 788,000 lb (357.4 mt) in Area 2C, and 3,650,000 lb (1,655.6 mt) in Area 3A. The GHL in Area 2C has been reduced from the 2008 level of 931,000 lb (422.3 mt). The GHL for Area 3A did not change.

This is a notice of the GHLs in Areas 2C and 3A for 2009 and does not require any regulatory action by NMFS. If a GHL is exceeded in 2009, NMFS will notify the North Pacific Fishery Management Council (Council) in writing within 30 days of receipt of that information. The Council has proposed management actions to reduce the harvest of Pacific halibut in the Area 2C guided charter vessel fishery to the GHL (73 FR 78276, December 22, 2008). The Secretary of Commerce may issue a final rule after consideration of the 2009 GHL and public comments on the proposed rule.

Classification

This notice does not require any additional regulatory action by NMFS and does not impose any additional restrictions on harvests by the charter fishery. If a GHL is exceeded in any year, the Council would be notified, but would not be required to take action. This process of notification is intended to provide the Council with information about the level of Pacific halibut harvest by the charter vessel fishery in a given year and could prompt future action.

Authority: 16 U.S.C. 773 *et seq.*

Dated: February 17, 2009.

Emily H. Menashes,

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

[FR Doc. E9–3922 Filed 2–23–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Notice: Broadband Grant Programs Meetings

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce

ACTION: Notice of meetings.

SUMMARY: The National Telecommunications and Information Administration (NTIA) will begin holding meetings with interested parties on Monday, March 2, 2009, in connection with the broadband grant programs described in the Broadband Data Services Improvement Act and the American Recovery and Reinvestment Act of 2009 (collectively, ''Broadband Grant Programs''). All interested parties are invited to schedule a meeting.

DATES: Meetings will be scheduled beginning March 2, 2009, and will continue until further notice.

ADDRESSES: The meetings will be held at the U.S. Department of Commerce, National Telecommunications and Information Administration, 1401 Constitution Avenue, N.W., Washington, D.C. (Please enter at 14th Street.) Room numbers will be provided to interested parties when meetings are scheduled. The disability accessible entrance is located at the 14th Street Aquarium Entrance.

FOR FURTHER INFORMATION CONTACT: To schedule a meeting, contact Barbara Brown at (202) 482–4374 or bbrown@ntia.doc.gov.

SUPPLEMENTARY INFORMATION: NTIA is scheduling meetings to afford interested parties the opportunity to discuss implementation of the Broadband Grant Programs as described in the Broadband Data Services Improvement Act and the American Recovery and Reinvestment Act of 2009. The Broadband Data Services Improvement Act was enacted in October 2008 and directs the Secretary of Commerce to award grants to eligible entities on a competitive basis to assess, identify and track broadband service deployment in each State. The American Recovery and Reinvestment Act of 2009 was enacted in February 2009 and directs NTIA to establish the ''Broadband Technology Opportunities Program'' to make grants available on a competitive basis to accelerate and expand broadband deployment. Information about the Broadband Grant Programs will be made available at *http://www.ntia.doc.gov/broadbandgrants.*

Each meeting will be considered an *ex parte* presentation, and the substance of the meeting will be placed on the public record. No later than two (2) days after a meeting, an interested party must submit a memorandum to NTIA which summarizes the substance of the meeting. Any written presentations provided at the meeting will also be placed on the public record. NTIA reserves the right to hold individual or group meetings, depending on the number of meeting requests received. Group meetings may be transcribed and/or streamed to the Web and placed on the public record.

Attendance at the meetings is limited to space available. Meetings will be physically accessible to people with disabilities. Individuals requesting accommodations, such as sign language interpretation or other ancillary aids, are asked to indicate this to Barbara Brown at least two (2) days prior to each meeting. Interested parties will have an opportunity to ask questions at the meetings. Individuals who would like to submit questions in writing should e-mail their questions to Barbara Brown at BBrown@ntia.doc.gov at least 24 hours in advance of the meeting.

Dated: February 19, 2009.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. E9–3897 Filed 2–23–09; 8:45 am]

BILLING CODE 3510–60–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Online Safety and Technology Working Group

AGENCY: National Telecommunications and Information Administration

ACTION: Notice

SUMMARY: The National Telecommunications and Information Administration (NTIA) is clarifying a notice published in the **Federal Register** on November 21, 2008 seeking nominations of individuals to represent the business community, public interest groups, and other appropriate groups interested in serving on the NTIA Online Safety and Technology Working Group (OSTWG). The 30 member limit applies only to private sector members of the OSTWG. The OSTWG membership will also include a certain number of Federal Government representatives as required by the Act. This notice does not reopen nominations for the OSTWG.

FOR FURTHER INFORMATION CONTACT: Tim Sloan, Office of Policy Analysis and Development, at (202) 482–1899 or tsloan@ntia.doc.gov.

SUPPLEMENTARY INFORMATION: On October 10, 2008, the ''Protecting Children in the 21st Century Act'' (the Act) was enacted.[1] Section 214 of the Act directs NTIA to establish the OSTWG to be comprised of ''representatives of relevant sectors of the business community, public interest groups, and other appropriate groups and Federal agencies.'' On November 21, 2008, NTIA published a notice seeking nominations in accordance with the Act.[2] In that notice, NTIA announced that the OSTWG would have up to 30 members. With this notice, NTIA clarifies that this 30 member limit applies only to representatives from the relevant sectors of the business community, public interest groups and other appropriate groups as defined by the Act and the notice.

The Act also requires that NTIA invite representatives from relevant Federal Government agencies to serve on the OSTWG. NTIA is working with these agencies to identify appropriate representatives. The Assistant Secretary for Communications and Information will determine the number of Federal Government reprentatives that will serve on the OSTWG. The number of Federal Government representatives will be in addition to the 30 appointed from the private sector.

This notice does not reopen nominations for the working group. Applications for nominations were due on or before December 12, 2008.

Dated: February 19, 2009.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. E9–3915 Filed 2–23–09; 8:45 am]

BILLING CODE 3510–60–S

[1] Pub. L. No. 110-385, 122 Stat. 4096 (to be codified at 15 U.S.C § 6554).

[2] Call for Nominations, Online Safety and Technology Working Group, 73 Fed. Reg. 226 (Nov. 21, 2008), *available at* http://www.ntia.doc.gov/frnotices/2008/FR_OnlineSafety_081121.pdf.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0139]

Federal Acquisition Regulation; Submission for OMB Review; Federal Acquisition and Community Right-To-Know

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0139).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Federal acquisition and community right-to-know. A request for public comments was published in the **Federal Register** at 73 FR 56561, September 29, 2008. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before March 26, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. William Clark, Contract Policy Division, GSA, at (202) 219–1813.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VPR), 1800 F Street, NW, Room 4041, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR Subpart 23.9 and its associated solicitation provision and contract clause implement the requirements of E.O. 13148 of April 21, 2000, published in the **Federal Register** at 65 FR 24595, April 26, 2000. ''Greening the Government through Leadership in Environmental Management.'' The FAR coverage requires offerors, except for acquisitions of commercial items as defined in FAR Part 2, in competitive acquisitions over $100,000 (including options) and competitive 8(a) contracts, to certify that they will comply with applicable toxic chemical release reporting requirements of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001–11050) and the Pollution Prevention Act of 1990 (42 U.S.C. 13101–13109).

B. Annual Reporting Burden

Respondents: 167,487.
Responses per Respondent: 1.
Annual Responses: 167,487.
Hours per Response: 0.50.
Total Burden Hours: 83,744.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0139, Federal Acquisition and Community Right-to-Know, in all correspondence.

Dated: February 19, 2009.

Al Matera,

Director, Contract Policy Division.

[FR Doc. E9–3889 Filed 2–23–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board 2009 March Plenary Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U.S.C. § 552b, as amended) and 41 Code of the Federal Regulations (CFR §§ 102–3. 140 through 160, the Department of the Army announces the following committee meeting:

Name of Committee: Army Science Board (ASB).

Date(s) of March Plenary Meeting: March 24–25, 2009.

Time(s) of Meeting:

0800–1700, March 24, 2009.

0800–1700, March 25, 2009.

Place of Meeting: Massachusetts Institute of Technology, 77 Massachusetts Ave., Cambridge, MA 02139.

FOR FURTHER INFORMATION CONTACT: Army Science Board Studies Manager: Ms. Vivian Baylor, 703–604–7472.

SUPPLEMENTARY INFORMATION: *Proposed Agenda:* The purpose of the meeting is to update members on Army Science Board administrative matters, to conduct interim meetings of individual study subcommittees, and to tour laboratories and hear briefings on scientific/engineering topics of general interest to the ASB membership at MIT, Natick Soldier Systems Center, and MIT Lincoln Laboratory. It is expected that the first day will be spent on the MIT campus on Army Science Board matters, with the second day devoted to tours and briefings.

Filing Written Statement: Pursuant to 41 CFR 102–3.140d, the Committee is not obligated to allow the public to speak; however, interested persons may submit a written statement for consideration by the Subcommittees. Individuals submitting a written statement must submit their statement to the Designated Federal Officer (DFO) at the address detailed below. Written statements not received at least 10 calendar days prior to the meeting may not be provided to or considered by the subcommittees until the next meeting.

The DFO will review all timely submissions with the subcommittee Chairs and ensure they are provided to the specific subcommittee members before the meeting. After reviewing written comments, the subcommittee Chairs and the DFO may choose to invite the submitter of the comments to orally present their issue during a future open meeting.

The DFO, in consultation with the subcommittee Chairs, may allot a specific amount of time for the members of the public to present their issues for review and discussion. Written submissions are to be submitted to the following address: Army Science Board, ATTN: Designated Federal Officer, 2511 Jefferson Davis Highway, Suite 11500, Arlington, VA 22202–3911.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E9–3891 Filed 2–23–09; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Inland Waterways Users Board; Request for Nominations

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: Section 302 of Public Law 99–662 established the Inland Waterways Users Board. The Board is an independent Federal advisory committee. The Secretary of the Army appoints its 11 members. This notice is to solicit nominations for five (5) appointments or reappointments to two-year terms that will begin after August 15, 2009.

ADDRESSES: Headquarters, U.S. Army Corps of Engineers, Civil Works Directorate, Attention: Inland Waterways Users Board Nominations Committee, Mr. Mark Pointon, 441 G Street NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Headquarters, U.S. Army Corps of Engineers, Civil Works Directorate, (202) 761–4691.

SUPPLEMENTARY INFORMATION: The selection, service, and appointment of Board members are covered by provisions of Section 302 of Public Law 99–662. The substance of those provisions is as follows:

a. *Selection.* Members are to be selected from the spectrum of commercial carriers and shippers using the inland and intracoastal waterways, to represent geographical regions, and to be representative of waterborne commerce as determined by commodity ton-miles statistics.

b. *Service.* The Board is required to meet at least semi-annually to develop and make recommendations to the Secretary of the Army on waterways construction and rehabilitation priorities and spending levels for commercial navigation improvements, and report its recommendations annually to the Secretary and Congress.

c. *Appointment.* The operation of the Board and appointment of its members are subject to the Federal Advisory Committee Act (Pub. L. 92–463, as amended) and departmental implementing regulations. Members serve without compensation but their expenses due to Board activities are reimbursable. The considerations specified in Section 302 for the selection of the Board members, and certain terms used therein, have been interpreted, supplemented, or otherwise clarified as follows:

(1) *Carriers and Shippers.* The law uses the terms ''primary users and shippers.'' Primary users have been interpreted to mean the providers of transportation services on inland waterways such as barge or towboat operators. Shippers have been interpreted to mean the purchasers of such services for the movement of commodities they own or control. Individuals are appointed to the Board, but they must be either a carrier or shipper, or represent a firm that is a carrier or shipper. For that purpose a trade or regional association is neither a shipper nor primary user.

(2) *Geographical Representation.* The law specifies ''various'' regions. For the purpose of selecting Board members, the waterways subjected to fuel taxes and described in Public Law 95–502, as amended, have been aggregated into six regions. They are (1) the Upper Mississippi River and its tributaries above the mouth of the Ohio; (2) the Lower Mississippi River and its tributaries below the mouth of the Ohio and above Baton Rouge; (3) the Ohio River and its tributaries; (4) the Gulf Intracoastal Waterway in Louisiana and Texas; (5) the Gulf Intracoastal Waterway east of New Orleans and associated fuel-taxed waterways including the Tennessee-Tombigbee, plus the Atlantic Intracoastal Waterway below Norfolk; and (6) the Columbia-Snake Rivers System and Upper Willamette. The intent is that each region shall be represented by at least one Board member, with that representation determined by the regional concentration of the individual's traffic on the waterways.

(3) *Commodity Representation.* Waterway commerce has been aggregated into six commodity categories based on ''inland'' ton-miles shown in Waterborne Commerce of the United States. These categories are (1) Farm and Food Products; (2) Coal and Coke; (3) Petroleum, Crude and Products; (4) Minerals, Ores, and Primary Metals and Mineral Products; (5) Chemicals and Allied Products; and (6) All Other. A consideration in the selection of Board members will be that the commodities carried or shipped by those individuals or their firms will be reasonably representative of the above commodity categories.

d. *Nomination.* Reflecting preceding selection criteria, the current representation by the five (5) Board members whose terms will expire is one member each representing regions 1, 2, 3, 4 and 5. Also, three of these Board members represent carriers, one represents a shipper and one represents a carrier/shipper.

Three of the five members whose terms will expire are eligible for reappointment. Nominations to replace Board members whose terms expire may be made by individuals, firms or associations. Nominations will:

(1) State the region(s) to be represented.

(2) State whether the nominee is representing carriers, shippers or both.

(3) Provide information on the nominee's personal qualifications, such as a bio or a resume.

(4) Include the commercial operations of the carrier and/or shipper with whom the nominee is affiliated. This commercial operations information will show the actual or estimated ton-miles of each commodity carried or shipped on the inland waterways system in a recent year (or years) using the waterway regions and commodity categories previously listed.

Nominations received in response to **Federal Register** notices published on February 17, 2006 (71 FR 8568), on July 7, 2006 (71 FR 38629), on February 16, 2007 (72 FR 7620) and the notice published on July 11, 2008 (73 FR 39952) have been retained for consideration. Renomination is not required but highly encouraged to indicate continued interest and provide updated information.

e. *Deadline for Nominations.* All nominations must be received at the address shown above no later than March 31, 2009.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E9–3893 Filed 2–23–09; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Draft Environmental Impact Statement for Residential, Commercial, and Marine Development Along the Gulf Intracoastal Waterway, Foley Land Cut, Gulf Shores and Orange Beach, Baldwin County, AL

AGENCY: Department of the Army, U.S. Corps of Engineers, DOD.

ACTION: Notice of availability.

SUMMARY: This notice of availability announces the public release of the Draft Environmental Impact Statement (EIS) for evaluation of 15 separate permit applications under the authority of Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act, for proposed mixed-use waterfront development along the Gulf Intracoastal Waterway (GIWW) in Baldwin County, AL, specifically the stretch known as the ''Foley Land Cut'' (FLC). The Mobile District, U.S. Army Corps of Engineers (Corps) published in the **Federal Register**, May 26, 2006, (71 FR 30393) a Notice of Intent to Prepare a Draft EIS to evaluate the full range of direct, indirect, and cumulative impacts of the proposed development activities along the shoreline of the FLC. The EIS will be used as a basis for ensuring compliance with the National Environmental Policy Act (NEPA).

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and the DEIS should be addressed to Mr. Michael B. Moxey, Regulatory Division, phone (251) 694–3771 or e-mail at *michael.b.moxey@sam.usace.army.mil,* or Ms. Linda T. Brown, Coastal Environment Team, phone (251) 694–3786 or e-mail at *linda.t.brown@usace.army.mil,* Mobile District, U.S. Army Corps of Engineers, P.O. Box 2288, Mobile, AL 36628–0001.

SUPPLEMENTARY INFORMATION:

1. The permit applications propose construction of 15 mixed-use developments along the FLC consisting of the following: 17 marinas, in excess of 16,700 condominium units, 1,722 wet boat slips, 1,742 dry boat storage spaces, various commercial establishments, support facilities, and resort amenities. The projects are in south Baldwin County on 15 parcels of land, of which 14 are along the northern shoreline of the FLC and are generally bounded to the north by Baldwin County Road (C.R.) 4. The other parcel of land proposed for development is on the Oyster Bay southern shoreline, south of the FLC. The portions of the properties fronting the FLC are expected to be used for water-based developments and will include marinas, ship stores, and associated infrastructure. The remaining portions of the properties are expected to accommodate mixed-use development and will include condominium units; amenities such as pools, boardwalks, and restroom facilities; and light commercial outlets. Construction of the proposed projects would impact approximately 711 acres and require excavation of approximately 3,143,195 cubic yards of material from uplands, wetlands, and waterbottoms.

The DEIS examines the No Action Alternative, Maximum Boat Slip Alternative, and Minimum Boat Slip Alternative, as the principal alternatives for detailed analysis. These alternatives are described in the following paragraphs.

2. Alternative 1: No Action alternative. Under the No Action Alternative, no marinas would be constructed on the FLC. The proposed uplands developments could be constructed along the FLC and Oyster Bay, but dredging of uplands, waterbottoms, or wetlands for marina construction would not be permitted. The No Action Alternative in the EIS serves as a benchmark against which the Preferred Alternative and alternatives can be evaluated.

3. Alternative 2: Maximum Boat Slip alternative. Under the Maximum Boat slip alternative, authorization for up to 3,093 boat slips on the FLC through the year 2025 would be granted. The methodology used to calculate this maximum number is presented in Table 10.3 of the Draft Waterway Capacity Study (WCS) (Appendix R of the EIS). On the basis of implementing management options and approved site plans, the WCS-recommended capacity in the year 2025 to avoid conflict with commercial navigation traffic is 254 boats on the FLC at any time. This capacity translates to 3,639 boat slips on the FLC. Because no detailed guidance exists for calculating waterway capacity for a waterbody similar to the FLC, the WCS recognizes that some uncertainty exists with the recommended capacity. Therefore, a confidence range of ± 15 percent was applied, resulting in a waterway capacity range of 3,093 to 4,185 boat slips. Using a conservative approach in approving permits for marinas along the FLC, the USACE selected the low end of this range as the maximum number of boat slips that will be approved.

4. Alternative 3: Minimum Boat Slip Alternative (Preferred Alternative). Under the Minimum Boat Slip Alternative, authorization for 1,818 boat slips through the first year of construction would initially be granted, with the option of phasing-in 1,150 additional boat slips until the maximum number of slips (3,093) is reached. The methodology used to calculate this number is presented in Table 9.3 of the WCS. This alternative assumes that mitigation management options would not have been implemented by the first year of construction but site plans have been approved. As a result, the WCS-recommended capacity in the year 2025 to avoid conflict with commercial navigation traffic is 191 boats on the FLC at any time. This capacity translates to 2,139 boat slips on the FLC. Because no detailed guidance exists for calculating waterway capacity for a waterbody similar to the FLC, the WCS recognizes that some uncertainty exists with the recommended capacity.

Therefore, a confidence range of ±15 percent was applied, resulting in a waterway capacity range of 1,818 to 2,460 boat slips. Using a conservative approach in approving permits for marinas along the FLC, the USACE selected the low end of this range (1,818) as the number of boat slips that will be initially approved. Due to the implementation of mitigation options, specifically the construction of dedicated commercial barge mooring locations, the number of boat slips initially approved increased to 1,943. This number was derived by updating Tables 9.1, 9.3, and 10.2 in the WCS as a result of applying the ''Commercial Vessels'' updated reduction factor (Appendix R). The option of phasing-in 1,150 additional slips will begin after the first year of construction and occur at a rate of 25 percent (287 slips) every year for four years. An evaluation period will occur each year to evaluate impacts of increased recreational boat traffic on commercial barge navigation and overall waterway safety. During this period, the applicant could implement mitigation management options and provide monitoring reports to include the following:

- Additional baseline data to include marina vessel use, peak volumes/flow rates, and peak hour uses.
- Impacts of projects on safety on the FLC, including Alabama Marine Police and USCG reports.
- Impacts on commercial navigation operations, including impacts on commercial traffic schedules.

If during this evaluation period it is determined that increased recreational boat traffic is having adverse impacts on commercial barge navigation or safety, the USACE has the authority to deny permits for additional boat slips on the FLC.

5. The DEIS will be available for public review at the following locations:

Thomas B. Norton Public Library, 221 W. 19th Avenue, Gulf Shores AL 36542, (251) 968–1176.

Fairhope Public Library, 161 N. Section Street, Fairhope AL 36532, (251) 928–7483.

Foley Public Library, 319 E. Laurel Street, Foley AL 36535, (251) 943–7665.

Orange Beach Public Library, 26267 Canal Rd., Orange Beach AL 36561, (251) 981–2923.

Daphne Public Library, 2607 U.S. Hwy. 98, Daphne AL 36526, (251) 621–2818.

6. Public comments can be submitted through a variety of methods. Written comments may be submitted to the Corps by mail, facsimile, or electronic methods. Additional comments (written or oral) may be presented at the public hearing to be held in March 2009 in Gulf Shores, AL. Additional information on the public hearing will be mailed in a public notice to the agencies and public and announced in news releases.

Dated: February 17, 2009.

Craig J. Litteken,

Chief, Regulatory Division.

[FR Doc. E9–3887 Filed 2–23–09; 8:45 am]

BILLING CODE 3720–58–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference followed by a public hearing on Wednesday, March 11, 2009. The hearing will be part of the Commission's regular business meeting. The conference session and business meeting both are open to the public and will be held at the Commission's office building, located at 25 State Police Drive, West Trenton, New Jersey.

The conference among the commissioners and staff will begin at 10:30 a.m. and will consist of a presentation by representatives of the National Weather Service and the U.S. Army Corps of Engineers on a project due to be completed later this year that will make digital, interactive flood inundation maps available via the Internet for the main stem Delaware River from Trenton to Port Jervis, excluding the Delaware Water Gap. The presentation will be followed by q. and a.

The subjects of the public hearing to be held during the 1:30 p.m. business meeting include the dockets listed below:

1. *DuPont Country Club D–90–104–2*. An application for renewal of a surface water withdrawal project to continue the withdrawal of a maximum of 11 million gallons per thirty days (mg/30 days) of water to irrigate approximately 80 acres of the applicant's golf course fairways. Surface water is withdrawn from two existing intakes—one on Brandywine Creek and the other on Husband's Run, a tributary of Brandywine Creek. The project is located in the Brandywine-Christina Watershed in the City of Wilmington, New Castle County, Delaware.

2. *Borough of Glassboro D–96–54 CP–2*. An application for the renewal of a ground water withdrawal project to continue the withdrawal of 105 mg/30 days to supply the applicant's public water distribution system from existing Wells Nos. 2, 3, 4, 5, 6, 7, 8, and 9 in the Cohansey Formation. The project is located in the Mantua Creek Watershed in Glassboro Borough, Gloucester County, New Jersey, in New Jersey Critical Water Supply Area 2.

3. *Womelsdorf-Robesonia Joint Authority D–98–23 CP–2*. An application for renewal of a ground water withdrawal project to continue the withdrawal of 23 mg/30 days to supply the applicant's public water supply from existing Well Nos. 1, 2, 8 and 9. The project is located in the Precambrian and Cambrian age formations in the Tulpehocken Creek Watershed in Millcreek Township, Lebanon County and Heidelberg Township, Berks County, Pennsylvania.

4. *Buckingham Township D–2003–13 CP–5*. An application for approval of a ground water withdrawal project to supply up to 5.31 mg/30 days of water to the applicant's public water supply system from new Well No. F–8 and retain the existing combined withdrawal from all wells of 42.0 mg/30 days. The project will allow the docket holder to add flexibility and redundancy and will relieve stress on its Furlong distribution system. The project is located in the Limeport Formation in the Mill Creek Watershed in Buckingham Township, Bucks County, Pennsylvania and is located in the Southeastern Pennsylvania Ground Water Protected Area.

5. *United States Steel, LLC D–78–68–2*. An application for the approval of a 0.163 million gallon per day (mgd) discharge of treated sanitary wastewater from Outfall No. 203; a 3.75 mgd discharge of industrial waste and non-contact cooling water (NCCW) from Outfall No. 103; and a NCCW discharge from Outfall No. 002. Additionally, the docket holder has requested increased TDS effluent concentrations to support a new industrial client. The applicant requests a TDS determination establishing new daily maximum (2,200 mg/l), monthly average (1,100 mg/l) and instantaneous maximum (2,750 mg/l) concentrations at Outfall No. 103. On-site Outfalls Nos. 103 (IWTP), 203 (WWTP) and 303 (stormwater only) all discharge to Outfall No. 003. The project WWTP, IWTP, and Outfall No. 002 all discharge to Water Quality Zone 2 of the Delaware River at River Mile 127.0. The project facilities are located at the U.S. Steel Real Estate Keystone Industrial Port Complex in Falls Township, Bucks County, Pennsylvania.

6. *Eagle Lake Community Association D–87–55–2*. An application to approve the Association's existing 0.5 mgd

wastewater treatment plant (WWTP). The DRBC issued Docket No. D–87–55 on September 22, 1987, approving construction of a 0.4 mgd WWTP by the Association. The WWTP discharges to an unnamed tributary of Tamarack Creek, a tributary of the Lehigh River, which flows to the Delaware River. The project is located within the drainage area to the section of the non-tidal Delaware River known as the Lower Delaware, which is designated as Special Protection Waters with the classification Significant Resource Waters. The project is located in Covington Township, Lackawanna County, Pennsylvania.

7. *Waste Management Disposal Services of Pennsylvania, Inc.* D–88–54–4. An application for renewal of approval of a discharge of 0.1 mgd from the Grows Landfill Leachate Treatment Plant (LTP). Additionally, a TDS determination is requested to allow the plant's monthly average effluent TDS concentration to increase from 15,000 mg/l to 19,100 mg/l. The LTP outfall discharges to the tidal Delaware River via a cove in Water Quality Zone 2 at River Mile 125.64—1.0. The LTP is located in Falls Township, Bucks County, Pennsylvania. A Notice of Application Received for construction of a new 0.3 mgd LTP for the Grows Landfill was published on November 14, 2006 under Docket No. D–88–54–4. Since the proposed renewal will be processed first, the renewal will be assigned Docket No. D–88–54–4. The application for approval of a new LTP, to be reviewed separately, has been assigned Docket No. D–88–54–5.

8. *Croda, Inc. D–88–74–3.* An application for an increase in the applicant's ground water withdrawal from 60.04 mg/30 days to 76.63 mg/30 days. DNREC denied a like request, and the DRBC draft docket reflects that decision. Additionally, the applicant requested renewal of its surface water allocation; however the DRBC staff are recommending that the Commission consider a reduction. The purpose of the project is to continue to supply water for heating and cooling purposes to the Croda, Inc. industrial facility from one Delaware River Intake and Wells Nos. 8, 9, 10, 11, and 12. The existing groundwater allocation of 60.04 mg/30 days is proposed to be renewed for all wells, but the surface water allocation is proposed to be reduced from 470.0 mg/30 days to 99.0 mg/30 days. The project is located south of Interstate Route 295 in New Castle County, Delaware.

9. *Ruscombmanor Township D–2007–34 CP–1.* An application for approval to expand the Golden Oaks WWTP from 0.025 mgd to 0.0645 mgd. The WWTP discharges to an unnamed tributary of Furnace Creek in Ruscombmanor Township, Berks County, Pennsylvania.

10. *Blue Mountain Ski Area D–2008–23–1.* An application for approval of the expansion of the Blue Mountain Ski Area WWTP from 25,000 gallons per day (gpd) to 60,000 gpd. The project WWTP is located in Lower Towamensing Township, Carbon County, Pennsylvania. The WWTP currently discharges to Buckwa Creek, a tributary of Aquashicola Creek. If approved, the project will discharge directly to Aquashicola Creek. Aquashicola Creek is a tributary of the Lehigh River. The project WWTP is located within the drainage area of the section of the non-tidal Delaware River known as the Lower Delaware, which is classified as Special Protection Waters.

11. *Aqua Pennsylvania, Inc. D–2008–25–1.* An application for approval of the existing 0.150 mgd Ridley Creek Water Filtration Plant discharge. The discharge consists of filter backwash from the applicant's water filtration plant. The project discharges to Ridley Creek, which is a tributary of the Delaware River within Water Quality Zone 4. The project is located in Middletown Township, Delaware County, Pennsylvania.

12. *West Deptford Energy Station D–2008–27–1.* An application to approve a cooling water withdrawal and industrial wastewater discharge associated with the construction of a new gas fired, 1,500 megawatt combined cycle power generation facility, known as the West Deptford Energy Station (WDES). The WDES will withdraw an average of 222.6 mg/30 days and maximum of 287.7 mg/30 days of treated effluent from the effluent pipeline of the Gloucester County Utilities Authority (GCUA) wastewater treatment plant as a cooling water source. The WDES will also discharge a monthly average of 2.0 mgd (2.6 mgd daily maximum) of industrial wastewater back to GCUA's effluent pipeline (via WDES Outfall No. DSN001A). The combined effluents will discharge from GCUA's existing outfall (No. DSN001). The facility is located in West Deptford Township, Gloucester County, New Jersey.

13. *Sunny Side Farms, Inc. D–2008–32–1.* A ground water withdrawal project to supply a maximum of 13.5 mg/30 days of water for the irrigation of approximately 60 acres of wheat and soybeans from a single well known as Millville Farm Well. The well is located in the Kirkwood-Cohansey Formation in the Maurice River Watershed in the City of Millville, Cumberland County, New Jersey.

14. *Arcelor Mittal Plate LLC D–2008–36–1.* An application for approval of an existing surface water withdrawal of up to 240 mg/30 days. The Arcelor Mittal Plate Industrial facility withdraws surface water from two intakes. Intake No. 1 withdraws approximately 0.8 mgd of surface water from Sucker Run, a tributary of the West Branch Brandywine Creek. Intake No. 2 withdraws approximately 7.2 mgd of surface water from the West Branch Brandywine Creek. The facility is located in the City of Coatesville, Chester County, Pennsylvania.

15. *FPL Energy Marcus Hook, L.P. D–2000–44–2.* Approval is requested for minor corrections to the Descriptions and Decisions Sections of Docket D–2000–44, issued to FPL Energy Marcus Hook, L.P., on September 28, 2000.

The business meeting also will include adoption of the Minutes of the Commission's December 10, 2009 business meeting; announcements of upcoming advisory committee meetings and other events; a report on hydrologic conditions in the basin; a report by the Executive Director; and a report by the Commission's General Counsel. Additional business meeting items will include consideration by the Commission of a resolution adopting proposed amendments to the Water Code and Comprehensive Plan to implement water auditing, and a resolution formally declaring DRBC's intention to review natural gas drilling projects in shale formations in the Delaware Basin. An opportunity for public dialogue will be provided at the end of the meeting.

Draft dockets scheduled for public hearing on March 11, 2009 will be posted on the Commission's Web site, *http://www.drbc.net*, where they can be accessed through the Notice of Commission Meeting and Public Hearing. Additional documents relating to the dockets and other items may be examined at the Commission's offices. Please contact William Muszynski at 609–883–9500, extension 221, with any docket-related questions.

Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the informational meeting, conference session or hearings should contact the commission secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how the Commission can accommodate your needs.

Dated: February 18, 2009.

Pamela M. Bush,

Commission Secretary.

[FR Doc. E9–3933 Filed 2–23–09; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 27, 2009.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, 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: February 19, 2009.

Angela C. Arrington,

Director, Information Collections Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title: Integrated Postsecondary Education Data System.

Frequency: Annually.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs

Reporting and Recordkeeping Hour Burden:

Responses: 58,090.

Burden Hours: 189,133.

Abstract: The National Center for Education Statistics (NCES) is requesting an amendment to its three-year clearance for the Integrated Postsecondary Education Data System (IPEDS) to run for the 2008–09, 2009–10, and 2010–2011 Web-based data collections. Current authorization for IPEDS expires January 31, 2012 (OMB No. 1850–0582). The Higher Education Opportunity Act (HEOA), which became law on August 14, 2008, after OMB had already granted IPEDS a three-year clearance, has several implications for the IPEDS annual Web-based data collection. The law requires the immediate implementation of several new institutional reporting requirements so that the data may be made available on the College Navigator Web site by August 2009. To meet these statutory deadlines, NCES requested two amendments to its clearance package from OMB, in order to meet the August 2009 deadline for several new requirements in the new law. First, a change memo was sent to OMB on August 19, 2008 (known as ''Amendment 1''). It included a small number of non-substantive changes to the 2008–09 data collection based on the new requirements. OMB provided clearance for those changes in a notice on August 26, 2008. Then, NCES submitted a revised clearance package (known as ''Amendment 2''). It included a limited number of additional substantive changes to spring cycle of the 2008–09 IPEDS Web-based data collection. OMB provided clearance for those changes in a notice on January 16, 2009. NCES now requests a third set of revisions to the Original Clearance Package to meet additional HEOA requirements for the collection of data related to net price in the 2009–10 and 2010–11 data collections (known hereafter as ''Amendment 3''). These changes do not affect the 2008–09 data collection now underway. These changes will allow NCES to make available on the College Navigator Web site data on institutional net prices and a multi-year tuition calculator. In addition, we are including a set of changes to improve the data already collected in IPEDS that are based on suggestions from the postsecondary education data community and IPEDS Technical Review Panel. These changes will improve the reporting of data related to the new HEOA-mandated student-to-faculty ratio, and simplify IPEDS reporting and reduce reporting burden for nondegree-granting institutions.

Requests for copies of the proposed information collection request may be accessed from *http://www.edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3947. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to ICDocketMgr@ed.gov or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–3924 Filed 2–23–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 27, 2009.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires

that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, 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: February 19, 2009.

Angela C. Arrington,

Director, Information Collections Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Planning, Evaluation and Policy Development

Type of Review: New.

Title: Evaluation of the Teaching American History Grants Program: Data Collection Instruments.

Frequency: Annually.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 384.

Burden Hours: 416.

Abstract: This evaluation is the first systematic study of the Teaching American History (TAH) Grants Program that focuses on the relationship between program practices and outcomes. In particular, this evaluation will focus on TAH program contributions to teacher content knowledge and student achievement. The data collection activities for which we are seeking OMB approval are the case studies portion of the evaluation. The purpose of the case study visits will be to deepen our understanding of the factors and conditions that support improved outcomes in student achievement and teacher content knowledge as a result of participation in the grant and to describe practices for various subgroups of teachers. This evaluation (including the case studies portion of which we are seeking OMB approval) is crucial for establishing whether the TAH program is working as intended by Congress, and for identifying which elements of the program are most effective.

Requests for copies of the proposed information collection request may be accessed from *http://www.edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3955. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–3925 Filed 2–23–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 27, 2009.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, 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: February 19, 2009.

Angela C. Arrington,

Director, Information Collections Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title: William D. Ford Federal Direct Loan (Direct Loan) Program: Alternative Documentation of Income.

Frequency: On occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 863,657.

Burden Hours: 285,007.

Abstract: This form serves as the means by which a borrower who is

repaying Direct Loan Program loans under the Income-Contingent Repayment (ICR) Plan or the Income-Based Repayment (IBR) Plan provides the U.S. Department of Education (the Department) with alternative documentation of the borrower's income if the borrower's adjusted gross income (AGI) is not available from the IRS, or if the Department believes that the borrower's most recently reported AGI does not accurately reflect the borrower's current income. Under the Direct Loan Program regulations, a borrower's AGI is used to calculate the monthly loan repayment amount under the ICR and IBR plans.

Requests for copies of the proposed information collection request may be accessed from *http://www.edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3967. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to ICDocketMgr@ed.gov or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–3926 Filed 2–23–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 27, 2009.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, 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: February 19, 2009.

Angela C. Arrington,

Director, Information Collections Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: Evaluation of Secondary Math Teachers from Two Highly Selective Routes to Alternative Certification

Frequency: One time.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 26,929.

Burden Hours: 11,582.

Abstract: The Evaluation of Secondary Math Teachers from Two Highly Selective Routes to Alternative Certification will examine the relative effectiveness of secondary math achievement of teachers who obtain certification through the two largest highly selective routes to alternative certification. This second package is for the majority of the data collection, including the teacher survey and collection of teacher contact information, a teacher math content knowledge assessment, a form for teachers to release their test scores to the study team, parent/guardian consent forms, collection of school records data, a student math assessment and students' assent for taking the assessment, and a protocol for semi-structured interviews of alternative certification program administrators.

Requests for copies of the proposed information collection request may be accessed from *http://www.edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3950. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–3927 Filed 2–23–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 27, 2009.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public

participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, 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: February 19, 2009.

Angela C. Arrington,

Director, Information Collections Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Extension.

Title: Teacher Cancellation Low Income Directory.

Frequency: Annually.

Affected Public:

Individuals or household; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 57.

Burden Hours: 6983.

Abstract: State Agencies contribute to the development of a directory of elementary and secondary schools and educational service agencies that serve low-income families. The directory allows post-secondary institutions to determine whether or not a Federal Perkins Loan, Direct loan, or Federal Family Education Loan at their school is eligible to receive a loan cancellation as provided under Title I of the Elementary and Secondary Education Act of 1965.

Requests for copies of the proposed information collection request may be accessed from *http://www.edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3948. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–3928 Filed 2–23–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 27, 2009.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, 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: February 19, 2009.

Angela C. Arrington,

Director, Information Collections Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Extension.

Title: Quick Response Information System (QRIS).

Frequency: One time.

Affected Public: Individuals or household; not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 3,655.

Burden Hours: 7,889.

Abstract: The National Center for Education Statistics (NCES) Quick Response Information System (QRIS) consists of the Fast Response Survey System (FRSS) and the Postsecondary Education Quick Information System (PEQIS). The QRIS currently conducts surveys under OMB generic clearance 1850–0733, which expires in October 2009. This clearance request represents a request for a continuation of the current clearance conditions through October 2012. FRSS primarily conducts surveys of the elementary/secondary sector (districts, schools) and public libraries. PEQIS conducts surveys of the postsecondary education sector. FRSS and PEQIS surveys are cleared under the QRIS generic clearance. The QRIS clearance goes through the regular clearance process at OMB with a 60-day notice and a 30-day notice as part of the 120-day review period. The QRIS package describes the general scope of

the surveys, their quick turnaround time, their length, size of sample, sample design, and some typical topics. Each individual FRSS or PEQIS survey goes into the clearance process with an abbreviated clearance package, justifying the particular content of the survey, describing the sample design, the timeline for the survey activities, and the questionnaire. The review period for each individual survey is approximately 45 days, including a 30-day **Federal Register** notice period. OMB will provide comments as soon after the end of the 30-day notice period as possible. This generic clearance request is for surveys of state education agencies, school districts, schools, postsecondary institutions, and libraries. Surveys of teachers, students, commercial establishments, and households are not included in this request.

Requests for copies of the proposed information collection request may be accessed from *http://www.edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3965. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to ICDocketMgr@ed.gov or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–3930 Filed 2–23–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The 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.

DATES: Interested persons are invited to submit comments on or before March 26, 2009.

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 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, 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.

Dated: February 19, 2009.

Angela C. Arrington,

Director, Information Collections Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New Collection.

Title: Evaluation of Secondary Math Teachers from Two Highly Selective Routes to Alternative Certification.

Frequency: One time.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 5,270.

Burden Hours: 1,185.

Abstract: The objective of the evaluation is to estimate the impact on secondary student math achievement of teachers who obtain certification via Highly Selective Routes to Alternative Certification (HSAC) routes compared with teachers who receive certification through traditional or less selective alternative certification routes. The evaluation design is an experiment in which the researchers will randomly assign secondary school students to a treatment or control group. This submission includes the justification and plan for the data collection of information and statistical methods for the evaluation. The package also provides an overview of the study, including its design and data collection procedures.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3921. 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. E9–3932 Filed 2–23–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–36–001]

Southern Natural Gas Company; Notice of Amendment to Application

February 17, 2009.

Take notice that on February 10, 2009, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed, pursuant to section 7 of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations in the above referenced docket an application to amend its pending application in Docket No. CP09–36–000 filed on December 15, 2008, for a certificate of public convenience and necessity authorizing the construction, installation, and operation of certain pipeline, compression, measurement, interconnection, and appurtenant facilities in the states of Alabama,

Mississippi, and Georgia, and the abandonment and replacement of certain other sections of its pipeline system in the states of Alabama and Georgia (SSEIII Project), all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing 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 at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Specifically, Southern proposes to in its amendment to change the pipeline diameter for the proposed Thomaston-Griffin Loop from 30 inches to 36 inches. In addition, Southern proposes to reduce the length of the proposed Gwinville Loop from 14.3 miles to 12.0 miles and the length of the proposed Gallion Loop from 9.75 to 5.2 miles. Southern states that the purpose of the facility modifications is to accommodate a delivery point shift at the request of an existing shipper, Atlanta Gas Light Company. Southern asserts that the proposed changes will result in a cost savings of approximately $200,000. Southern does not propose any other changes to its SSEIII Project, including the proposed levels of service, rates, and phasing.

Any questions concerning this application may be directed to John C. Griffin, Senior Counsel, Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202–2563 at (205) 325–7133.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice, the Commission staff will either: complete the environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: March 10, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–3852 Filed 2–23–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 459–249]

Ameren/UE; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

February 17, 2009.

a. *Type of Application:* Non-project use of project lands and waters.

b. *Project Number:* 459–249.

c. *Date Filed:* December 22, 2008.

d. *Applicant:* Ameren/UE.

e. *Name of Project:* Osage Hydroelectric Project.

f. *Location:* The project is located in Benton, Camden, Miller, and Morgan Counties, Missouri. The proposed use would be located at the Paradise Tropical Restaurant, Inc., near mile marker 24 of the main channel of the Lake of the Ozarks in Camden County, Missouri.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Jeff Green, Shoreline Supervisor, Ameren/UE, P.O. Box 993, Lake Ozark, MO 65049, (573) 365–9214.

i. *FERC Contact:* Any questions on this notice should be addressed to Christopher Yeakel at (202) 502–8132,

or e-mail address: *christopher.yeakel@ferc.gov*.

j. *Deadline for filing comments and/or motions:* March 17, 2009.

k. *Description of Request:* Ameren/UE requests approval to permit Tucker Investments, LLC, to modify an existing multi-slip boat dock and construct a breakwater at the Paradise Tropical Restaurant, Inc., near mile marker 24 of the main channel of the Lake of the Ozarks. The existing dock has 13 double slips. The modified dock would have a total of 18 double boat slips; twelve slips would be 28 feet long and 24 feet wide and six would be 28 feet long and 28 feet wide. The docks would be available to patrons of Paradise Tropical Restaurant. The breakwater would be a floating-concrete design 320 feet long and 12 feet wide, and would have seventeen navigation lights. The existing fuel-dispensing facilities would remain. In developing the application, the licensee consulted with the Missouri State Historic Preservation Officer, U.S. Fish and Wildlife Service, the Missouri Department of Conservation, and the Missouri State Water Patrol.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also 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 (p-459) to access the document. 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, call 1–866–208–3372 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers (p–459–249). All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–3856 Filed 2–23–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 459–253]

Ameren/UE; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

February 17, 2009.

a. *Type of Application:* Non-project use of project lands and waters.

b. *Project Number:* 459–253.

c. *Date Filed:* February 4, 2009.

d. *Applicant:* Ameren/UE.

e. *Name of Project:* Osage Hydroelectric Project.

f. *Location:* The project is located in Benton, Camden, Miller, and Morgan Counties, Missouri. The proposed action would be located at Captain Ron's Restaurant near mile marker 34.2+0.4 in Francis Hollow Cove on the Lake of the Ozarks, in Camden County, Missouri.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Jeff Green, Shoreline Supervisor, Ameren/UE, P.O. Box 993, Lake Ozark, MO 65049, (573) 365–9214.

i. *FERC Contact:* Any questions on this notice should be addressed to Christopher Yeakel at (202) 502–8132, or e-mail address: *christopher.yeakel@ferc.gov*.

j. *Deadline for Filing Comments and/or Motions:* March 17, 2009.

k. *Description of Request:* Ameren/UE requests approval to permit Buccaneer Bay, LLC, to modify 4 existing multi-slip boat docks and construct 2 new multi-slip boat docks at Captain Ron's Restaurant. The existing docks would be reconfigured to be consistent with AmerenUE's shoreline permitting guidelines. One existing dock would expand from 14 to 20 covered single slips. One proposed dock would consist of 8 double uncovered slips and extend 132 feet from the shoreline; the other proposed dock would consist of 8 single covered slips and extend 138 feet from the shoreline. Approval of the licensee's proposal would increase the permitted watercraft capacity of the facilities from 88 to 118 watercraft. The docks would be available to patrons of Captain Ron's Restaurant. No dredging, fuel dispensing, or sewage pumping facilities are proposed. In developing the application, the licensee consulted with the Missouri State Historic Preservation Officer, U.S. Fish and Wildlife Service, the Missouri Department of Conservation, and the Missouri State Water Patrol.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also 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 (p-459) to access the document. 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, call 1–866–208–3372 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also

available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers (p–459–253). All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–3857 Filed 2–23–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–58–000]

Rockies Express Pipeline LLC; Notice of Application

February 17, 2009.

Take notice that on February 3, 2009, Rockies Express Pipeline LLC (Rockies Express) 370 Van Gordon Street, Lakewood, Colorado 80228, filed an application in Docket No. CP09–58–000, pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting a certificate of public convenience and necessity to construct and operate facilities to expand the capacity of its system in Zone 1 by 200,000 Dth per day. Specifically, Rockies Express proposes to increase compression at two certificated compressor stations: (1) Big Hole Compressor Station in Moffat County, Colorado—one new 20,500 horsepower (hp) unit; and (2) Arlington Compressor Station in Carbon County, Wyoming—one new 17,500 hp unit. Rockies Express requests a determination that rolled-in rate treatment is appropriate for the proposed facilities.

Any questions regarding this application should be directed to Robert F. Harrington, Vice President, Rockies Express Pipeline LLC, P.O. Box 281304, Lakewood, Colorado 80228–8304, telephone no. (303) 763–3258, and e-mail: *Robert_Harrington@kindermorgan.com*.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://*

www.ferc.gov. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: March 10, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–3853 Filed 2–23–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9202–150]

Upper Yampa Water Conservancy District; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Fishway Prescriptions

February 17, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No.:* 9202–150.

c. *Date Filed:* December 4, 2008.

d. *Applicant:* Upper Yampa Water Conservancy District.

e. *Name of Project:* Stagecoach Project.

f. *Location:* The project is located on the Yampa River, in Routt County, Colorado.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Kevin McBride, Director, Upper Yampa Water Conservancy District, P.O. Box 880339, Steamboat Springs, CO 80488–0339, (970) 879–2424.

i. *FERC Contact:* Anthony DeLuca, (202) 502–6632.

j. Deadline for filing comments, protests, motions to intervene, recommendations, preliminary terms and conditions, and fishway prescriptions is due 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice. All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–9202–150) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The Upper Yampa Water Conservancy District requests Commission approval to amend the project's existing license issued by the Federal Energy Regulatory Commission (FERC) to raise the storage level of Stagecoach Reservoir by 4 feet. This proposal will increase the spillway crest elevation, thereby enlarging the project's reservoir storage capacity from 33,275 to 36,460 Ac-ft and increasing the project's potential for increasing downstream water supply. The physical composition of most of the Stagecoach Project developments (e.g., the powerhouse, turbines and generators, transmission and substation, and other mechanical, electrical, and transmission equipment) will not be impacted. However, the project spillway and reservoir will be altered by the proposal.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also 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, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application. Comments, protests, interventions, recommendations, terms and conditions, and fishway prescriptions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

o. *Filing and Service of Responsive Documents:* All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''FISHWAY PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, recommendations, terms and conditions or prescriptions should relate to project works which are the subject of the license amendment. Agencies may obtain copies of the application directly from the applicant. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

p. As provided for in 18 CFR 4.34(b)(5)(i), a license applicant must file, no later than 60 days following the date of issuance of this notice of acceptance and ready for environmental analysis: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received

the request; or (3) evidence of waiver of water quality certification.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–3851 Filed 2–23–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2157–167]

Public Utility District No. 1 of Snohomish County, Washington City of Everett, WA; Notice Dismissing Motion To Intervene

February 17, 2009.

On December 1, 2005, in Project No. 2157–167, Public Utility District No. 1 of Snohomish County, Washington (Snohomish PUD) and the City of Everett (Everett) filed a Notice of Intent to File a License Application and a Pre-Application Document (PAD) under the Commission's integrated licensing process (ILP) for the Henry M. Jackson Project. On February 6, 2009, Snohomish County filed a motion to intervene in this proceeding.

Pursuant to Rule 214(a)(3) of the Commission's Rules of Practice and Procedure, any person may seek to intervene and become a party in a proceeding by filing a motion to intervene that complies with the content requirements of Rule 214(b).[1] However, a motion to intervene in the ILP at the *pre*-application stage is not appropriate. Because Snohomish PUD and Everett have not yet filed a license application, there is no proceeding in which to intervene, and consequently the motion to intervene in Project No. 2157–167 is dismissed as premature. Should Snohomish PUD and Everett file a license application, the Commission will then provide an opportunity for intervention.[2]

This notice constitutes final agency action. Requests for rehearing of this notice may be filed within 30 days of the date of issuance of this notice, pursuant to Rule 713 of the Commission's Rules of Practice and Procedure.[3]

Kimberly D. Bose,

Secretary.

[FR Doc. E9–3855 Filed 2–23–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–615–000; ER07–1257–000; ER08–1113–000; OA08–62–000]

California Independent System Operator Corporation; Notice of FERC Staff Attendance

February 17, 2009.

The Federal Energy Regulatory Commission (Commission) hereby gives notice that on the following dates members of its staff will participate in teleconferences and meetings to be conducted by the California Independent System Operator (CAISO). The agenda and other documents for the teleconferences and meetings are available on the CAISO's Web site, *http://www.caiso.com*.

February 23, 2009	MRTU Parallel Operations Touchpoint.
February 24, 2009	MRTU Parallel Operations Touchpoint. Systems Interface Users Group. Payment Acceleration Working Group.
February 25, 2009	Settlements and Market Clearing Users Group.
February 26, 2009	MRTU Parallel Operations Touchpoint. Residual Unit Commitment Procedure. Participating Transmission Owner Unit Costs.
February 27, 2009	2009 Transmission Plan.
March 2, 2009	MRTU Parallel Operations Touchpoint.
March 3, 2009	MRTU Parallel Operations Touchpoint. Systems Interface Users Group.
March 4, 2009	Settlements and Market Clearing Users Group. Congestion Revenue Rights.
March 5, 2009	MRTU Parallel Operations Touchpoint.

Sponsored by the CAISO, the teleconferences and meetings are open to all market participants, and Commission staff's attendance is part of the Commission's ongoing outreach efforts. The teleconferences and meetings may discuss matters at issue in the above captioned dockets.

For further information, contact Saeed Farrokhpay at *saeed.farrokhpay@ferc.gov*; (916) 294–0233 or Maury Kruth at *maury.kruth@ferc.gov*, (916) 294–0275.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–3854 Filed 2–23–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC09–40–000]

Empire Pipeline, Inc.; Notice of Filing

February 17, 2009.

Take notice that on February 10, 2009 Empire Pipeline, Inc. submitted a request for waiver of the requirement to submit the 2008 FERC Form No. 2 under Section 260.1 of the Commission regulations.

Any person desiring to intervene or to protest this filing must file in

[1] 18 CFR 385.214 (2008).

[2] 18 CFR 5.1 *et seq.* (2008). To receive all filings in a docket, interested parties are encouraged to utilize the Commission's e-Subscription service, which can be accessed at *http://www.ferc.gov/docs-filing/esubscription.asp*.

[3] 18 CFR 385.713 (2008).

accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: March 19, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–3858 Filed 2–23–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2001–010; Docket No. ER06–1152–000; Docket No. ER07–1247–000]

Order on Intent To Revoke Market-Based Rate Authority

February 19, 2009.

Before Commissioners: Jon Wellinghoff, Acting Chairman; Suedeen G. Kelly, Marc Spitzer, and Philip D. Moeller.

Electric Quarterly Reports: Docket No. ER02–2001–010.

Celeren Corporation: Docket No. ER06–1152–000.

FC Energy Services Company, LLC: Docket No. ER07–1247–000.

1. Section 205 of the Federal Power Act (FPA), 16 U.S.C. 824d (2006), and 18 CFR part 35 (2008), require, among other things, that all rates, terms, and conditions of jurisdictional services be filed with the Commission. In Order No. 2001, the Commission revised its public utility filing requirements and established a requirement for public utilities, including power marketers, to file Electric Quarterly Reports summarizing the contractual terms and conditions in their agreements for all jurisdictional services (including market-based power sales, cost-based power sales, and transmission service) and providing transaction information (including rates) for short-term and long-term power sales during the most recent calendar quarter.[1]

2. Commission staff's review of the Electric Quarterly Report submittals indicates that two utilities with authority to sell electric power at market-based rates have failed to file their Electric Quarterly Reports. This order notifies these public utilities that their market-based rate authorizations will be revoked unless they comply with the Commission's requirements within 15 days of the date of issuance of this order.

3. In Order No. 2001, the Commission stated that,

> [i]f a public utility fails to file a[n] Electric Quarterly Report (without an appropriate request for extension), or fails to report an agreement in a report, that public utility may forfeit its market-based rate authority and may be required to file a new application for market-based rate authority if it wishes to resume making sales at market-based rates.[2]

4. The Commission further stated that,

> [o]nce this rule becomes effective, the requirement to comply with this rule will supersede the conditions in public utilities' market-based rate authorizations, and failure to comply with the requirements of this rule will subject public utilities to the same consequences they would face for not satisfying the conditions in their rate authorizations, including possible revocation of their authority to make wholesale power sales at market-based rates.[3]

5. Pursuant to these requirements, the Commission has revoked the market-based rate tariffs of several market-based rate sellers that failed to submit their Electric Quarterly Reports.[4]

6. As noted above, Commission staff's review of the Electric Quarterly Report submittals identified two public utilities with authority to sell power at market-based rates that failed to file Electric Quarterly Reports through the third and fourth quarters of 2008. Commission staff contacted these entities to remind them of their regulatory obligations.[5] None of the public utilities listed in the caption of this order has met those obligations.[6]

Accordingly, this order notifies these public utilities that their market-based rate authorizations will be revoked unless they comply with the Commission's requirements within 15 days of the issuance of this order.

7. In the event that any of the above-captioned market-based rate sellers has already filed its Electric Quarterly Report in compliance with the Commission's requirements, its inclusion herein is inadvertent. Such market-based rate seller is directed, within 15 days of the date of issuance of this order, to make a filing with the Commission identifying itself and providing details about its prior filings that establish that it complied with the Commission's Electric Quarterly Report filing requirements.

8. If any of the above-captioned market-based rate sellers do not wish to continue having market-based rate authority, they may file a notice of cancellation with the Commission pursuant to section 205 of the FPA to cancel their market-based rate tariff.

The Commission Orders:

(A) Within 15 days of the date of issuance of this order, each public utility listed in the caption of this order shall file with the Commission all delinquent Electric Quarterly Reports. If a public utility fails to make this filing, the Commission will revoke that public utility's authority to sell power at market-based rates and will terminate its electric market-based rate tariff. The Secretary is hereby directed, upon expiration of the filing deadline in this order, to promptly issue a notice, effective on the date of issuance, listing the public utilities whose tariffs have

[1] *Revised Public Utility Filing Requirements,* Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *Reh'g Denied,* Order No. 2001–A, 100 FERC ¶ 61,074, *Reconsideration and Clarification Denied,* Order No. 2001–B, 100 FERC ¶ 61,342, *Order Directing Filings,* Order No. 2001–C, 101 FERC ¶ 61,314 (2002) *Order Directing Filings,* Order No. 2001–D, 102 FERC ¶ 61,334 (2003).

[2] Order No. 2001 at P 222.

[3] *Id.* P 223.

[4] *See, e.g., Electric Quarterly Reports,* 73 FR 31,460 (June 2, 2008); *Electric Quarterly Reports,* 115 FERC ¶ 61,073 (2006), *Electric Quarterly Reports,* 114 FERC ¶ 61,171 (2006).

[5] *See Celeren Corporation,* Docket No. ER06–1152–000 (December 19, 2008) (unpublished letter order); *FC Energy Services Company, LLC,* Docket No. ER07–1247–000 (December 19, 2008) (unpublished letter order).

[6] According to the Commission's records, the companies subject to this order last filed their Electric Quarterly Reports for the 2nd quarter of 2008.

been revoked for failure to comply with the requirements of this order and the Commission's Electric Quarterly Report filing requirements.

(B) The Secretary is hereby directed to publish this order in the **Federal Register**.

By the Commission. Commissioner Kelliher is not participating.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–3931 Filed 2–23–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OARM–2008–0829, FRL–8776–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Drug Testing for Contract Employees (Renewal), EPA ICR Number 2183.03, OMB Control Number 2030–0044

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. This ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments must be submitted on or before March 26, 2009.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OARM–2008–0829, to (1) EPA online using *www.regulations.gov* (our preferred method), by e-mail to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: 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: Donna Blanding, Environmental Protection Agency, Office of Acquisition Management, Mail Code 3802R, 1200 Pennsylvania Ave., NW., Washington, DC 20460; (202) 564–1130; fax number: (202) 565–2475; e-mail address: *blanding.donna@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to procedures prescribed in 5 CFR 1320.12. On November 13, 2008 (73 FR 67152), 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–OARM–2008–0829, which is available for public viewing at *http://www.regulations.gov,* or in person viewing at the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 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 Office of Environmental Information Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Titles: Drug Testing for Contractor Employees (Renewal).

ICR numbers: EPA ICR No. 2183.03, OMB Control No. 2030–0044.

ICR Status: This ICR is scheduled to expire on March 31, 2009. 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, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA uses contractors to perform services throughout the nation with regard to environmental emergencies involving the release, or threatened release, of oil, radioactive materials or hazardous chemicals that may potentially affect communities and the surrounding environment. Releases may be accidental, deliberate, or may be caused by natural disasters. Emergency responders are available 24 hours-a-day to an incident, and respond with necessary personnel and equipment to eliminate dangers to the public and environment. Contractors responding to any of these types of incidents are responsible for conducting drug tests and applying Government-established suitability criteria in determining whether employees are acceptable to perform on given sites or on specific projects prior to contract employee performance. The information to be collected under the ICR for Drug Testing for Contractor Employees covers testing for the presence of marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP). The Contractor shall maintain records of all drug tests.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 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 is estimated to average 1 hour per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; 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: Entities potentially affected by this action are contractors involved with Emergency Response that have significant security concerns, as determined by the Contracting Officer on a case-by-case basis, to provide qualified personnel that meet the drug testing requirements developed by EPA.

Estimated Number of Respondents: 450.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 450.

Estimated Total Annual Cost: $70,686 which includes $0 annual capital/startup and O&M costs.

Changes in the Estimates: There is no change in the estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: February 18, 2009.

John Moses,

Acting Director, Collection Strategies Division.

[FR Doc. E9–3908 Filed 2–23–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2005–0121; FRL–8775–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Exclusion Determinations for New Non-road Spark-Ignited Engines, New Non-road Compression-Ignited Engines and New On-Road Heavy Duty Engines (Renewal); EPA ICR No. 1852.04, OMB Control No. 2060–0395

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that 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 information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before March 26, 2009.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2005–0121, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center (2282T), 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: 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: Nydia Reyes-Morales (6405J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–343–9264; fax number: 202–343–2804; e-mail address: *reyes-morales.nydia@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 30, 2008 (73 FR 36863), 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 No. EPA–HQ–OAR–2005–0121, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Exclusion Determinations for New Non-road Spark-Ignited Engines, New Non-road Compression-Ignited Engines and New On-Road Heavy Duty Engines (Renewal).

ICR numbers: EPA ICR No. 1852.04, OMB Control No. 2060–0395.

ICR Status: This ICR is scheduled to expire on February 28, 2009. 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 are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Under the provisions of the Clean Air Act (Act), the Administrator is required to promulgate regulations to control air pollutant emissions from ''motor vehicles'' and ''non-road engines,'' as defined in the Act. Motor vehicles and non-road engines not meeting the applicable definitions are excluded from compliance with current regulations.

A manufacturer may make an exclusion determination by itself; however, manufacturers and importers may routinely request EPA to make such determination to ensure that their determination does not differ from the Agency's. To request an exclusion determination, manufacturers submit a letter with a description of the engine and/or vehicle (engine type, horsepower rating, intended usage etc.) and sales brochures to EPA. EPA uses this information to determine whether the engine or vehicle is excluded from compliance with one or more emission regulations. EPA then stores the data in its internal files, and makes it available to environmental groups and the public upon request under the Freedom of Information Act.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 6 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions;

develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Light Truck and Utility Vehicle Manufacturers; Heavy Duty Truck Manufacturers; Gasoline Engine and Engine Parts Manufacturers; Construction Machinery Manufacturers; Industrial Truck, Tractor, Trailer, and Stacker Machinery Manufacturers; Marine Engine Manufacturers; Other Engine Equipment Manufacturers.

Estimated Number of Respondents: 12.

Frequency of Response: Annual and On Occasion.

Estimated Total Annual Hour Burden: 69.

Estimated Total Annual Cost: $6,254, which includes $116 annualized capital or O&M costs.

Changes in the Estimates: There is no change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: February 18, 2009.

John Moses,

Acting Director, Collection Strategies Division.

[FR Doc. E9–3909 Filed 2–23–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0039; FRL–8775–4]

Agency Information Collection Activities; Proposed Collection; Comment Request; Reporting and Recordkeeping Requirements of the HCFC Allowance System; EPA ICR No. 2014.03 OMB Control No. 2060–0498

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on July 31, 2009. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 27, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2003–0039 by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax*: 202–566–9744.
- *Mail*: 1200 Pennsylvania Ave, NW., Mailcode 2822T, Washington DC 20460.
- Hand Delivery: 1301 Constitution Ave, NW., Room 3334, EPA West Building, 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–2003–0039. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

FOR FURTHER INFORMATION CONTACT: Robert Burchard, Office of Air and Radiation, 6205J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9126; fax number: (202) 343–2208 ; email address: *burchard.robert@epa.gov*.

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2003–0039, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of

information technology, *e.g.*, permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does this Apply to?

Docket ID No. EPA–HQ–OAR–2003–0039.

Affected entities: Entities potentially affected by this action are companies that produce, import, and export class II controlled ozone depleting substances.

Title: Reporting and Recordkeeping Requirements of the HCFC Allowance System.

ICR numbers: EPA ICR No. 2014.03, OMB Control No. 2060–0498.

ICR status: This ICR is currently scheduled to expire on July 31, 2009. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The international treaty *The Montreal Protocol on Substances that Deplete the Ozone Layer* (Protocol) and Title VI of the Clean Air Act Amendments (CAAA) established limits on total U.S. production, import, and export of class I and class II controlled ozone depleting substances (commonly referred to as ''controlled substances'').

Under its Protocol commitments, the United States was obligated to cease production and import of class I controlled substances (*e.g.*, chlorofluorocarbons or CFCs) with exemptions for essential uses, critical uses, previously used material, and material that is transformed, destroyed, or exported to developing countries. The Protocol also establishes limits and reduction schedules leading to the eventual phaseout of class II controlled substances (*i.e.*, hydrochlorofluorocarbons or HCFCs).

The U.S. is obligated to limit HCFC consumption (defined by the Protocol as production plus imports, minus exports). The U.S. is also a signatory to amendments that created a schedule for the phaseout of the consumption of HCFCs. The schedule called for a 35 percent reduction on January 1, 2004, followed by a 75 percent reduction on January 1, 2010, a 90 percent reduction on January 1, 2015, a 99.5 percent reduction on January 1, 2020, and a total phaseout on January 1, 2030. The U.S. Environmental Protection Agency (EPA) is responsible for administering the phaseout. The U.S. comfortably met the 35% reduction of the cap, and is on schedule to meet the 75% reduction for January 1, 2010.

To ensure the U.S. compliance with these limits and restrictions, EPA established an allowance system to control U.S. production and import of HCFCs by granting control measures referred to as baseline allowances. Baseline allowances are based on the historical activity of individual companies. There are two types of allowances: consumption and production allowances. Since each allowance is equal to 1 kilogram of HCFC, EPA is able to monitor the quantity of HCFCs being produced, imported and exported. Transfers of production and consumption allowances among producers and importers are allowed and are tracked by EPA.

The limits and restrictions for individual U.S. companies are monitored by EPA through the recordkeeping and reporting requirements established in the regulations in 40 CFR part 82, subpart A. To submit required information, regulated entities can download voluntary reporting forms from EPA's Web site (*http://www.epa.gov/ozone/record.index.html*), complete them, and send them to EPA electronically,via mail, courier, or fax. Almost all of the large regulated companies use the EPA reporting forms.

Upon receipt of the reports, the data is entered into the ODS Tracking System. The ODS Tracking System is a secure database that maintains the data submitted to EPA and helps the Agency: maintain oversight over total production and consumption of controlled substances; monitor compliance with limits and restrictions on production, imports, and trades and specific exemptions from the phaseout for individual U.S. companies; and enforce against illegal imports.

Burden Statement: The total annual public reporting and recordkeeping burden for this collection of information is estimated to be 1,860 hours and $175,673. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 53.

Frequency of response: Annually, Quarterly, or on occasion (Request for additional consumption Reports or Transfer of Allowance Report).

Estimated total average number of responses for each respondent: 7.5 (393/53).

Estimated total annual burden hours: 1860 hours.

Estimated total annual costs: $175,673. This includes an estimated burden cost of $174,533 and an estimated cost of $1,140 for capital investment or maintenance and operational costs.

There is an increase of 228 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase reflects EPA's updating of burden estimates for this collection. The

increase can be attributed to two major changes; (1) an increase in the number of responses for the Request for Additional Allowance Report and Domestic Transfer of Allowances/Inter-pollutant Transfer Report and (2) an increase in the number of activities per year for the Petition to Import Used Substances. Data retrieved from the ODS Tracking System and EPA staff confirm the increase in these numbers of reports received by the agency over the last several years.

In addition to reflecting this trend, the numbers for the Request for Additional Allowance Report and Domestic Transfer of Allowances/Inter-pollutant Transfer Report were then adjusted to reflect an anticipated increase in allowance holders (*i.e.*, new entrants into the allowance system), given EPA's soon-to-be released final rulemaking which will assign allowances to HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb.

For all other report types, the update to the burden analysis resulted in a decrease in the total hours per year.

Overall, the increase to the number of respondents or number of activities per year for the three aforementioned reports resulted in an overall net increase of 228 hours in total annual respondent burden.

What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: February 17, 2009.

Brian McLean,

Director, Office of Air and Radiation.

[FR Doc. E9–3910 Filed 2–23–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2008–0220; FRL–8776–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; TSCA Section 5(a)(2) Significant New Use Rules for Existing Chemicals; EPA ICR No. 1188.09, OMB Control No. 2070–0038

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 information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before March 26, 2009.

ADDRESSES: Submit your comments, referencing docket ID Number EPA–HQ–OPPT–2008–0220 to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *oppt.ncic@epa.gov* or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Mail Code: 7407T, 1200 Pennsylvania Ave., 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: Barbara Cunningham, Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Mailcode: 7408–M, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–554–1404; e-mail address: *TSCA-Hotline@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 18, 2008 (73 FR 34725), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any comments related to 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 No. EPA–HQ–OPPT–2008–0220, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the OPPT Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 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 Pollution Prevention and Toxics Docket is 202–566–0280.

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 public docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in *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. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in *http://www.regulations.gov.* The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: TSCA Section 5(a)(2) Significant New Use Rules for Existing Chemicals.

ICR Numbers: EPA ICR No. 1188.09, OMB Control No. 2070–0038.

ICR Status: This ICR is currently scheduled to expire on March 31, 2009. 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, are displayed either by

publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 5 of the Toxic Substances Control Act (TSCA) provides EPA with a regulatory mechanism to monitor and, if necessary, control significant new uses of chemical substances. Section 5 authorizes EPA to determine by rule (a significant new use rule or SNUR), after considering all relevant factors, that a use of a chemical substance represents a significant new use. If EPA determines that a use of a chemical substance is a significant new use, section 5 requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the substance for that use.

EPA uses the information obtained through this collection to evaluate the health and environmental effects of the significant new use. EPA may take regulatory actions under TSCA section 5, 6 or 7 to control the activities for which it has received a notice. These actions include orders to limit or prohibit the manufacture, importation, processing, distribution in commerce, use or disposal of chemical substances. If EPA does not take action, section 5 also requires EPA to publish a **Federal Register** notice explaining the reasons for not taking action.

Responses to the collection of information are mandatory (*see* 40 CFR part 721).

Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to be approximately 71 hours per response. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; 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: Entities potentially affected by this action are companies that manufacture, process, import, or distribute in commerce chemical substances or mixtures.

Frequency of Collection: On occasion.

Estimated Average Number of Responses for Each Respondent: 1.

Estimated No. of Respondents: 20.

Estimated Total Annual Burden on Respondents: 1,423 hours.

Estimated Total Annual Costs: $9,403.

Changes in Burden Estimates: There is a net increase of 562 hours (from 861 hours to 1,423 hours) in the total estimated respondent burden compared with that currently in the OMB inventory. This increase reflects EPA's updated estimates of an anticipated increase in the number of SNURs promulgated from three to five per year and an increase in the estimated number of SNUNs received from five to ten per year. Additionally, estimated number of chemicals per SNUR is estimated to fall from 41 to 20. All of these changes are adjustments.

Dated: February 18, 2009.

John Moses,

Acting Director, Collection Strategies Division.

[FR Doc. E9–3911 Filed 2–23–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0078; FRL–8776–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Landfill Methane Outreach Program (Renewal), EPA ICR Number 1849.05, OMB Control Number 2060–0446

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 reinstate a previously approved ICR. The ICR that is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before March 26, 2009.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OAR–2003–0078 to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *a-and-r-Docket@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Air and Radiation Docket, mail code 2282T, 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: Victoria Ludwig, Climate Change Division, Office of Atmospheric Programs, 6207J, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 343–9291; fax number: (202) 343–2202; e-mail address: *ludwig.victoria@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 3, 2008 (73 FR 31681), 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–OAR–2003–0078, which is available for public viewing online at *http://www.regulations.gov,* and in person viewing at the Air and Radiation 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 Air and Radiation Docket is (202) 566–1742.

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 access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains

copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Landfill Methane Outreach Program (Renewal).

ICR Numbers: EPA ICR Number 1849.05, OMB Control Number 2060–0446.

ICR Status: This ICR was discontinued on July 31, 2007. EPA is reinstating the previously approved ICR. 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 are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Landfill Methane Outreach Program (LMOP), created by EPA as part of the Climate Change Action Plan, is a voluntary program designed to encourage and facilitate the development of environmentally and economically sound landfill gas (LFG) energy projects across the United States in order to reduce methane emissions from landfills. LMOP does this by educating local governments and communities about the benefits of LFG recovery and use; building partnerships between state agencies, industry, energy service providers, local communities, and other stakeholders interested in developing this valuable resource in their community; and providing tools to evaluate LFG energy (LFGE) potential. LMOP signs voluntary Memoranda of Understanding (MOU) with these organizations to enlist their support in promoting cost-effective LFG utilization. The information collection includes completion and submission of the MOU, and annual completion and submission of information forms that include basic information on landfill gas energy projects with which the organizations are involved. The information collection also includes a one-time effort to update the LMOP Landfill and Landfill Gas Energy Project Database. The information collection is to be utilized to maintain up-to-date data and information about LMOP Partners and landfill gas energy projects with which they are involved. The data will also be used by the public to assess LFGE project development opportunities in the United States. In addition, the information collection will assist LMOP in evaluating the reduction of methane emissions from landfills. Responses to the information collection are voluntary.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, and disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Landfill owners and operators (both public and private), landfill gas energy project developers, manufacturers and suppliers of landfill gas energy equipment, utilities, industries using landfill gas energy, state agencies involved in energy, air pollution, economic development and solid waste management, and non-profits involved in the solid waste management, public works, local government and renewable energy sectors.

Estimated Number of Respondents: 1,279.

Frequency of Response: Initially, occasionally, annually.

Estimated Total Annual Hour Burden: 5,887.

Estimated Total Annual Cost: $344,827, which includes $1,342 in annualized O&M costs.

Changes in the Estimates: There is an increase of 4,354 hours in the total estimated annual respondent burden compared with that identified in the ICR previously approved by OMB. This increase reflects a large growth in the number of LMOP Partners since the last renewal. Since the last ICR renewal, LMOP no longer collects information annually from Energy, State, and non-developer Industry Partners, the information forms have been simplified into pre-populated spreadsheets, and other collection efficiencies have been implemented such as the option to submit MOUs electronically. As a result of these changes, the average number of hours per Partner has decreased, but the total hourly burden for LMOP Partners still increased because of an increase in the number of Partners. For perspective on the magnitude of Partner growth, there were 365 Partners at the end of 2003 when the ICR was last renewed, whereas there were 675 Partners as of July 2007. This indicates an 85% increase in Partners since the last renewal. The remainder of the increase in total hourly burden comes from a planned initiative to collect critical landfill data from 1,000 additional landfill owners and operators. These data are necessary in order to better respond to public data requests and evaluate the potential of future LFGE opportunities. This type of data collection has not occurred during LMOP's history. This change is the result of a program change.

Dated: February 18, 2009.

John Moses,

Acting Director, Collection Strategies Division.

[FR Doc. E9–3912 Filed 2–23–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

February 17, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (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 estimate; (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.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 27, 2009. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, (202) 395–5887, or via fax at 202–395–5167 or via internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov,* Federal Communications Commission, or an e-mail to *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information, contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0999.

Title: Section 20.19, Hearing Aid-Compatible Mobile Handsets Annual Reporting (Hearing Aid Compatibility Act).

Form No.: FCC Form 655—electronic only.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 925 respondents; 925 responses.

Estimated Time per Response: 1–3 hours.

Frequency of Response: Annual reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for these information collections is contained in 47 U.S.C. Sections 154(i), 303(r), and 610.

Total Annual Burden: 12,525 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: In submitting the information requested in the annual reports, respondents may need to disclose confidential information to satisfy the requirements. However, covered entities would be free to request that such materials submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules. The Commission's rules provide for requesting that confidential treatment be afforded particular materials that the requesting party identifies and submission of those materials (for review by the Commission) for which a party seeks confidential treatment. This same treatment is available for licensing applications filed in ULS and other reports that are filed electronically.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) after this 60-day comment period in order to obtain its full three year clearance. The Commission is requesting a revision of this information collection. The Commission is reporting a decrease in respondents since the last submission to OMB because manufacturers have already filed their January 15, 2009 reports. Therefore, each respondent now needs to file only one report per year. Starting July 15, 2009, all annual reports filed by service providers and manufacturers will be submitted using electronic FCC Form 655.

The Commission is implementing a mandatory electronic filing requirement for all manufacturers and service providers. The Commission is eliminating the use of paper-based annual reports and will require annual reports filed by manufacturers and service providers to be submitted using electronic FCC Form 655 beginning July 15, 2009. Use of the electronic FCC Form 655 will help filers ensure that their reports include all of the required information; will facilitate the Commission's compilation of data from the reports; and will decrease the paperwork burden on all respondents (service providers and manufacturers). The reporting criteria will assist the Commission staff in monitoring the progress of implementation by phone manufacturers and wireless service providers, and it will provide valuable information to the public concerning hearing aid-compatible handsets. The annual reports will permit the Commission to continue to stay abreast of ongoing standards work and other pertinent information associated with achieving digital wireless compatibility with hearing aids and cochlear implants. This information will help to ensure that the Commission's decisions relating to hearing aid compatibility with wireless phones are fair to all involved and reflect the actual status of technology. The technical standard for hearing aid compatibility is required by the Hearing Aid Compatibility (HAC) Act of 1988, and will be used by covered entities and the Commission as a compliance guide.

The Commission adopted and released a First Report and Order on February 28, 2008 (73 FR 25566) in which the Commission modified the deployment benchmarks for hearing aid-compatible phones, and imposed new requirements on manufacturers and service providers to ensure their product lines are current and include handset models with varying levels of functionality and are periodically refreshed. The Commission also required manufacturers and service providers to continue to file reports on the status of their compliance with these requirements, and it modified the content and timing of these reports (service providers were required to file the new reports annually beginning on January 15, 2009 and subsequently thereafter, and manufacturers also filed their reports on January 15, 2009 and then are required to file annually thereafter beginning on July 15, 2009). The requirement to provide certain information in conjunction with product labeling remains, although the details of the information required have changed slightly, especially with regard to phones that have Wi-Fi air interface capability. Finally, the Commission required manufacturers and service providers which already have public Web sites to publish up-to-date information on their Web sites regarding their hearing aid-compatible models and to keep that information current.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–3929 Filed 2–23–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 11, 2009.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90

Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Michael John Finley, Janesville, Minnesota, to acquire control of Janesville Holding Company, and thereby indirectly acquire control of Janesville State Bank, both of Janesville, Minnesota.

Board of Governors of the Federal Reserve System, February 19, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–3869 Filed 2–23–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 20, 2009.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106–2204:

1. Middlesex Bancorp, MHC, to become a bank holding company by acquiring 100 percent of the voting shares of Middlesex Savings Bank, both of Natick, Massachusetts.

In addition, Applicant also has applied to merge with Service Bancorp, MHC, and thereby indirectly acquire Service Bancorp, Inc., and Strata Bank, all of Medway, Massachusetts.

Board of Governors of the Federal Reserve System, February 18, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–3828 Filed 2–23–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 20, 2009.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Valliance Texas Financial Holdings, Inc., McKinney, Texas, to become a bank holding company by acquiring 100 percent of the voting shares of Valliance Bank, McKinney, Texas.

Board of Governors of the Federal Reserve System, February 19, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–3870 Filed 2–23–09; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0248]

General Services Administration Acquisition Regulation; Information Collection; Solicitation Provisions and Contract Clauses, Placement of Orders Clause, and Ordering Information Clause

AGENCY: Office of the Chief Acquisition Officer, GSA.

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding solicitation provisions and contract clauses, placement of orders clause, and ordering information clause. The clearance currently expires on May 31, 2008.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: April 27, 2009.

FOR FURTHER INFORMATION CONTACT: Warren Blankenship, Procurement Analyst, Contract Policy Division, GSA, (202) 501–1900.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Regulatory Secretariat (VPR), General Services Administration, Room 4041, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0248, Solicitation

Provisions and Contract Clauses, Placement of Orders Clause, and Ordering Information Clause, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration (GSA) has various mission responsibilities related to the acquisition and provision of the Federal Acquisition Service's (FAS's) Stock, Special Order, and Schedules Programs. These mission responsibilities generate requirements that are realized through the solicitation and award of various types of FAS contracts. Individual solicitations and resulting contracts may impose unique information collection and reporting requirements on contractors, not required by regulation, but necessary to evaluate particular program accomplishments and measure success in meeting program objectives. As such, GSAR 516.506, Solicitation provision and clauses, specifically directs contracting officers to insert 552.216–72, Placement of Orders, when the contract authorizes FAS and other activities to issue delivery or task orders and 552.216–73, Ordering Information, directs the Offeror to elect to receive orders placed by FAS by either facsimile transmission or computer-to-computer Electronic Data Interchange (EDI).

B. Annual Reporting Burden

Respondents: 6,493.

Responses Per Respondent: 1.

Annual Responses: 6,493.

Hours Per Response: .25.

Total Burden Hours: 1,623.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0248, Solicitation Provisions and Contract Clauses, Placement of Orders Clause, and Ordering Information Clause, in all correspondence.

Dated: February 19, 2009.

Al Matera,

Director, Contract Policy Division.

[FR Doc. E9–3888 Filed 2–23–09; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, April 2, 2009, 8 a.m. to April 2, 2009, 5 p.m., Westin Embassy Row, 2100 Massachusetts Ave., NW., Washington, DC 20008 which was published in the **Federal Register** on February 12, 2009, 74 FR 7071.

The meeting will be held on the same date and times, but will now be held at The Topaz Hotel, 1733 N St., NW., Washington, DC 20036. The meeting is closed to the public.

Dated: February 18, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–3948 Filed 2–23–09; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Initial Review Group Minority Programs Review Subcommittee A.

Date: March 23, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mona R. Trempe, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, MD 20892, 301–594–3998, *trempemo@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 18, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–3949 Filed 2–23–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the President's Council on Bioethics

AGENCY: Department of Health and Human Services, Office of Public Health and Science, The President's Council on Bioethics.

ACTION: Notice.

SUMMARY: The President's Council on Bioethics (Edmund D. Pellegrino, MD, Chairman) will hold its thirty-sixth meeting; the primary focus of discussion will be the future of public bioethics and national bioethics commissions in the United States. The full agenda will be posted on the Council's Web site at *http://www.bioethics.gov* prior to the meeting. Subjects discussed at past Council meetings (although not on the agenda for the March 2009 meeting) include: therapeutic and reproductive cloning, assisted reproduction, reproductive genetics, neuroscience, aging retardation, organ transplantation, personalized medicine, standards for the determination of death, children and bioethics, and lifespan-extension, among others. Publications issued by the Council to date include: *Human Cloning and Human Dignity: An Ethical Inquiry* (July 2002); *Beyond Therapy: Biotechnology and the Pursuit of Happiness* (October 2003); *Being Human: Readings from the President's Council on Bioethics* (December 2003); *Monitoring Stem Cell Research* (January 2004); *Reproduction and Responsibility: The Regulation of New Biotechnologies* (March 2004); *Alternative Sources of Human Pluripotent Stem Cells: A White Paper* (May 2005); *Taking Care: Ethical Caregiving in Our Aging Society* (September 2005); *Human Dignity and Bioethics: Essays Commissioned by the President's Council on Bioethics* (March 2008); *The Changing Moral Focus of*

Newborn Screening: An Ethical Analysis by The President's Council on Bioethics (December 2008); and *Controversies in the Determination of Death: A White Paper by The President's Council on Bioethics* (December 2008). Reports are forthcoming on organ transplantation and health care reform.

DATES: The meeting will take place Thursday, March 12, 2009, from 9 a.m. to 5 p.m., ET; and Friday, March 13, 2009, from 9 a.m. to 10:45 a.m., ET.

ADDRESSES: Renaissance Washington, DC Hotel, 999 9th Street, NW., Washington, DC 20001. Phone 202–898–9000.

FOR FURTHER INFORMATION CONTACT: Ms. Diane M. Gianelli, Director of Communications, The President's Council on Bioethics, 1425 New York Avenue, NW., Suite C100, Washington, DC 20005. Telephone: 202/296–4669. E-mail: *info@bioethics.gov*. Web site: *http://www.bioethics.gov*.

SUPPLEMENTARY INFORMATION: The meeting agenda will be posted at *http://www.bioethics.gov*. The Council encourages public input, either in person or in writing. At this meeting, interested members of the public may address the Council, beginning at 10:30 a.m., on Friday, March 13. Comments are limited to no more than five minutes per speaker or organization. As a courtesy, please inform Ms. Diane M. Gianelli, Director of Communications, in advance of your intention to make a public statement, and give your name and affiliation. To submit a written statement, mail or e-mail it to Ms. Gianelli at one of her contact addresses given above.

Dated: February 5, 2009.

F. Daniel Davis,

Executive Director, The President's Council on Bioethics.

[FR Doc. E9–3843 Filed 2–23–09; 8:45 am]

BILLING CODE 4154–06–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

Correction

In notice document E9–1009 beginning on page 4748 in the issue of Tuesday, January 27, 2009 make the following correction:

On page 4749, in the first column, under the **ADDRESSES** section, in the sixth line, ''*doris.lefkowitz@.ahrq.hhs.gov*'' should read ''*doris.lefkowitz@ahrq.hhs.gov*''.

[FR Doc. Z9–1009 Filed 2–23–09; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Aging the authority vested in the Secretary of Health and Human Services under section 119(c) of the Medicare Improvements for Patients and Providers Act of 2008, Public Law 110–275 pertaining to making grants to Aging and Disability Resource Centers under the Aging and Disability Resource Center grant program.

These delegations shall be exercised under the Department's policy on regulations and the existing delegation of authority to approve and issue regulations. This delegation excludes the authority to issue reports to Congress.

I hereby affirmed and ratified any actions taken by the Assistant Secretary for Aging or other Administration on Aging officials, which involved the exercise of these authorities prior to the effective date of this delegation.

This delegation was effective upon date of signature.

Dated: February 9, 2009.

Charles E. Johnson,

Acting Secretary.

[FR Doc. E9–3839 Filed 2–23–09; 8:45 am]

BILLING CODE 4154–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Opportunity To Collaborate in the Evaluation of Rapid Diagnostic Tests for HIV and HCV

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Opportunities for collaboration for evaluation of rapid diagnostic tests for HIV and hepatitis C virus (HCV). The Centers for Disease Control and Prevention (CDC), National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), has an opportunity for collaboration to evaluate diagnostic tests for HIV and HCV. These evaluations will include evaluation of the sensitivity and specificity of the tests, and the predictive value of algorithms using two or more different rapid tests in combination.

Specific tests are sought to meet one or more of the following purposes: (1) Laboratory-based or rapid point-of-care tests designed to detect both HIV antigen and antibody; (2) laboratory-based or rapid point-of-care tests that can distinguish persons with acute HIV infection from persons who have longer-standing HIV infection; (3) laboratory-based or rapid point-of-care tests that can be used as supplemental confirmatory tests to help diagnose HIV–1 or HIV–2 infection, (4) rapid laboratory-based or rapid point-of-care tests designed to detect HCV antibody, antigen or both. Tests of interest include those that can detect HIV–½ and/or HCV antibody, antigen, RNA, or DNA when used on whole blood, serum, plasma, oral fluid or dried blood spots. Evaluations will include the sensitivity and specificity of the test when used in the intended application (e.g., for screening or confirmation).

SUMMARY: The National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP) at the Centers for Disease Control and Prevention (CDC) of the Department of Health and Human Services (DHHS) seeks one or more companies that have developed or are distributing rapid diagnostic tests for HIV or HCV and are interested in marketing the tests for use in the United States. The Division of HIV/AIDS Prevention and the Division of Viral Hepatitis are interested in evaluating such tests. The evaluation will include determination of sensitivity and specificity of the test, and may also evaluate the predictive value of two or more different tests used in combination in populations of low prevalence. This collaboration will have an expected duration of two (2) to three (3) years. The goals of the collaboration include the timely development of data to be used to determine whether the test could be used in screening and/or diagnosis for HIV or HCV in the United States, and to examine laboratory-based or rapid point-of-care tests. These tests require high sensitivity to detect persons with acute and longer-standing HIV infection; or high specificity to distinguish persons with acute infection from those with longer-standing infection; or high specificity for tests that can be used as to confirm HIV–1 or HIV–2 infection. Acute HIV infection is defined as the early infection period associated with a transient symptomatic illness, high viral load, and expansive immunologic response. For HCV testing,

rapid tests to be used in the screening setting require high sensitivity and confirmatory tests with high specificity.

Confidential proposals, preferably six pages or less (excluding appendices), are solicited from companies who have a product that is suitable for commercial distribution.

DATES: Formal proposals must be submitted no later than 30 calendar days after date of publication in the **Federal Register**.

ADDRESSES: Formal proposals should be submitted to Sal Butera, Associate Director for Laboratory Science, NCHHSTP, CDC, 1600 Clifton Road, NE., Mailstop E–07, Atlanta, GA 30333; Phone 404–639–6379; Fax 404–639–3125; e-mail; *SButera@cdc.gov*.

Scientific questions should be addressed to Bernard M. Branson, M.D., Division of HIV/AIDS Prevention, NCHSTP, CDC 1600 Clifton Road, NE., Mailstop D–21, Atlanta, GA 30333; Phone 404–639–6166, Fax 404–639–0897; e-mail *BBranson@cdc.gov*.

SUPPLEMENTARY INFORMATION:

Technology Sought

One goal of the National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP) is to develop new approaches to increase the number of persons infected with HIV and/or HCV who know their status and have access to effective treatment. These approaches might include increasing the use of more sensitive screening assays (such as antigen or nucleic acid amplification tests) that can identify persons with acute HIV infection; rapid tests that can identify resolved or ongoing HCV infection; and more sensitive and specific confirmatory assays that can be used at point-of-care to obviate the need for clients to return for confirmed test results. NCHHSTP is seeking rapid diagnostic tests that are suitable for commercial distribution and that are simple: preferably, tests that use direct, unprocessed specimens (e.g., whole blood); can be performed in 30 minutes or less by persons with minimal training; include all necessary reagents in the test kit; can be stored at temperatures between 25 and 39°C; and have a minimum 1-year shelf life. Of particular interest are tests with high sensitivity for early stage HIV infection and tests that can distinguish persons with acute or recent HIV infection from persons with longer standing infections. NCHHSTP also seeks new methods that could serve to expedite confirmatory testing for HIV–1, HIV–2, and HCV either at the point-of-care or in the laboratory.

NCHHSTP and Collaborator Responsibilities

The NCHHSTP role may include, but will not be limited to, the following:

(1) Providing scientific and technical expertise needed for the evaluation project;

(2) Planning and conducting evaluation studies of the diagnostic tests and interpreting results; and

(3) Publishing evaluation results.

The NCHHSTP anticipates that the role of the successful collaborator(s) will include the following:

(1) Providing NCHHSTP access to data necessary to identify candidate tests for further evaluation; and

(2) Providing tests that can be used in the evaluation.

Selection Criteria

Proposals submitted for consideration will be evaluated according to selection criteria, and should address, as best as possible and to the extent relevant to the proposal, each of the following:

(1) Information on the technology used for the test, including basic operating principals such as antigen or antibody components used for detection;

(2) Data available on the performance characteristics of the tests in different populations;

(3) Information on the time required to perform the test, whether the test is performed on oral fluid, whole blood, serum, plasma, or dried blood spots, and the steps involved in performing the test;

(4) Information on the storage requirements and stability of the test;

(5) Interest by the company to seek FDA approval and market the test in the United States;

(6) Ability to provide to CDC approximately 8,000 tests and all related equipment to enable laboratory validation at CDC;

(7) Documentation of production capacity to provide at least 500,000 tests annually.

Dated: February 13, 2009.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–3865 Filed 2–23–09; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Low Income Home Energy Assistance Program LIHEAP Leveraging Report.

OMB No.: 0970–0121.

Description: The LIHEAP leveraging incentive program rewards LIHEAP grantees that have leveraged non-federal home energy resources for low-income households. The LIHEAP leveraging report is the application for leveraging incentive funds that these LIHEAP grantees submit to the Department of Health and Human Services for each fiscal year in which they leverage countable resources. Participation in the leveraging incentive program is voluntary and is described at 45 CFR 96.87. The LIHEAP leveraging report obtains information on the resources leveraged by LIHEAP grantees each fiscal year (as cash, discounts, waivers, and in-kind); the benefits provided to low-income households by these resources (for example, as fuel and payments for fuel, as home heating and cooling equipment, and as weatherization materials and installation); and the fair market value of these resources/benefits.

HHS needs this information in order to carry out statutory requirements for administering the LIHEAP leveraging incentive program, to determine accountability and valuation of grantees leveraged non-federal home energy resources, and to determine grantees shares of leveraging incentive funds. HHS proposes to request a three-year extension of OMB approval for the currently approved LIHEAP leveraging report information collection.

Respondents: State, Local or Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
LIHEAP Leveraging Report	70	1	38	2,660

Estimated Total Annual Burden Hours: 2,660.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded 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. E-mail address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: February 19, 2009.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E9–3859 Filed 2–23–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Educational Development and Partnership Division, Office of Head Start

AGENCY: Educational Development and Partnership Division (EDPD), Office of Head Start (OHS), Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

ACTION: Notice to award a Non-competitive Successor Grant.

CFDA#: 93.600.

Legislative Authority: Section 648(g) of the Head Start Act (42 U.S.C. 9843) for these Career Advancement Partnership Programs.

Project Period: January 22, 2009–September 29, 2009.

SUMMARY: Notice is hereby given that the Administration for Children and Families (ACF), Educational Development and Partnership Division (EDPD) will award a non-competitive successor award to Southwestern Indian Polytechnic Institute (SIPI) a Tribal College federally charted and operated by the Bureau of Indian Education, Department of the Interior located in Albuquerque, NM. Southwestern Indian Polytechnic Institute (SIPI) will assume a grant award under the Head Start Career Advancement Partnership Program for the remainder of the project period January 22, 2009 to September 29, 2009. The Board of Regents, Southwestern Indian Polytechnic Institute, has relinquished the grant to its Federal entity to ensure greater internal controls.

FOR FURTHER INFORMATION CONTACT: Georgeline Sparks, Program Officer, Educational Development and Partnership Division, 1250 Maryland Ave., SW., Washington, DC 20024 or by phone at (202) 205–8539, or by e-mail at *georgeline.sparks@acf.hhs.gov*.

Dated: February 13, 2009.

Patricia Brown,

Acting Director, Office of Head Start.

[FR Doc. E9–3833 Filed 2–23–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0209] (formerly Docket No. 2007D–0491)

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Dietary Supplement Labeling Requirements and Recommendations under the Dietary Supplement and Nonprescription Drug Consumer Protection Act

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. Elsewhere in this issue of the **Federal Register**, FDA is announcing that a proposed collection of information regarding labeling requirements for nonprescription human drugs marketed without an approved application has been submitted to OMB for review.

DATES: Fax written comments on the collection of information by March 26, 2009.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–NEW and title, ''Dietary Supplement Labeling Requirements and Recommendations under the Dietary Supplement and Nonprescription Drug Consumer Protection Act.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management (HFA–710), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3794.

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.

Dietary Supplement Labeling Requirements and Recommendations under the Dietary Supplement and Nonprescription Drug Consumer Protection Act

On December 22, 2006, the President signed into law the Dietary Supplement and Nonprescription Drug Consumer Protection Act (DSNDCPA) (Public Law 109–462, 120 Stat. 3469). This law amends the Federal Food, Drug, and Cosmetic Act (the act) with respect to serious adverse event reporting for dietary supplements and nonprescription drugs marketed without an approved application. The law also amended the act to add section 403(y) (21 U.S.C. 343(y)), which requires the label of a dietary supplement marketed in the United States to include a domestic address or domestic telephone number through which the product's manufacturer, packer or distributor may receive a report of a serious adverse event associated with the dietary supplement.

In the **Federal Register** of January 2, 2008 (73 FR 197), FDA announced the availability of a draft guidance document entitled ''Questions and Answers Regarding the Labeling of Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act. '' In the **Federal Register** of December 11, 2008 (73 FR 75438), FDA announced the availability of a revised version of the same draft guidance document . The guidance document contains questions and answers relating to the labeling requirements in section 403(y) of the act and provides guidance to industry on the following topics: (1) The meaning of ''domestic address'' for purposes of the labeling requirements of section 403(y) of the act; (2) FDA's recommendation for the use of an introductory statement before the domestic address or telephone number that is required to appear on the product label under section 403(y) of the act; and (3) FDA's intent regarding enforcing the labeling requirements of section 403(y) of the act.

In the **Federal Register** of January 2, 2008 (73 FR 197), FDA published a notice of availability for the original draft guidance that also gave notice of the proposed collections of information in the draft guidance, included an analysis and burden estimate for these proposed collections of information, and provided 60 days for public comment under the Paperwork Reduction Act of 1995 (PRA). FDA did not revise the PRA burden analysis and estimate when it issued the revised draft guidance in December 2008 because the revisions did not affect them.

Several comments suggested that FDA underestimated the number of dietary supplement labels that would have to be revised. Two comments noted that in the past FDA had estimated the number of distinct dietary supplement labels at 29,514, and another comment noted that in the past FDA had estimated the number of distinct dietary supplement labels at 75,000. Several other comments suggested that the number of dietary supplements sold in the United States was between 50,000 and 60,000 products based on information from the Office of Dietary Supplements at the National Institutes of Health (NIH). All the aforementioned comments suggested that the costs associated with re-labeling the dietary supplements represented a significant burden to the industry. Based on these comments, FDA has revised its estimate of the number of labels that would have to be redesigned to include the complete domestic address or domestic telephone number of the responsible person for each dietary supplement stockkeeping unit (SKU).

FDA used A.C. Nielsen Sales Scanner Data from 2004 to improve its estimate of the number of dietary supplement SKUs. The 2004 A.C. Nielsen scanner data are more recent and more complete than the data FDA used to derive the estimate used in the 60-day notice. FDA also adjusted the Nielsen scanner data estimate to account for methods of sale not covered by the Nielsen scanner data, such as non-participating retailers and internet sales. Based on the adjusted Nielsen scanner data, FDA estimates that the number of dietary supplement SKUs for which sales of the products are greater than zero is 55,600. This number of SKUs is similar to the number of dietary supplement products that was suggested by several comments and the number estimated by the Office of Dietary Supplements at NIH.

FDA did not receive any comments regarding the number of firms that would be responsible for re-labeling the dietary supplement products. Therefore, we retain our estimate that there are about 1,460 dietary supplement firms that must comply with the labeling requirements of section 403(y) of the act. Assuming the 55,600 SKUs are split equally among the firms, then each firm would be responsible for updating about 38 SKUs. FDA also did not receive any comments regarding how many of the dietary supplement SKUs would have to undergo a label change to include the complete domestic address or domestic phone number of the responsible person as required by the DSNDCPA. Thus, as in the 60-day notice, FDA is assuming conservatively that all labels will need to be redesigned.

Several comments noted that the overall process of changing a label requires a significant amount of time to implement; however, FDA did not receive any estimates of the actual time it would take to assess the current layout of each label and redesign it. FDA also did not receive any estimates of how many firms would choose to include an explanatory statement on the reason for the domestic address or telephone number appearing on the label of the dietary supplement product, though several comments speculated that all or nearly all firms would be likely to include an explanatory statement. Because we did not receive any comments on the burden associated with each of these tasks, we retain our original estimates. We assume conservatively that all firms will include an explanatory statement on the label, and we estimate that the redesign of each label to include the domestic address or telephone number and the explanatory statement will take a total of 8 hours (4 hours for each change).

FDA estimates the burden of this collection of information as follows:

Hour Burden Estimate

TABLE 1.—ESTIMATED ONE-TIME REPORTING BURDEN [1]

	No. of Respondents	Annual Frequency per Response	Total annual Responses	Hours Per Response	Total Hours
Domestic address or telephone number labeling requirement (21 U.S.C. 343(y))	1,460	38.0822	55,600	4	222,400
FDA recommendation for label statement explaining purpose of domestic address or telephone number	1,460	38.0822	55,600	4	222,400
Total					444,800

[1] There are no capital costs or maintenance and operating costs associated with this collection of information.

Dated: February 17, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–3916 Filed 2–23–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0429] (formerly Docket No. 2007D–0496)

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Labeling of Nonprescription Human Drug Products Marketed Without an Approved Application as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act: Questions and Answers

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 (the PRA). Elsewhere in this issue of the **Federal Register**, FDA is announcing that a proposed collection of information regarding dietary supplement labeling requirements and recommendations has been submitted for OMB review.

DATES: Fax written comments on the collection of information by March 26, 2009.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the title ''Labeling of Nonprescription Human Drug Products Marketed Without an Approved Application as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act: Questions and Answers.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3792.

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.

Labeling of Nonprescription Human Drug Products Marketed Without an Approved Application as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act: Questions and Answers

On December 22, 2006, the President signed into law the Dietary Supplement and Nonprescription Drug Consumer Protection Act (Public Law 109–462, 120 Stat. 3469). This law amends the Federal Food, Drug, and Cosmetic Act (the act) with respect to serious adverse event reporting for dietary supplements and nonprescription drugs marketed without an approved application.

Section 502(x) of the act (21 U.S.C. 352(x)), which was added by Public Law 109–462, requires the label of a nonprescription drug product marketed without an approved application in the United States to include a domestic address or domestic telephone number through which a responsible person may receive a report of a serious adverse event associated with the product. In the **Federal Register** of January 2, 2008 (73 FR 196), FDA announced the availability of a draft guidance document entitled ''Questions and Answers Regarding the Labeling of Nonprescription Human Drug Products Marketed Without an Approved Application as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act.'' In the **Federal Register** of December 11, 2008 (73 FR 75436), FDA published a notice of availability of a revised version of the same draft guidance document. The guidance document contains questions and answers relating to the labeling requirement and provides guidance to industry on the following topics: (1) The meaning of ''domestic address'' for purposes of the labeling requirements of section 502(x) of the act; (2) FDA's recommendation for the use of an introductory statement before the domestic address or telephone number that is required to appear on the product label under section 502(x) of the act; and (3) FDA's intent regarding enforcing the labeling requirements of section 502(x) of the act.

Title: Labeling of Nonprescription Human Drug Products Marketed Without an Approved Application as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act: Questions and Answers.

Description of Respondents: Respondents to this collection of information are manufacturers, packers, and distributors whose name (under section 502(b)(1) of the act (21 U.S.C. 352(b)(1))) appears on the label of a nonprescription drug product marketed in the United States without an approved application.

Burden Estimate: FDA is requesting public comment on the estimated one-time reporting burden from these respondents, as required by 502(x) of the act and described in the guidance ''Labeling of Nonprescription Human Drug Products Marketed Without an Approved Application as Required by

the Dietary Supplement and Nonprescription Drug Consumer Protection Act: Questions and Answers.'' The estimates for one-time reporting are based on FDA's knowledge of nonprescription drug product labeling in the United States, whether or not marketed under an approved application.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

	No. of Respondents	Frequency per Response	Total Responses	Hours per Response	Total Hours
Domestic address or telephone number labeling requirement (21 U.S.C. 502(x)) and recommendation to clarify its purpose	200	500	100,000	4	400,000

[1] There are no capital costs or maintenance and operating costs associated with this collection of information.

As indicated in Table 1 of this document, we estimate that approximately 200 manufacturers will revise approximately 100,000 labels to add a full domestic address and a domestic telephone number, and should they choose to adopt the guidance's recommendation, to add a statement identifying the purpose of the domestic address or telephone number. FDA believes that designing the label change should not take longer than 4 hours per label. Automated printing of the labels should only require a few seconds per label. This estimate accounts for the possibility that every manufacturer will make label revision, which is unlikely. Because the majority of over-the-counter drug product labels currently have a domestic telephone number that satisfies the requirement, we believe many manufacturers will opt not to adopt the guidance's recommendation to add a statement identifying the purpose of the address or telephone number, significantly reducing the number of total responses. However, assuming that all labels are revised, estimate a one-time reporting burden for this information collection of 400,000 hours.

In the **Federal Register** of January 2, 2008 (73 FR 196), FDA published a notice of availability for the original draft guidance that also gave notice of the proposed collections of information in the draft guidance, included an analysis and burden estimate for those proposed collections of information, and provided 60 days for public comment under the PRA. FDA did not revise the PRA burden analysis and estimate when it issued the revised draft guidance in December 2008 because the revisions did not affect them.

FDA received one comment on the proposed collections of information, stating that the time involved in revising labels would be significantly longer than the typical timeframe to implement labeling changes because the volume of labels required to be revised at one time might exceed manufacturers' labeling revision capacity. Several comments requested that FDA extend the date of its enforcement discretion. In response to comments, in December 2008, FDA published a notice of availability of the revised draft guidance for industry. The revised draft guidance was identical to the first draft guidance, with the exception that, in the revised draft guidance, FDA stated its intention to exercise enforcement discretion until January 1, 2010. As a result, any label revision made as a result of this guidance would likely be made contemporaneously with other scheduled label revisions, minimizing the burden to industry.

Dated: February 17, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–3917 Filed 2–23–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Clinical Trial Design for Hospital-Acquired Pneumonia and Ventilator-Associated Pneumonia; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop, cosponsored with the Infectious Diseases Society of America (IDSA), the American College of Chest Physicians (ACCP), the Society of Critical Care Medicine (SCCM), and the American Thoracic Society (ATS) regarding scientific issues in clinical trial design for hospital-acquired pneumonia (HAP) and ventilator-associated pneumonia (VAP). This public workshop is intended to provide information about, and gain perspective from, health care providers, academia, and industry on various aspects of antimicrobial drug development for HAP and VAP, including diagnosis of HAP and VAP, effect of antimicrobial treatment for HAP and VAP, endpoints for trials of HAP and VAP, and statistical issues in analysis of results of trials in HAP and VAP. The input from this public workshop will help in developing topics for further discussion.

Date and Time: The public workshop will be held on March 31, 2009, from 8 a.m. to 6 p.m. and on April 1, 2009, from 8 a.m. to 5 p.m.

Location: The public workshop will be held at the Crowne Plaza Hotel, Kennedy Ballroom, 8777 Georgia Ave., Silver Spring, MD 20910. Seating is limited and available only on a first-come, first-served basis.

Contact: Chris Moser or Lori Benner, Center for Drug Evaluation and Research, Food and Drug Administration, Office of Antimicrobial Products, 10903 New Hampshire Ave., Bldg. 22, rm. 6209, Silver Spring, MD 20993– 0002, 301–796–1300.

Registration: To register electronically, e-mail registration information (including name, title, firm name, address, telephone, and fax numbers) to *HAPwkshp@fda.hhs.gov* by March 23, 2009. Persons without access to the Internet can call 301–796–1300 to register. Registration is free for the public workshop. Interested parties are encouraged to register early because space is limited. Seating will be available on a first-come, first-served basis. Persons needing a sign language interpreter or other special accommodations should notify Chris Moser or Lori Benner (see Contact) at least 7 days in advance.

SUPPLEMENTARY INFORMATION: FDA is announcing a public workshop, cosponsored with IDSA, ACCP, SCCM, and ATS, regarding antimicrobial drug

development for HAP and VAP. This public workshop will focus on scientific considerations in designing clinical trials for HAP and VAP. Topics for discussion include the following: (1) Approaches to the diagnosis of HAP and VAP, (2) the effect of antimicrobial treatment for HAP and VAP, (3) various endpoints that might be considered as endpoints for trials of HAP and VAP, and (4) statistical issues in analysis of results from trials in HAP and VAP. The input from this public workshop will help in developing topics for further discussion.

The agency encourages individuals, patient advocates, industry, consumer groups, health care professionals, researchers, and other interested persons to attend this public workshop.

Transcripts: Transcripts of the public workshop may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857, approximately 20 working days after the public workshop at a cost of 10 cents per page. Transcripts will also be available on the Internet at *http://www.fda.gov/cder/meeting/hap_vap.htm* approximately 45 days after the workshop.

Dated: February 17, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–3832 Filed 2–23–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Arthritis Advisory Committee; Notice of Postponement of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is postponing the meeting of the Arthritis Advisory Committee scheduled for March 5, 2009. This meeting was announced in the **Federal Register** of January 29, 2009 (74 FR 5165). The postponement is due to the need to complete the review of additional data submitted by the applicant. Future meeting dates will be announced in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Nicole Vesely, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–6793, FAX: 301–827–6776, e-mail: *nicole.vesely@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512532. Please call the Information Line for up-to-date information on this meeting.

Dated: February 17, 2009.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E9–3830 Filed 2–23–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Obstetrics and Maternal-Fetal Biology Subcommittee.

Date: March 23, 2009.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Courtyard Gaithersburg Washingtonian Center, 204 Boardwalk Place, Gaithersburg, MD 20878.

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Rm. 5b01, Rockville, MD 20852, (301) 435–6889, *bhatnagg@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 18, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–3952 Filed 2–23–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group. Population Sciences Subcommittee.

Date: March 26–27, 2009.

Time: 8 a.m to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Madison Hotel, 1177 15th Street, NW., Washington, DC 20005.

Contact Person: Carla T. Walls, PhD, Scientific Review Administratior, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6898, *wallsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 18, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–3956 Filed 2–23–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Training Grant Applications.

Date: March 20, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room 3AN12, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Arthur L. Zachary, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–12, Bethesda, MD 20892, (301) 594–2886, *zacharya@nigms.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; ZGM1–GDB–2–CP.

Date: March 23–24, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room 3AN12, 45 Center Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Arthur L. Zachary, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–12, Bethesda, MD 20892, (301) 594–2886, *zacharya@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 18, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–3950 Filed 2–23–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Statement of Delegation of Authority

Notice is hereby given that I have delegated to the Director, National Institutes of Health (NIH), with the authority to redelegate, the authorities under Section 105 of the National Institutes of Health Reform Act of 2006 (Pub. L. No. 109–482), 42 U.S.C. 284n, pertaining to certain demonstration projects authorized by this Section.

The Secretary of Health and Human Services retains the authority to submit reports to Congress. The delegation shall be exercised in accordance with the Department's applicable policies, procedures, guidelines and regulations. In addition, the delegation ratifies and affirms any actions taken by the Director, National Institutes of Health, or subordinates that involved the exercise of the authorities prior to the effective date of the delegation.

This delegation is effective upon date of signature.

Dated: February 9, 2009.

Charles E. Johnson,

Acting Secretary.

[FR Doc. E9–3844 Filed 2–23–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2008–N0332; 40120–1112–0000–F2]

Receipt of Applications for the Renewal of Incidental Take Permits for Residential Construction in Charlotte and Sarasota County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit renewal applications; request for comments.

SUMMARY: The U.S Fish and Wildlife Service (Service) issued incidental take permits (permits), pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended, for incidental take of the threatened Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay) in Sarasota County, Florida, to Paul Athanas (TE126176–0) and to David Boxer (TE156306–0) in Charlotte County, Florida (Applicants). The Applicants have requested renewals that will extend permit expiration by 5 years from the date their permits are reissued. The Applicants have agreed to follow all of the existing habitat conservation plan (HCP) conditions. If renewed, no additional take will be authorized.

DATES: We must receive your written comments on the permit renewals on or before March 26, 2009.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section below for information on how to submit your comments on the permit renewals. You may obtain a copy of the permit renewal applications and the HCPs by writing to the South Florida Ecological Services Office, Attn: Permit number TE126176–1/TE156306–1, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960–3559. In addition, we will make the permit renewal applications and HCPs available for public inspection by appointment during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Trish Adams, Fish and Wildlife Biologist, South Florida Ecological Services Office (see **ADDRESSES**); telephone: (772) 562–3909, ext. 232.

SUPPLEMENTARY INFORMATION: If you wish to comment on the permit renewals, you may submit comments by any one of the following methods. Please reference permit number TE126176–1/TE156306–1 in such comments.

1. Mail or hand-deliver comments to our South Florida Ecological Services Office address (see **ADDRESSES**).

2. E-mail comments to *trish_adams@fws.gov.* If you do not receive a confirmation that we have received your e-mail message, contact us directly at the telephone number listed under **FOR FURTHER INFORMATION CONTACT**.

Before including your address, phone number, e-mail address, or other personal identifying information in your comments, 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.

Residential construction for the Paul Athanas HCP will take place within Section 33, Township 39, Range 19, South Venice, Sarasota County, Florida,

at Poinciana Road, Lots 1652, 1653, and 1654, of South Venice unit 5, property identification number 0459–05–0033. These lots are within scrub-jay occupied habitat. The lots encompass about 0.275 acres (0.11 ha), and the footprint of the home, infrastructure, and landscaping precludes retention of scrub-jay habitat on these lots. Details of the habitat conservation plan are available (see **ADDRESSES**).

Residential construction for the David Boxer HCP will take place within Section 24, Township 40, Range 21, Port Charlotte, Charlotte County, Florida, at 3300 Liberty Street, property identification number 402124336005. This lot is within scrub-jay occupied habitat. The lot encompasses about 0.23 acres (0.09 ha), and the footprint of the home, infrastructure, and landscaping precludes retention of scrub-jay habitat on this lot. Details of the habitat conservation plan are available (see **ADDRESSES**).

The Service has made preliminary determinations that renewal of the permits is neither a major Federal action that will significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA), nor will they individually or cumulatively have more than a negligible effect on the species covered in the HCPs. Therefore, the permit renewals qualify as categorical exclusions under NEPA as provided by the Department of Interior Manual (516 DM 2, Appendix 1 and 516 DM 8.5).

Authority: We provide this notice pursuant to Section 10 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: December 2, 2008.

Paul Souza,

Field Supervisor, South Florida Ecological Services Field Office.

[FR Doc. E9–3863 Filed 2–23–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2009–N043; 96300–1671–0000–P5]

Denial of Permits for Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of denial of permits for marine mammals.

SUMMARY: The following permits were denied.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service denied the requested permits.

MARINE MAMMALS

Permit No.	Applicant	Receipt of application **Federal Register** notice	Denial date
189427	Dennis H. Dunn	73 FR 61162, October 15, 2008	February 2, 2009.
189429	Keith C. Halstead	73 FR 61162, October 15, 2008	February 2, 2009.
189430	Keith J. Atcheson	73 FR 61162, October 15, 2008	February 2, 2009.
189431	Kevin J. Wieczorek	73 FR 61162, October 15, 2008	February 2, 2009.
189432	Marcus C. Hansen	73 FR 61162, October 15, 2008	February 2, 2009.
189434	Ben A. Hamel	73 FR 61162, October 15, 2008	February 2, 2009.
191814	Aaron R. Neilson	73 FR 61162, October 15, 2008	February 2, 2009.

Dated: February 13, 2009.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E9–3836 Filed 2–23–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2009–N044; 96300–1671–0000–P5]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species.

DATES: Written data, comments or requests must be received by March 26, 2009.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (**ADDRESSES** above).

Applicant: Richard A. Hyce, Wasilla, AK, PRT–191870

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Milton T. Hummer, Anchorage, AK, PRT–205664

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus*

pygargus) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Vulgens M. Schoen, Phillipsburg, NJ, PRT–204668

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Ted A. Trout, Houston, TX, PRT–202724

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Raymond J. Paolucci, Rockwall, TX, PRT–206196

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Dated: February 13, 2009.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E9–3835 Filed 2–23–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Agency Information Collection: Comment Request

AGENCY: United States Geological Survey (USGS), Interior.

ACTION: Notice of a new collection.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we will submit to OMB a new information collection (IC) described below for review and approval. As a part of our continuing effort to reduce paper work and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on the paperwork burden of this collection.

DATES: You must submit comments on or before April 27, 2009.

ADDRESSES: Send your comments regarding this IC to Phadrea Ponds, Information Collections Clearance Officer, at U.S. Geological Survey, 2150–C Center Avenue, Fort Collins, CO 80525 (mail); (970) 226–9230 (fax); or *pponds@usgs.gov* (e-mail). Please reference Information Collection 1028–NEW, GAPSURVEY.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Joan Ratz by mail at U.S. Geological Survey, 2150–C Center Avenue, Fort Collins, CO 80526, or by telephone at (970) 226–9315.

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Geological Survey (USGS) will design and conduct a survey that will be used to evaluate the performance of its Gap Analysis Program (GAP). The information collected will provide information for the Program's annual performance plan as required by the Government Performance and Results ACT (GPRA). Scientists and staff in the Policy Analysis and Science Assistance Branch of the USGS will conduct the survey on-line. The only option for all respondents will be to complete the survey on-line.

Information from this survey will provide the GAP Program managers with scientifically sound data that can be used to: (1) Prepare strategic planning and performance documents, (2) measure user satisfaction, and (3) understand user needs. Additionally, this survey can target performance issues that relate to education and outreach, technology and data quality. Due to the nature of this collection, all identified respondents will have: (1) an active e-mail address and (2) skills in GIS and computer operations.

II. Data

OMB Control Number: None. This is a new collection.

Title: Gap Analysis Program (GAP) Evaluation: A Survey of National Users.

Type of Request: New.

Frequency of Collection: This is a one-time survey.

Respondent's Obligation: Voluntary.

Estimated Annual Number and Description of Respondents: Approximately 820 non-federal current and past users of the USGS Gap Analysis Program (GAP).

Estimated Total Annual Responses: 574 responses.

Estimated Time per Response: 22 minutes.

Annual Burden Hours: 197 hours.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: We estimate the public reporting burden will average 22 minutes per response. This includes the time for reviewing instructions and completing the on-line survey.

III. Request for Comments

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'': We have not identified any ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments: We invite comments concerning this IC on: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. 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 OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done. To comply with the public process, we publish this **Federal Register** notice announcing that we will submit this IC to OMB for approval. The notice provided the required 60 day public comment period.

USGS Information Collection Clearance Officer: Phadrea Ponds, USGS Information Collection Clearance Officer.

Dated: February 16, 2009.

Sue Hasletine,

Associate Director for Biology.

[FR Doc. E9–3824 Filed 2–23–09; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14929–A, F–14929–A2; AK–965–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Askinuk Corporation. The lands are in the vicinity of Scammon Bay, Alaska, Alaska, and are located in:

Seward Meridian, Alaska

T. 20 N., R. 88 W.,
Secs. 16 and 17;
Secs. 21 to 25, inclusive;
Sec. 36.

Containing approximately 4,392 acres.

T. 21 N., R. 88 W.,
Secs. 17 to 20, inclusive.

Containing approximately 2,531 acres.

T. 21 N., R. 89 W.,
Secs. 13, 14, and 24.

Containing approximately 1,905 acres.

T. 21 N., R. 90 W.,
Secs. 1, 2, and 11;
Secs. 12 and 13.
Containing approximately 1,478 acres.

T. 22 N., R. 90 W.,
Secs. 13, 14, and 15;
Secs. 22 to 26, inclusive;
Secs. 35 and 36.

Containing approximately 5,098 acres.
Total aggregate of approximately 15,404 acres.

The subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to Askinuk Corporation. Notice of the decision will also be published four times in the Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until March 26, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION, CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Robert Childers,

Land Law Examiner, Land Transfer Adjudication II.

[FR Doc. E9–3866 Filed 2–23–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14849–A, F–14849–A2; AK–965–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Chevak Company. The lands are in the vicinity of Chevak, Alaska, and are located in:

Seward Meridian, Alaska

T. 16 N., R. 83 W.,
Secs. 19 to 23, inclusive;
Secs. 27 to 34, inclusive.

Containing approximately 7,498 acres.

T. 17 N., R. 83 W.,
Secs. 19 and 20;
Secs. 29 to 32, inclusive.

Containing approximately 3,155 acres.

T. 15 N., R. 84 W.,
Secs. 1 to 4, inclusive;
Secs. 11 and 12.

Containing approximately 3,462 acres.

T. 16 N., R. 84 W.,
Secs. 4 to 8, inclusive;
Secs. 17 to 20, inclusive;
Secs. 25 to 30, inclusive;
Secs. 32 to 36, inclusive.

Containing approximately 10,265 acres.

T. 17 N., R. 84 W.,
Secs. 1 to 6, inclusive;
Secs. 11 to 14, inclusive;
Secs. 23, 24, 25, and 36.

Containing approximately 8,042 acres.

T. 18 N., R. 84 W.,
Secs. 31 to 36, inclusive.

Containing approximately 3,627 acres.

T. 17 N., R. 85 W.,
Sec. 1.

Containing approximately 534 acres.

T. 18 N., R. 85 W.,
Sec. 36.

Containing approximately 595 acres.

T. 15 N., R. 91 W.,
Secs. 17 and 18.

Containing approximately 1,002 acres.

T. 15 N., R. 92 W.,
Secs. 13 to 18, inclusive.

Containing approximately 2,823 acres.

T. 15 N., R. 93 W.,
Secs. 13 and 14.

Containing approximately 1,039 acres.
Aggregating approximately 42,042 acres.

A portion of the subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to Chevak Company. The remaining lands lie within Clarence Rhode National Wildlife Range, established January 20, 1969. The subsurface estate in the refuge lands will be reserved to the United States at the time of conveyance. Notice of the decision will also be published four times in the Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until March 26, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Robert Childers,

Land Law Examiner, Land Transfer Adjudication II.

[FR Doc. E9–3872 Filed 2–23–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office for Victims of Crime

[OMB Number 1121–0170]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: Correction: 30-Day Notice of Information Collection Under Review: Extension of a currently approved collection; Victim of Crime Act, Crime Victim Assistance Grant Program, Subgrant Award Report.

Department of Justice (DOJ), Office of Justice Programs (OJP), Office for Victims of Crime (OVC) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 73, Number 250, page 79910 on December 30, 2008, following for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until March 26, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact DeLano Foster (202) 616–3612, Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Victims of Crime Act, Victim Assistance Grant Program, Subgrant Award Report.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form number: 1121–0142. Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State government. Other: None. The VOCA, Crime Victim Assistance Grant Program, Subgrant Award Report is a required submission by state grantees, within 90 days of their awarding a subgrant for the provision of crime victim services. VOCA and the Program Guidelines require each state victim assistance office to report to OVC on the impact of the Federal funds, to certify compliance with the eligibility requirements of VOCA, and to provide a summary of proposed activities. This information will be aggregated and serve as supporting documentation for the Director's biennial report to the President and to the Congress on the effectiveness of the activities supported by these grants.

This request is for an extension of a currently approved reporting instrument, with no revisions.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The number of VOCA-funded victim assistance programs varies widely from State to State. A review of information currently available to this Office on the number of active victim assistance programs in 15 states selected for variance in size and population revealed that a State would be responsible for entering subgrant data for as many as 436 programs (California) to as few as 12 programs (District of Columbia).

The estimated time to enter a record via the Grants Management System is three minutes (.05 hour). Therefore, the estimated clerical time can range from 36 minutes to 22 hours, based on the number of records that are entered. It would take 295 hours to enter 5,900 responses electronically [5,900 × .05 hour].

(6) *An estimate of the total public burden (in hours) associated with the collection:* The current estimated burden is 295 (5,900 responses × .05 hour per response = 295 hours). There is no increase in the annual recordkeeping and reporting burden.

If additional information is required contact: Lynn Bryant, Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: February 18, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–3829 Filed 2–23–09; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Proposed Collection; Comment Request

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) is soliciting public comments on the proposed information collection described below. The proposed information collection will be sent to the Office of Management and Budget (OMB) for review, as required by the provisions of the Paperwork Reduction Act of 1995.

DATES: Comments on this information collection must be submitted on or before April 27, 2009.

ADDRESSES: Send comments to Ms. Susan Daisey, Director, Office of Grant Management, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Room 311, Washington, DC 20506, or by e-mail to: *sdaisey@neh.gov*. Telephone: 202–606–8494.

SUPPLEMENTARY INFORMATION: The National Endowment for the Humanities will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This notice is soliciting comments from members of the public and affected agencies. NEH is

particularly interested in comments which help the agency to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate electronic collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

This Notice also lists the following information:

Type of Review: Extension of a currently approved collection.

Agency: National Endowment for the Humanities.

Title of Proposal: Generic Clearance Authority for the National Endowment for the Humanities.

OMB Number: 3136–0134.

Affected Public: Applicants to NEH grant programs, reviewers of NEH grant applications, and NEH award recipients.

Total Respondents: 6,978.

Frequency of Collection: On occasion.

Total Responses: 6,978.

Average Time per Response: Varied according to type of information collection.

Estimated Total Burden Hours: 68,375 hours.

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

Michael P. McDonald,

Acting Deputy Chairman, National Endowment for the Humanities.

[FR Doc. E9–3947 Filed 2–23–09; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of additional meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Michael P. McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* March 20, 2009.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting, which will be by teleconference, will review applications for America's Media Makers Grants Program in Foreign Cultures, submitted to the Division of Public Programs, at the January 28, 2009 deadline.

2. *Date:* March 23, 2009.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for America's Media Makers Grants Program in United States History, submitted to the Division of Public Programs, at the January 28, 2009 deadline.

3. *Date:* March 24, 2009.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for America's Historical and Cultural Organizations Grants Program in United States History, submitted to the Division of Public Programs, at the January 28, 2009 deadline.

4. *Date:* March 26, 2009.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for America's Historical and Cultural Organizations Grants Program in Digital History, submitted to the Division of Public Programs, at the January 28, 2009 deadline.

5. *Date:* March 31, 2009.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for America's Historical and Cultural Organizations Grants Program in Art and Anthropology, submitted to the Division of Public Programs, at the January 28, 2009 deadline.

Michael P. McDonald,

Advisory Committee Management Officer.

[FR Doc. E9–3845 Filed 2–23–09; 8:45 am]

BILLING CODE 7536–01–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 73 FR 76407, and no 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. 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*. 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.

SUPPLEMENTARY INFORMATION:

Title: Grantee Reporting Requirements for Science and Technology Centers (STC): Integrative Partnerships

OMB Control Number: 3145–0194.

Abstract:

Proposed Project

The Science and Technology Centers (STC): Integrative Partnerships Program supports innovation in the integrative conduct of research, education and knowledge transfer. Science and Technology Centers build intellectual and physical infrastructure within and between disciplines, weaving together knowledge creation, knowledge integration, and knowledge transfer. STCs conduct world-class research through partnerships of academic institutions, national laboratories, industrial organizations, and/or other public/private entities. New knowledge thus created is meaningfully linked to society.

STCs enable and foster excellent education, integrate research and education, and create bonds between learning and inquiry so that discovery and creativity more fully support the learning process. STCs capitalize on diversity through participation in center activities and demonstrate leadership in the involvement of groups underrepresented in science and engineering.

Centers selected will be required to submit annual reports on progress and plans, which will be used as a basis for performance review and determining the level of continued funding. To support this review and the management of a Center, STCs will be required to develop a set of management and performance indicators for submission annually to NSF via an NSF evaluation technical assistance contractor. These indicators are both quantitative and descriptive and may include, for example, the characteristics of center personnel and students; sources of financial support and in-kind support; expenditures by operational component; characteristics of industrial and/or other sector participation; research activities; education activities; knowledge transfer activities; patents, licenses; publications; degrees granted to students involved in Center activities; descriptions of significant advances and other outcomes of the STC effort. Part of this reporting will take the form of a database which will be owned by the institution and eventually made available to an evaluation contractor. This database will capture specific information to demonstrate progress towards achieving the goals of the program. Such reporting requirements will be included in the cooperative agreement which is binding between the academic institution and the NSF.

Each Center's annual report will address the following categories of activities: (1) Research, (2) education, (3) knowledge transfer, (4) partnerships, (5) diversity, (6) management and (7) budget issues.

For each of the categories the report will describe overall objectives for the year, problems the Center has encountered in making progress towards goals, anticipated problems in the following year, and specific outputs and outcomes.

Use of the Information: NSF will use the information to continue funding of the Centers, and to evaluate the progress of the program.

Estimate of Burden: 100 hours per center for seventeen centers for a total of 1700 hours.

Respondents: Non-profit institutions; federal government.

Estimated Number of Responses per Report: One from each of the seventeen centers.

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 of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: February 18, 2009.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. E9–3846 Filed 2–23–09; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No 50–414; NRC–2009–0074]

Duke Energy Carolinas, LLC; Notice of Consideration of Issuance of Amendments to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License No. NPF–52 issued to Duke Energy Carolinas, LLC (the licensee), for operation of the Catawba Nuclear Station, Unit 2, located in York County, South Carolina.

The proposed amendment requested to update the Leak-Before-Break evaluation for Catawba Nuclear Station, Unit 2. This request is being submitted in conjunction with Duke Energy Carolinas LLC's proposal to apply full structural weld overlays to the reactor vessel hot leg nozzle-to-safe end welds in the upcoming spring 2009 refueling outage.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the CODE OF FEDERAL REGULATIONS (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided

its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The applicable accident is a Large Break Loss of Coolant Accident (LBLOCA). Since the application of FSWOLs [full structural weld overlays] will enhance the integrity of the reactor coolant system, the probability of a previously evaluated accident is not increased. The consequences of a LBLOCA have been previously evaluated and found to be acceptable. Application of FSWOLs to the welds will cause no change to the dose analysis associated with a LBLOCA, and therefore, does not affect the consequences.

For the above reasons, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment will allow application of FSWOLs to mitigate potential PWSCC [Primary Water Stress Corrosion Cracking] of the welds. These welds provide a primary pressure boundary function. This amendment request does not change the function of the welds, or the way the plant is operated; it allows the application of FSWOLs that will enhance the ability of the welds to perform the pressure boundary function. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is related to the ability of the fission product barriers to perform their design functions during and following accident conditions. These barriers include the fuel cladding, the reactor coolant system, and the containment. This amendment request does not involve a change to the fuel cladding or the containment. This amendment request updates the LBB [Leak Before Break] evaluation to account for the application of FSWOLs to the reactor vessel hot leg nozzle-to-safe end welds for Catawba Unit 2.

The effect of applying a weld overlay repair has been evaluated with respect to the LBB evaluation at this location. This evaluation addresses mitigation of PWSCC in these welds. This evaluation allows the application of a PWSCC resistant overlay that has the added benefit of producing compressive stresses on the inner portion of the welds. Crack growth evaluations performed as part of the evaluation indicate that no PWSCC is expected after the application of the overlay and fatigue crack growth is minimal. The effect of the adverse morphology due to PWSCC cracking was also evaluated. When considering the combined effects of flaw size, increased thickness, and adverse morphology, the leakage was shown to be largely unaffected due to the offsetting effects of these factors.

The evaluation described above shows that these welds will perform as originally intended and that the adverse effects of PWSCC will be mitigated. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner(s right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to

rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/ requestor must contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer$_{TM}$ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer$_{TM}$ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/ petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC electronic filing Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday excluding government holidays. The electronic filing Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MSHD.Resource@nrc.gov.*

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/ehd_proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their submissions.

For further details with respect to this license amendment application, see the application for amendment dated November 20, 2008, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 18th day of February 2009.

For The Nuclear Regulatory Commission.

Robert Martin,

Acting Chief, Plant Licensing Branch II–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–3896 Filed 2–23–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–413 and 50–414; NRC–2009–0073]

Duke Energy Carolinas, LLC Notice of Consideration of Issuance of Amendments to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License No. NPF–35 and Facility Operating License No. NPF–52 issued to Duke Energy Carolinas, LLC (the licensee), for operation of the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

The proposed amendments revise the Technical Specifications (TSs) to change the logic configuration of TS Table 3.3.2–1, ''Engineered Safety Feature Actuation System Instrumentation,'' Function 5.b.(5), ''Turbine Trip and Feedwater Isolation, Feedwater Isolation, Doghouse Water Level—High High.'' The existing one-out-of-one (1/1) logic per train per doghouse is being modified to a two-out-of-three (2/3) logic per train per doghouse. The proposed change will improve the overall reliability of this function and will reduce the potential for spurious actuations.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1:

Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The doghouse water level instrumentation is considered accident mitigation equipment. As such, changes in the logic configuration for this instrumentation cannot have an impact on the probability of an accident.

The instrumentation will continue to comply with all applicable regulatory requirements and design criteria following approval of the proposed changes (*e.g.,* train separation, redundancy, and single failure). The instrumentation will actually be made more reliable as a result of the proposed modifications. Therefore, since the instrumentation will continue to function as designed, all plant parameters will remain within their design limits. As a result, the proposed changes will not increase the consequences of an accident.

Based on this discussion, the proposed amendments do not significantly increase the probability or consequences of an accident previously evaluated.

Criterion 2:

Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed modification to the logic configuration for the doghouse water level instrumentation will result in it being better enabled to fulfill its design function in response to accident conditions. The instrumentation will continue to meet its seismic and equipment qualification requirements. The proposed modifications do not involve a change in the methods governing normal plant operation. The change does not alter assumptions made in the safety analysis (this instrumentation is not credited in the safety analysis).

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3:

Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their accident mitigation functions. These barriers include the fuel and fuel cladding, the reactor coolant system, and the containment and containment related systems. The proposed modifications will not impact the reliability of these barriers to function. The proposed modifications will actually enhance the reliability of the doghouse water level instrumentation in responding to a feedwater line break in a doghouse. Radiological doses to plant operators or to the public will not be impacted as a result of the proposed change. The affected instrumentation is not credited in the UFSAR [Update Final Safety Analysis Report] Chapter 15 accident analyses, nor is it Maintenance Rule High Safety significant.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example,

in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's (Rules of Practice for Domestic Licensing Proceedings) in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ (to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ (is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/-submittals.html.* A filing is considered complete at the time the filer submits its

documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC electronic filing Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday. The electronic filing Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MSHD.Resource@nrc.gov.*

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://www.ehd.nrc.gov/ehd_proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submissions.

For further details with respect to this license amendment application, see the application for amendment dated June 23, 2008, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 12th day of February 2009.

For the Nuclear Regulatory Commission.

John Stang,

Senior Project Manager, Plant Licensing Branch II–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–3898 Filed 2–23–09; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–414; NRC–2009–0072]

Duke Energy Carolinas, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–35 issued to Duke Energy Carolinas, LLC (the licensee), for operation of the Catawba Nuclear Station, Unit 2, located in York County, South Carolina.

The proposed amendment proposes a one-cycle revision to the Technical Specifications (TSs) to incorporate an interim alternate repair criterion for steam generator tube repair criteria during the End of Cycle 16 refueling outage and subsequent cycle 17 operation.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1:

Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Of the various accidents previously evaluated, the following are limiting with respect to the proposed changes to TS 5.5.9, TS 5.6.8, and the Facility Operating License:

- SG Tube Rupture (SGTR) evaluation
- Steam Line Break (SLB) evaluation
- Locked Rotor Accident (LRA) evaluation
- Rod Ejection Accident (REA) evaluation

Loss of Coolant Accident (LOCA) conditions cause a compressive axial load to

act on the tube. Therefore, since the LOCA tends to force the tube into the tubesheet rather than pull it out, it is not a factor in this amendment request. Another faulted load consideration is a Safe Shutdown Earthquake (SSE); however, the seismic analysis of Model D5 SGs (the SGs at Catawba) has shown that axial loading of the tubes is negligible during a SSE.

At normal operating pressures, leakage from Primary Water Stress Corrosion Cracking (PWSCC) below 17 inches from the TTS is limited by both the tube-to-tubesheet crevice and the limited crack opening permitted by the tubesheet constraint. Consequently, negligible normal operating leakage is expected from cracks within the tubesheet region.

For the SGTR event, the required structural margin of the SG tubes is maintained by limiting the allowable ligament size for a circumferential crack to remain in service to 203 degrees below 17 inches from the TTS and above 1 inch from the bottom of the tubesheet. Tube rupture is precluded for cracks in the hydraulic expansion region due to the constraint provided by the tubesheet. The potential for tube pullout is mitigated by limiting the allowable crack size to 203 degrees. This allowable crack size takes into account eddy current uncertainty and crack growth rate. It has been shown that a circumferential crack with an azimuthal extent of 203 degrees meets the performance criteria of NEI (Nuclear Energy Institute) 97–06, Rev. 2, ''Steam Generator Program Guidelines'' and NRC draft Regulatory Guide (RG) 1.121, ''Bases for Plugging Degraded PWR Steam Generator Tubes.'' Therefore, the margin against tube burst/pullout is maintained during normal and postulated accident conditions and the proposed change does not result in a significant increase in the probability or consequence of a SGTR.

The probability of a SLB, LRA, and REA are not affected by the potential failure of a SG tube, as the failure of a tube is not an initiator for any of these events. SLB leakage is limited by leakage flow restrictions resulting from the leakage path above potential cracks through the TTS crevice. The leak rate during postulated accident conditions has been shown to remain within the accident analysis assumptions for all axially or circumferentially oriented cracks occurring 17 inches below the TTS. Since normal operating leakage is limited to 60 gpd through any one SG and 240 gpd through all SGs, the attendant accident condition leak rate, assuming all leakage to be from indications below 17 inches from the TTS, would be bounded by 150 gpd through any one SG and 600 gpd through all SGs. This value is within the accident analysis assumptions for these design basis accidents for Catawba Unit 2.

Based on the above, the performance criteria of NEI 97–06, Rev. 2 and draft RG 1.121 continue to be met and the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2:

Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to TS 5.5.9, TS 5.6.8, and the Facility Operating License do not introduce any changes or mechanisms that create the possibility of a new or different kind of accident. Tube bundle integrity is expected to be maintained for all plant conditions upon implementation of the IARC. The proposed change does not introduce any new equipment or any change to existing equipment. No new effects on existing equipment are created nor are any new malfunctions introduced.

Therefore, based on the above evaluation, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3:

Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes to TS 5.5.9, TS 5.6.8, and the Facility Operating License maintain the required structural margins of the SG tubes for both normal and accident conditions. NEI 97–06, Rev. 2 and draft RG 1.121 are used as the basis in the development of a methodology for determining that SG tube integrity considerations are maintained within acceptable limits. Draft RG 1.121 describes a method acceptable to the NRC staff for meeting GDC 14, 15, 31, and 32 by reducing the probability and consequences of a SGTR. Draft RG 1.121 concludes that by determining the limiting safe conditions of tube wall degradation beyond which tubes with unacceptable cracking, as established by inservice inspection, should be removed from service or repaired, the probability and consequences of a SGTR are reduced. This RG uses safety factors on loads for tube burst that are consistent with the requirements of Section III of the ASME Code.

For axially oriented cracking located within the tubesheet, tube burst is precluded due to the presence of the tubesheet. For circumferentially oriented cracking in a tube or the TTS weld, the supporting Westinghouse analysis defines a length of remaining tube ligament that provides the necessary resistance to tube pullout due to the pressure induced forces (with applicable safety factors applied).

Based on the above, it is concluded that the proposed change does not result in any reduction of margin with respect to plant safety as defined in the UFSAR or Bases of the plant TS.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for

leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC electronic filing Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday. The electronic filing Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MSHD.Resource@nrc.gov.*

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike,

Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://www.ehd.nrc.gov/ehd_proceeding/home.asp,* unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their submissions.

For further details with respect to this license amendment application, see the application for amendment dated November 13, 2008, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 5th day of February 2009.

For the Nuclear Regulatory Commission.

John Stang,

Senior Project Manager, Plant Licensing Branch II–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–3899 Filed 2–23–09; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[NRC–2009–0062]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from January 29, 2009, to February 11, 2009. The last biweekly notice was published on February 10, 2009 (74 FR 6662).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide

Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *hearingdocket@nrc.gov*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC electronic filing Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The electronic filing Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MSHD.Resource@nrc.gov*.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to

submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://www.ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: September 29, 2008, as supplemented by letter dated January 16, 2009.

Description of amendment request: The proposed amendment would modify Technical Specification (TS) Sections 5.6.1.3.a and 5.6.1.3.b to incorporate the results of a new criticality analysis. Specifically the TSs would be revised to add new requirements for the Boiling Water Reactor (BWR) spent fuel storage racks containing Boraflex in Spent Fuel Pools A and B. The requirements for the BWR spent fuel racks as currently contained in TS 5.6.1.3 would be revised to specify applicability to the spent fuel storage racks containing Boral in Spent Fuel Pool B.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed activity changes the design basis of the BWR Boraflex storage racks, but does not make physical changes to the facility. The change to TS Section 5.6.1.3 (BWR Storage Racks in Pools A and B), which is an update to the administrative controls for maintaining the required boron concentration in the Boraflex BWR spent fuel storage racks located in Pools A and B, does not modify the facility.

The accidents currently analyzed in the FSAR [Final Safety Analysis Report] applicable to the proposed activity are fuel handling accidents. These accidents include dropping a fuel assembly onto the top of a fuel rack or in the space between a rack and the pool wall. These events are caused either by personnel error or equipment malfunction.

Based on the new criticality analysis, revised acceptance criteria are needed to ensure the criticality safety of fuel storage in BWR Boraflex racks in Pools A and B. Similar administrative controls were previously placed on fuel stored in the PWR [Pressurized Water Reactor] Boraflex racks in Pools A and B. These changes will eliminate the dependence on the Boraflex absorber in the BWR storage racks. These changes do not impact the probability of having a fuel handling accident and do not impact the consequences of a fuel handling accident.

Therefore, this amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

These revised acceptance criteria applicable to the irradiated fuel stored in the BWR Boraflex racks in Pools A and B are being added to TS Section 5.6.1.3.a.

The proposed change does not result in any credible new failure mechanisms, malfunctions or accident initiators not considered in the original design and licensing bases.

Detailed analyses have been performed to ensure a criticality accident in Pools A and B is not a credible event. The events that could lead to a criticality accident are not new. These events include a fuel mispositioning event, a fuel drop event, and a boron dilution event. The proposed changes do not impact the probability of any of these events.

The detailed criticality analyses performed demonstrates that criticality would not occur following any of these events. Even in a more likely event, such as a fuel mispositioning event, the acceptance criteria for k_{eff} [the effective multiplication factor] remains less than or equal to 0.95. In the unlikely event that the spent fuel storage pool boron concentration were reduced to zero, k_{eff} remains less than 1.0. A criticality accident is considered ''not credible'' and the proposed action does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Incorporation of the revised criteria for fuel stored in the BWR Boraflex racks in Pools A and B do not involve a reduction in the margin of safety. The updated fuel storage condition continues to meet $k_{eff} < 0.95$ with credit for soluble boron and $k_{eff} < 1.0$ when flooded with unborated water.

The proposed changes for storage of irradiated fuel in BWR Boraflex racks in

Pools A and B continues to provide the controls necessary to ensure a criticality event could not occur in the spent fuel storage pool. The acceptance criteria are consistent with the acceptance criteria specified in 10 CFR 50.68, which provide an acceptable margin of safety with regard to the potential for a criticality event.

Therefore, this amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Branch Chief: Thomas H. Boyce.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: August 28, 2008, as supplemented by letter dated January 19, 2009.

Description of amendment request: The proposed amendment would implement the Technical Specification Task Force Standard Technical Specification Change Traveler 449, Revision 4 inspection requirements for the replacement once through steam generators (OTSGs) that are being installed during the Crystal River Unit 3 Nuclear Generating Plant fall 2009 refueling outage. The replacement OTSGs differ from the existing OTSGs in that the tube material is Alloy 690 thermally treated in the replacements versus Alloy 600 in the existing OTSGs. Additionally, this amendment would remove inspection requirements that are designated for specific damage conditions in the existing OTSGs, remove tube repair techniques approved by the license amendment No. 233, dated May 16, 2007, for the existing OTSGs, and remove inspection and reporting requirements specific to those repair techniques.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change for replacement OTSGs continues to implement the current OTSG Program that includes performance criteria which provide reasonable assurance that the replacement OTSG tubing will retain integrity over the full range of operating conditions (including startup, operation in the power range, hot standby, cooldown and all anticipated transients included in the design specifications). This change removes repair criteria from the OTSG Program that were approved by previous License Amendments for the existing Steam Generators which are not applicable to the replacement OTSGs. It removes references to use of repairs and reporting of repair results in other Technical Specification sections. This change removes inspection requirements that are designated for specific damage conditions in the existing OTSGs.

The change also revises the inspection interval for 100% inspections of OTSG tubes and the maximum interval for inspection of a single OTSG consistent with Technical Specification Task Force item 449 for the Alloy 690 tube material in the replacement OTSGs. The revised inspection requirements are based on properties and experience with the improved Alloy 690 tube material. The revised inspection requirements will result in the same outcome that OTSG tube integrity will continue to be maintained.

This change continues to implement steam generator performance criteria for tube structural integrity, accident induced leakage, and operational leakage for the replacement OTSGs. Meeting the performance criteria provides reasonable assurance that the replacement OTSG tubing will remain capable of fulfilling its specific safety function of maintaining reactor coolant pressure boundary integrity throughout each operating cycle and in the unlikely event of a design basis accident. The performance criteria are only a part of the OTSG program required by the existing ITS [Improved Technical Specification]. The program, defined by NEI [Nuclear Energy Institute] 97–06, Steam Generator Program Guidelines, includes a framework that incorporates a balance of prevention, inspection, evaluation, repair, and leakage monitoring. These features will continue to be implemented as they are currently approved. The proposed changes do not, therefore, significantly increase the probability of an accident previously evaluated.

The consequences of design basis accidents are, in part, functions of the DOSE EQUIVALENT I–131 in the primary coolant and the primary to secondary LEAKAGE rates resulting from an accident. Therefore, limits are included in the plant technical specifications for operational leakage and for DOSE EQUIVALENT I–131 in the primary coolant to ensure the plant is operated within its analyzed condition. The analysis of the limiting design basis accident assumes that the primary to secondary leak rate, after the accident, is 1 gallon per minute with no more than 150 gallons per day in any one SG [steam generator], and that the reactor coolant activity levels of DOSE EQUIVALENT I–131 are at the TS [technical specification] values before the accident. The proposed change to the OTSG inspection program does not affect the design of the OTSGs, their method of operation, operational leakage limits, or primary coolant chemistry controls. The proposed change does not adversely impact any other previously evaluated design basis accident. In addition, the proposed changes do not affect the consequences of a Main Steam Line Break, rod ejection, or a reactor coolant pump locked rotor event, or other previously evaluated accident. Therefore, the proposed change does not affect the consequences of a Steam Generator Tube Rupture accident and the probability of such an accident is unchanged.

2. The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed license amendment does not affect the design of the OTSGs, their method of operation, or primary or secondary coolant chemistry controls. In addition, the proposed amendment does not impact any other plant system or component. The change modifies existing OTSG inspection requirements for 100% inspection intervals, but establishes inspection requirements that are considered equivalent based on properties and experience with improved materials. Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The steam generator tubes in pressurized water reactors are an integral part of the reactor coolant pressure boundary and, as such, are relied upon to maintain the primary system's pressure and inventory. As part of the reactor coolant pressure boundary, the steam generator tubes are

unique in that they are also relied upon as a heat transfer surface between the primary and secondary systems such that residual heat can be removed from the primary system. In addition, the steam generator tubes isolate the radioactive fission products in the primary coolant from the secondary system. In summary, the safety function of a steam generator is maintained by ensuring the integrity of its tubes. Steam generator tube integrity is a function of the design, environment, and the physical condition of the tube. The proposed change to the OTSG inspection program does not affect tube design or operating environment. The existing OTSG Program is maintained in this change. The repair criteria that are being removed are specific to the existing OTSGs and are not applicable to the replacement OTSGs. In the case of the roll repair that is being removed, it potentially leads to additional cracking over subsequent operating cycles due to tube cold working during the re-roll. If tube defects are detected that exceed limits in the new generators, then the tube will be removed from service. This is considered a more effective means for removing defects than repairs. For the above reasons, the margin of safety is not changed and overall plant safety will be enhanced by the proposed change to the ITS. Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Branch Chief: Thomas H. Boyce.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: November 6, 2008.

Description of amendments request: The proposed change would revise the Crystal River Unit 3 (CR–3) Improved Technical Specifications Surveillance Requirements (SRs); SR 3.8.1.2, SR 3.8.1.6, and SR 3.8.1.10 to restrict the voltage and frequency limits for all Emergency Diesel Generator (EDG) starts. The steady state voltage limits would be revised to be more restrictive (plus or minus 2 percent of the nominal voltage) to accurately reflect the appropriate calculation and the way the plant is operated and tested. The steady state frequency limits would be revised to be more restrictive (plus or minus 1 percent for all EDG starts) to ensure compliance with the plant design bases and the way the plant is operated. These changes would ensure that the EDGs are capable of supplying power, with the correct voltage and frequency, to the required electrical loads.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The LAR [license amendment request] proposes to provide more restrictive steady state voltage and frequency limits for the Emergency Diesel Generators (EDGs). The voltage band is going from a range of greater than or equal to 3933 V [volts] but less than or equal to 4400 V, to greater than or equal to 4077 V but less than or equal to 4243 V. The proposed limits are +/−2% [percent] around the nominal safety-related bus voltage of 4160 V. The Frequency Limits are going from a 2% tolerance band to a 1% tolerance band around the nominal frequency of 60 Hz [hertz] (59.4 Hz to 60.6 Hz) for all starts of the EDGs.

The EDGs are a safety-related system that functions to mitigate the impact of an accident with a concurrent loss of offsite power. A loss of offsite power is typically a significant contributor to postulated plant risk and, as such, onsite AC [alternating current] generators have to be maintained available and reliable in the event of a loss of offsite power event. The EDGs are not initiators for any analyzed accident, therefore; the probability for an accident that was previously evaluated is not increased by this change. The revised, voltage and frequency limits will ensure the EDGs will remain capable of performing their design function.

The consequences of an accident refer to the impact on both plant personnel and the public from any radiological release associated with the accident. The EDG supports equipment that is supposed to preclude any radiological release. More restrictive voltage and frequency limits for the output of the EDG restores design margin, and provides assurance that the equipment supplied by the EDG will operate correctly and within the assumed timeframe to perform their mitigating functions.

Until the proposed CR–3 ITS [Improved Technical Specifications] EDG voltage and frequency limits are approved by the NRC, administratively controlled limits have been established in accordance with NRC Administrative Letter 98–10 to ensure all EDG mitigation functions will be performed, per design, in the event of a loss of offsite power. These administrative limits have been determined as acceptable and have been incorporated into the surveillance test procedures under the provisions of 10 CFR 50.59. Periodic testing has been performed with acceptable results. Since EDGs are mitigating components and are not initiators for any analyzed accident, no increased probability of an accident can occur. Since administrative limits will ensure the EDGs will perform as designed, consequences will not be significantly affected.

2. Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Administrative voltage limits were established using verified design calculations and the guidance of NRC Administrative Letter 98–10. These administrative limits will ensure the EDGs will perform as designed. No new configuration is established by this change. The administrative limits for the EDG frequency were determined to be sufficient to account for measurement and other uncertainties.

The proposed amendment will place the administrative limits into the CR–3 ITS. The more restrictive voltage and frequency limits will provide additional assurance that the EDG can provide the necessary power to supply the required safety-related loads during an analyzed accident.

The proposed ITS voltage and frequency limits restore the EDG capability to those analyzed by engineering calculation. No new configuration is established. Therefore, no new or different kind of accident from any previously evaluated can be created.

3. Does not involve a significant reduction in a margin of safety.

The LAR proposes to provide more restrictive steady state voltage and frequency limits for the EDGs. The change in the acceptance criteria for specific surveillance testing provides assurance that the EDGs will be capable of performing their design function. Previous test history has shown that the new limits are well within the

capability of the EDGs and are repeatable. The ''as-left'' settings for voltage and frequency will be adjusted such that they remain within a tight band and this ensures that the ''as-found'' settings will be in an acceptable tolerance band.

The proposed ITS limits on voltage and frequency will ensure that the EDG will be able to perform all design functions assumed in the accident analyses. Administrative limits are in place to ensure these parameters remain within analyzed limits. As such, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, NC 27602.

NRC Branch Chief: Thomas H. Boyce.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of amendment request: September 26, 2008.

Description of amendment request: The amendments would revise the Technical Specifications to adopt Nuclear Regulatory Commission (NRC)-approved Revision 3 to Technical Specification Task Force (TSTF) Improved Standard Technical Specification Change Traveler, TSTF–448, ''Control Room Envelope Habitability.'' The proposed amendments include changes to the TS requirements related to control room envelope (CRE) habitability in TS 3/4.7.5, ''Control Room Emergency Ventilation System (CREVS),'' and TS Section 6.8, ''Administrative Controls—Procedures and Programs.'' In addition, the improvements to TSTF–448, Revision 3 as recommended in TSTF–508, Revision 0, ''Revise Control Room Envelope Habitability Actions to Address Lessons Learned from TSTF–448 Implementation,'' have been incorporated as appropriate.

The NRC staff published a notice of opportunity for comment in the **Federal Register** on October 17, 2006 (71 FR 61075), on possible amendments adopting TSTF–448, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line-item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on January 17, 2007 (72 FR 2022). The licensee affirmed the applicability of the following NSHC determination in its application dated September 26, 2008.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility. The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change revises the TS for the CRE emergency ventilation system, which is a mitigation system designed to minimize unfiltered air leakage into the CRE and to filter the CRE atmosphere to protect the CRE occupants in the event of accidents previously analyzed. An important part of the CRE emergency ventilation system is the CRE boundary. The CRE emergency ventilation system is not an initiator or precursor to any accident previously evaluated.

Therefore, the probability of any accident previously evaluated is not increased. Performing tests to verify the operability of the CRE boundary and implementing a program to assess and maintain CRE habitability ensure that the CRE emergency ventilation system is capable of adequately mitigating radiological consequences to CRE occupants during accident conditions, and that the CRE emergency ventilation system will perform as assumed in the consequence analyses of design basis accidents. Thus, the consequences of any accident previously evaluated are not increased. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated

The proposed change does not impact the accident analysis. The proposed change does not alter the required mitigation capability of the CRE emergency ventilation system, or its functioning during accident conditions as assumed in the licensing basis analyses of design basis accident radiological consequences to CRE occupants. No new or different accidents result from performing the new surveillance or following the new program. The proposed change does not involve a physical alteration of the plant (*i.e.*, no new or different type of equipment will be installed) or a significant change in the methods governing normal plant operation. The proposed change does not alter any safety analysis assumptions and is consistent with current plant operating practice. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The proposed change does not affect safety analysis acceptance criteria. The proposed change will not result in plant operation in a configuration outside the design basis for an unacceptable period of time without compensatory measures. The proposed change does not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Branch Chief: Thomas H. Boyce.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: January 5, 2009.

Description of amendment request: The proposed amendment would modify Technical Specifications (TS) requirements for mode change limitations in accordance with Revision 9 of Nuclear Regulatory Commission (NRC)-approved TS Task Force (TSTF) change TSTF–359, ''Increase Flexibility in Mode Restraints.''

In a **Federal Register** notice dated August 2, 2002 (67 FR 50475), the NRC staff issued a notice of opportunity to comment on a model safety evaluation and model no significant hazards consideration (NSHC) determination for proposed license amendments adopting TSTF–359 using the consolidated line item improvement process (CLIIP).

In a **Federal Register** notice dated April 4, 2003 (68 FR 16579), the NRC staff issued a notice of availability of a model application for proposed license amendments adopting TSTF–359 using the CLIIP. The notice also included a revised model safety evaluation and a

model NSHC determination. In its application dated January 5, 2009, the licensee affirmed the applicability of the model NSHC determination which is presented below.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of NSHC is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. Being in a TS condition and the associated required actions is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on required actions as allowed by proposed LCO [Limiting Condition for Operation] 3.0.4, are no different than the consequences of an accident while entering and relying on the required actions while starting in a condition of applicability of the TS. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve the physical alteration of the plant (no new or different type of equipment will be installed). Entering into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. The TS allow operation of the plant without the full complement of equipment through the conditions for not meeting the TS Limiting Conditions for Operation (LCO). The risk associated with this allowance is managed by the imposition of required actions that must be performed within the prescribed completion times. The net effect of being in a TS condition on the margin of safety is not considered significant. The proposed change does not alter the required actions or completion times of the TS. The proposed change allows TS conditions to be entered, and the associated required actions and completion times to be used in new circumstances. This use is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The change also eliminates current allowances for utilizing required actions and completion times in similar circumstances, without assessing and managing risk. The new change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Harold K. Chernoff.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: January 5, 2009.

Description of amendment request: The proposed amendments would delete Section 2.F of the Facility Operating License (FOL) for Hope Creek Generating Station (Hope Creek) and Section 2.I of the FOL for Salem Nuclear Generating Station (Salem) Unit No. 2. The FOL sections being deleted require reporting of violations of the requirements in Section 2.C of the respective FOLs. The proposed amendments would also delete Technical Specification (TS) 6.9.3 for Hope Creek, Salem Unit No. 1 and Salem Unit No. 2. These TSs contain a reporting requirement that is duplicative of Nuclear Regulatory Commission (NRC) regulations.

The NRC staff issued a ''Notice of Opportunity to Comment on Model Safety Evaluation on Elimination of Typical License Condition Requiring Reporting of Violations of Section 2.C of Operating Licensing Using the Consolidated Line Item Improvement Process,'' in the **Federal Register** on August 29, 2005 (70 FR 51098). The notice included a model safety evaluation (SE) and a model no significant hazards consideration (NSHC) determination. On November 4, 2005, the NRC staff issued a notice in the **Federal Register** (70 FR 67202) announcing that the model SE and model NSHC determination may be referenced in plant-specific applications to adopt the changes. In its application dated January 5, 2009, the licensee affirmed the applicability of the model NSHC determination which is presented below.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of NSHC is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change involves the deletion of a reporting requirement. The change does not affect plant equipment or operating practices and therefore does not significantly increase the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change is administrative in that it deletes a reporting requirement. The change does not add new plant equipment, change existing plant equipment, or affect the operating practices of the facility. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change deletes a reporting requirement. The change does not affect plant equipment or operating practices and therefore does not involve a significant reduction in a margin of safety.

Based on the above, the NRC staff proposes that the change presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c).

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit–N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Harold K. Chernoff.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant (BFN), Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: October 30 and November 20, 2008 (TS–463–T).

Description of amendment request: The BFN requests adoption of an approved change to the Standard Technical Specifications (TSs) for General Electric Plants (NUREG–1433, BWR/4) and plant-specific TSs, that allows: (1) Revising the frequency of Surveillance Requirement (SR) 3.1.3.2, notch testing of fully withdrawn control rod, from ''7 days after the control rod is withdrawn and THERMAL POWER is greater than the low-power set point (LPSP) of rod worth minimizer (RWM)'' to ''31 days after the control rod is withdrawn and THERMAL POWER is greater than the LPSP of the RWM,'' (2) adding the word ''fully'' to Limiting Condition for Operation LCO 3.3.1.2, Required Action E.2 to clarify the requirement to fully insert all insertable control rods in core cells containing one or more fuel assemblies when the associated source range monitor instrument is inoperable, and (3) revising Example 1.4–3 in Section 1.4 ''Frequency'' to clarify that the 1.25 surveillance test interval extension in SR 3.0.2 is applicable to time periods discussed in NOTES in the ''SURVEILLANCE'' column in addition to the time periods in the ''FREQUENCY'' column.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

This change does not affect either the design or operation of the Control Rod Drive Mechanism (CRDM). The affected surveillance and Required Action is not considered to be an initiator of any analyzed event. Revising the frequency for notch testing fully withdrawn control rods will not affect the ability of the control rods to shutdown the reactor if required. Given the extremely reliable nature of the CRDM, as demonstrated through industry operating experience, the proposed monthly notch testing of all withdrawn control rods continues to provide a high level of confidence in control rod operability. Hence, the overall intent of the notch testing surveillances, which is to detect either random stuck control rods or identify generic concerns affecting control rod operability, is not significantly affected by the proposed change. Requiring control rods to be fully inserted when the associated SRM is inoperable is consistent with other similar requirements and will increase the shutdown margin. The clarification of Example 1.4–3 in Section 1.4 ''Frequency'' is an editorial change made to provide consistency with other TSTF–475, Rev. 1 discussions in Section 1.4. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

Revising the frequency for notch testing fully withdrawn control rods does not involve physical modification to the plant and does not introduce a new mode of operation. Requiring control rods to be fully inserted will make this action consistent with other similar actions. The clarification of Example 1.4–3 in Section 1.4 ''Frequency'' is an editorial change made to provide consistency with other discussions in Section 1.4. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No

The CRDs and CRDMs are extremely reliable systems and, as such, reducing the number of control rod notch tests will not significantly impact the likelihood of detecting a stuck control rod. If a stuck control rod is detected, existing action requirements will ensure prompt action is taken to ensure there is not a generic problem. Other surveillances are routinely performed to ensure that the performance of the control rods in the event of a DBA [design-basis accident] or transient meets the assumptions used in the safety analyses. As such, potential effects of reducing the number of notch tests are far outweighed by the benefit of reducing undue burden on reactor operators and reducing the potential for mispositioning events which accompanies any control rod manipulation. Requiring control rods to be fully inserted instead of partially inserted when the associated SRM is inoperable will increase the margin of safety. The clarification of Example 1.4–3 in Section 1.4 ''Frequency'' is an editorial change made to provide consistency with other discussions in Section 1.4. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Branch Chief: Thomas H. Boyce.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Duke Power Company LLC, Docket Nos. 50–414, Catawba Nuclear Station, Unit 2, York County, South Carolina

Date of application for amendments: January 20, 2009.

Brief description of amendments: The proposed amendment would allow a one-time limited duration extension of the Technical Specification (TS) Surveillance (SR) 3.3.1.4 frequency. SR 3.3.1.4 is a Trip Actuating Device Operational Test (TADOT) of the reactor trip breakers (RTBs) and reactor trip bypass breakers.

*Date of publication of individual notice in **Federal Register**:* January 28, 2009 (74 FR 4986).

Expiration date of individual notice: 30 days February 27, 2009; 60 days March 30, 2009.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

Carolina Power & Light Company, et. al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: January 4, 2008.

Brief description of amendment: The amendment establishes more effective and appropriate action, surveillance, and administrative requirements related to ensuring the habitability of the control room envelope in accordance with the NRC-approved Technical Specification Task Force (TSTF) Standard Technical Specification change traveler TSTF–448, Revision 3, ''Control Room Habitability.'' This technical specification improvement was initially made available in the **Federal Register**by the NRC on January 17, 2007 (72 FR 2022).

Date of issuance: January 29, 2009.

Effective date: Effective as of the date of issuance and shall be implemented within 180 days.

Amendment No: 128.

Renewed Facility Operating License No. NPF–63: The amendment revises the Technical Specifications and Facility Operating License.

*Date of initial notice in **Federal Register**:* May 20, 2008 (73 FR 29161).

The Commission's related evaluation of the amendment is contained in a safety evaluation dated January 29, 2009.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, et. al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: April 3, 2008, as supplemented by letters dated December 9, 2008, and January 9, 2009.

Brief description of amendment: The amendment revises Technical Specification Section 5.6.3.b to allow a reconfiguration of the fuel racks in Spent Fuel Pool (SFP) C and allow the use of Metamic as an alternate neutron poison material in the new storage racks for SFP C and D. The amendment: (1) Revises the rack configuration in SFP C to allow the substitution of four previously approved (13 × 13 cell) Boiling Water Reactor racks with an equal number of (9 × 9 cell) Pressurized Water Reactor racks, and (2) authorizes the use of Metamic as an alternate spent fuel rack poison material.

Date of issuance: January 29, 2009.

Effective date: Effective as of the date of issuance and shall be implemented within 60 days.

Amendment No: 129.

Renewed Facility Operating License No. NPF–63: The amendment revises the Technical Specifications and Facility Operating License.

*Date of initial notice in **Federal Register**:* June 10, 2008 (73 FR 32744). The supplemental letters provided clarifying information that was within the scope of the initial notice and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a safety evaluation dated January 29, 2009.

No significant hazards consideration comments received: No.

Duke Power Company LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: January 22, 2008.

Brief description of amendments: The amendments revised the Technical Specifications (TSs) requirements related to control room envelope habitability in accordance with TS Task Force (TSTF) traveler TSTF–448, ''Control Room Habitability,'' Revision 3. This TS improvement was made available by the Commission on January 17, 2007 (72 FR 2022) as part of the consolidated line item improvement process (CLIIP).

Date of issuance: January 30, 2009.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 249 and 229.

Renewed Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the licenses and the technical specifications.

*Date of initial notice in **Federal Register**:* March 25, 2008 (73 FR 15784).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 30, 2009.

No significant hazards consideration comments received: No

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: September 22, 2008.

Brief description of amendment: The amendment revised the Technical Specification (TS) to change requirements related to Battery Systems specified in TS Section 3.10 resulting in

removing the Limiting Condition for Operation pertaining to 345 kV switchyard batteries, chargers and associated direct current distribution panel.

Date of Issuance: February 11, 2009.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 234.

Facility Operating License No. DPR–28: Amendment revised the License and Technical Specifications.

Date of initial notice in **Federal Register***:* November 18, 2008 (73 FR 68454).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 30, 2009.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: January 2, 2008, as supplemented by letter dated January 22, 2009.

Brief description of amendment: The amendment revised the actions for inoperable containment isolation valves (CIVs) in Technical Specification 3/4.6.3, ''Containment Isolation Valves,'' to increase the allowed outage time from 4 hours to 72 hours for inoperable CIVs for penetrations with closed systems inside containment.

Date of issuance: January 30, 2009.

Effective date: As of the date of issuance and shall be implemented 90 days from the date of issuance.

Amendment No.: 217.

Facility Operating License No. NPF–38: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register****:* January 29, 2008 (73 FR 5219). The supplemental letter dated January 22, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 30, 2009.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2 (Braidwood), Will County, Illinois

Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2 (Byron), Ogle County, Illinois

Date of application for amendment: February 21, 2008.

Brief description of amendment: The amendments approved revisions to the current licensing basis for Braidwood and Byron associated with the application of an alternative source term (AST) methodology, previously approved by the Nuclear Regulatory Commission staff. Specifically, the amendments approved removing credit for the control room ventilation system recirculation prefilters and reducing the assumed control room unfiltered inleakage in the AST analyses.

Date of issuance: February 5, 2009.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: Braidwood Unit 1–155; Braidwood Unit 2–155; Byron Unit No. 1–160; and Byron Unit No. 2–160.

Facility Operating License Nos. NPF–72, NPF–77, NPF–37, and NPF–66: The amendments revised the current licensing basis for Braidwood and Byron.

Date of initial notice in ***Federal Register****:* June 3, 2008 (73 FR 31720).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 5, 2009.

No significant hazards consideration comments received: No.

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of application for amendment: January 23, 2008.

Brief description of amendment: The proposed amendment would extend the pressure temperature (PT) limit curves and the low temperature overpressure protection (LTOP) setpoints for operation to 55 Effective Full Power Years (EFPYs). The current PT limit curves (and the LTOP setpoints) are applicable to 21.7 EFPYs. The new PT limits and LTOP settings will be applicable to 60 calendar years, which includes the period until the end of the renewed operating license.

Date of Issuance: January 29, 2009.

Effective Date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 154.

Renewed Facility Operating License No. NPF–16: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* September 9, 2008 (73 FR 52418).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 29, 2009.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: February 6, 2008, as supplemented on September 16 and November 6, 2008.

Brief description of amendment: The amendment approved the installation and use of the General Electric—Hitachi nuclear measurement analysis and control digital Power Range Neutron Monitoring System (PRNMS), and approved changes in the Technical Specifications to reflect use of the PRNMS at Monticello Nuclear Generating Plant.

Date of issuance: January 30, 2009.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 159.

Facility Operating License No. DPR–22. Amendment revised the Technical Specifications and Facility Operating License.

Date of initial notice in ***Federal Register****:* March 11, 2008 (73 FR 13025).

The supplemental letters contained clarifying information, did not change the initial no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 30, 2009.

No significant hazards consideration comments received: No.

Southern California Edison Company, et. al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: June 27, 2008.

Brief description of amendments: The amendments revised the Technical Specifications (TSs) to adopt Technical Specification Task Force (TSTF) Change Traveler TSTF–487, Revision 1, ''Relocate DNB [Departure from Nucleate Boiling] Parameters to the COLR [Core Operating Limits Report].'' Specifically, the amendments revised TS 3.4.1 and its associated bases and TS

5.7.1.5 to replace the DNB numeric limits in TSs with references to the COLR.

Date of issuance: February 3, 2009.

Effective date: As of its date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: Unit 2–219; Unit 3–212.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Facility Operating Licenses and Technical Specifications.

*Date of initial notice in **Federal Register**:* September 23, 2008 (73 FR 54868).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 3, 2009.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: January 23, 2008.

Brief description of amendments: The amendments revised the actions specified in Technical Specification (TS) 3.6.1.3, ''Containment Air Locks,'' when limiting condition for operation (LCO) 3.6.1.3 is not met. The amendments allow plant personnel to repair containment air lock components while the plant remains at power and ensure that the containment air locks will continue to meet the requirements of the design basis.

Date of issuance: January 30, 2009.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment Nos.: Unit 1–190; Unit 2–178.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Facility Operating Licenses and Technical Specifications.

*Date of initial notice in **Federal Register**:* March 25, 2008 (73 FR 15788).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 30, 2009.

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: July 10, 2008, as supplemented by letter dated August 26, 2008.

Brief description of amendment: The amendment modified Technical Specification (TS) 5.5.6 consistent with the Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–419, Revision 0, ''Revise PTLR [Pressure and Temperature Limits Report] Definition and References in ISTS [Improved Standard TS] 5.6.6, RCS [Reactor Coolant System] PTLR.'' The revised TS 5.6.6 references only the Topical Report (TR) number and title in TS 5.6.6, ''Reactor Coolant System (RCS) PRESSURE AND TEMPERATURE LIMITS REPORT (PTLR).'' This allows the use of the currently approved TRs to determine the pressure and temperature limits in the PTLR without having to submit an amendment to the Operating License. The change does not alter (1) the U.S. Nuclear Regulatory Commission (NRC) reviewed and approved analytical methods used to determine the pressure and temperature limits or Low Temperature Overpressure Protection System setpoints, or (2) the requirement to use NRC-approved analytical methods to determine the limits or setpoints.

Date of issuance: January 27, 2009.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 180.

Renewed Facility Operating License No. NPF–42. The amendment revised the Renewed Operating License and Technical Specifications.

*Date of initial notice in **Federal Register**:* August 26, 2008 (73 FR 50362). The supplemental letter dated August 26, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 27, 2009.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If there are problems in accessing the document, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.

2. Environmental—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.

3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a petitioner/requestor seeks to adopt the contention of another sponsoring petitioner/requestor, the petitioner/requestor who seeks to adopt the contention must either agree that the sponsoring petitioner/requestor shall act as the representative with respect to that contention, or jointly designate with the sponsoring petitioner/requestor a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating

[1] To the extent that the application contains attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel to discuss the need for a protective order.

under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve adjudicatory documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC electronic filing Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The electronic filing Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MSHD.Resource@nrc.gov*.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://www.ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Dominion Energy Kewaunee, Inc. Docket No. 50–305, Kewaunee Power Station (KPS), Kewaunee County, Wisconsin

Date of amendment request: January 23, 2009, as supplemented by letters of January 26, January 30 and February 5, 2009.

Description of amendment request: The amendment revised the KPS facility operating license by modifying the Technical Specifications in Section 3.7.a.7 from ''The two underground storage tanks combine to supply at least 35,000 gallons of fuel oil for either diesel generator and the day tanks for each diesel generator contain at least 1,000 gallons of fuel oil'' to require each diesel generator's underground storage tank and corresponding day tanks to contain a minimum useable volume of 32,888 gallons.

Date of issuance: February 6, 2009.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 203.

Facility Operating License No. DPR–43: Amendment revised Facility Operating License No. DPR–43 and Appendix A of the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. The Nuclear Regulatory Commission (NRC) staff published a public notice of the proposed amendment, issued a proposed finding of NSHC, and requested that any comments on the proposed NSHC be provided to the NRC staff no later than close of business on February 5, 2009. The notice was published in the ''Herald Times Reporter'' of Manitowoc, Wisconsin, on January 29, 2009. No comments have been received.

The Commission's related evaluation of the amendment, finding of exigent circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated February 6, 2009.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., Counsel for Dominion Energy Kewaunee, Inc., 120 Tredegar Street, Richmond, VA 23219.

NRC Branch Chief: Lois M. James.

Dated at Rockville, Maryland, this 12th day of February 2009.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–3515 Filed 2–23–09; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–28618; 812–13632]

Wachovia Securities, LLC, et al.; Notice of Application and Temporary Order

February 18, 2009.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (''Act'').

SUMMARY OF APPLICATION: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against Wachovia Securities, LLC (''Wachovia Securities'') on February 17, 2009 by the United States District Court for the Northern District of Illinois (''Injunction''), until the Commission takes final action on an application for a permanent order. Applicants also have applied for a permanent order.

APPLICANTS: Wachovia Securities, Evergreen Investment Management Company, LLC (''Evergreen Investment Management''), Tattersall Advisory Group, Inc. (''Tattersall''), First International Advisors, LLC (''First International''), Metropolitan West Capital Management, LLC (''Metropolitan West''), J.L. Kaplan Associates, LLC (''J.L. Kaplan''), Golden Capital Management, LLC (''Golden Capital''), Evergreen Investment Services, Inc. (''Evergreen Investment Services''), Prudential Investment Management, Inc. (''PIM, Inc.''), Prudential Investments LLC (''PI LLC''), The Prudential Insurance Company of America (''Prudential Insurance''), Jennison Associates LLC (''Jennison''), Prudential Bache Asset Management, Inc. (''Bache''), Quantitative Management Associates LLC (''QMA LLC''), Pruco Securities, LLC (''Pruco''), AST Investment Services, Inc. (''AST Investment''), Prudential Annuities Distributors, Inc. (''PAD''), Prudential Investment Management Services LLC (''PIMS LLC''), Pruco Life Insurance Company (''Pruco Life''), Pruco Life Insurance Company of New Jersey (''Pruco Life NJ''), Prudential Annuities Life Assurance Corporation (''PALAC''), Prudential Retirement Insurance and Annuity Company (''PRIAC''), Wells Fargo Funds Management, LLC (''WF Funds Management''), Wells Capital Management Incorporated (''Wells Capital Management''), Peregrine Capital Management, Inc. (''Peregrine''), Galliard Capital Management, Inc. (''Galliard''), Wells Fargo Private Investment Advisors, LLC d/b/a Nelson Capital Management (''Nelson''), Wells Fargo Funds Distributor, LLC (''WF Funds Distributor''), Lowry Hill Investment Advisors, Inc. (''Lowry Hill''), and Wells Fargo Alternative Asset Management, LLC (''WFAAM'') (collectively, other than Wachovia Securities, the ''Fund Servicing Applicants'' and together with Wachovia Securities, the ''Applicants'').[1]

DATES: *Filing Date:* The application was filed on February 18, 2009.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 16, 2009, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; *Applicants:* Wachovia Securities, One North Jefferson Avenue, St. Louis, MO 63103; Evergreen Investment Management, J.L. Kaplan and Evergreen Investment Services, 200 Berkeley Street, Boston, MA 02116; Tattersall, 6802 Paragon Place, Suite 200, Richmond, VA 23230; First International, 3 Bishopsgate, London, England UK EC2N3AB; Metropolitan West, 610 Newport Center Drive, Suite 1000, Newport Beach, CA 92660; Golden Capital, 5 Resource Square, Suite 150, 10715 David Taylor Drive, Charlotte, NC 28262; PIM, Inc. and QMA LLC, 100 Mulberry Street, Gateway Center Two, Newark, NJ 07102; PI LLC and PIMS LLC, 100 Mulberry Street, Gateway Center Three, Newark, NJ 07102; Prudential Insurance and Pruco, 751 Broad Street, Newark, NJ 07102; Jennison, 466 Lexington Avenue, New York, NY 10017; Bache, One New York Plaza, 13th Floor, New York, NY 10292; AST Investment, PAD and PALAC, One Corporate Drive, Shelton, CT 06484; Pruco Life and Pruco Life NJ, 213 Washington Street, Newark, NJ 07102; PRIAC, 280 Trumbull Street, Hartford, CT 06103–3509; WF Funds Management and WF Funds Distributor, 525 Market Street, 12th Floor, San Francisco, CA 94105; Wells Capital Management, 525 Market Street, 10th Floor, San Francisco, CA 94105; Peregrine, 800 LaSalle Avenue, Suite 1850, Minneapolis, MN 55402; Galliard, 800 LaSalle Avenue, Suite 2060, Minneapolis, MN 55402; Nelson, 1860 Embarcadero Road, #140, Palo Alto, CA 94303; Lowry Hill, 90 South Seventh Street, Suite 5300, Minneapolis, MN 55402; and WFAAM, 333 Market Street, 29th Floor, MAC# A0119–291, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Steven I. Amchan, Attorney Adviser, at (202) 551–6826, or Julia Kim Gilmer, Branch Chief, at (202) 551–6821, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1520 (tel. 202–551–5850).

Applicants' Representations:

1. Wells Fargo & Company (''Wells Fargo''), a financial holding company and bank holding company, offers banking, brokerage, advisory and other financial services to institutional and individual customers worldwide. On December 31, 2008, Wells Fargo acquired all of the outstanding voting shares of Wachovia Corporation. Wells Fargo indirectly owns 75% to 77% of Wachovia Securities Financial Holdings, LLC (''WSFH'') and Prudential Financial, Inc. (''Prudential'') indirectly owns 23% to 25% of WSFH.

[1] Applicants request that any relief granted pursuant to the application also apply to any other company of which Wachovia Securities is or may become an affiliated person (together with the Applicants, the ''Covered Persons'').

Wachovia Securities is a wholly owned subsidiary of WSFH, and an affiliated person of each Fund Servicing Applicant within the meaning of section 2(a)(3) of the Act (by virtue of being under common control with the Fund Servicing Applicants). Wachovia Securities offers a wide array of financial advisory, brokerage, asset management and other financial services in more than 3,700 locations nationwide.

2. Evergreen Investment Management, Tattersall, First International, Metropolitan West, J.L. Kaplan, Golden Capital, PIM, Inc., PI LLC, Jennison, Bache, QMA LLC, AST Investment, WF Funds Management, Wells Capital Management, Peregrine, Galliard, Nelson, Lowry Hill, and WFAAM are registered as investment advisers under the Investment Advisers Act of 1940, as amended (''Advisers Act'') and provide investment advisory or subadvisory services to registered investment companies (''Funds''). Evergreen Investment Services, Pruco, PAD, PIMS LLC, and WF Funds Distributor are broker-dealers registered under the Securities Exchange Act of 1934, as amended (''Exchange Act'') and serve as principal underwriters to open-end Funds and registered unit investment trusts (''UITs'', included in the term ''Funds''). Prudential Insurance, Pruco Life, Pruco Life NJ, PALAC, and PRIAC serve as depositors to registered separate accounts, all of which are Funds (''Registered Separate Accounts'').

3. On February 17, 2009, the United States District Court for the Northern District of Illinois entered a judgment against Wachovia Securities (''Judgment'') in a matter brought by the Commission.[2] The Commission alleged in the complaint (''Complaint'') that Wachovia Securities violated section 15(c) of the Exchange Act by marketing auction rate securities as highly liquid investments comparable to cash or money market instruments and by selling auction rate securities to its customers without adequately disclosing the risks involved in purchasing such securities. Without admitting or denying the allegations in the Complaint, except as to jurisdiction, Wachovia Securities consented to the entry of the Judgment that included, among other things, the entry of the Injunction and other equitable relief including undertakings to take various remedial actions for the benefit of purchasers of certain auction rate securities.

Applicants' Legal Analysis:

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from, among other things, engaging in or continuing any conduct or practice in connection with the purchase or sale of a security, or in connection with activities as an underwriter, broker or dealer, from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines ''affiliated person'' to include, among others, any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that Wachovia Securities is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3) of the Act. Applicants state that the entry of the Injunction results in Applicants being subject to the disqualification provisions of section 9(a) of the Act.

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to the Applicants, are unduly or disproportionately severe or that the Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the exemption. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting them and Covered Persons from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standard for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of the Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that the alleged conduct giving rise to the Injunction did not involve any of the Applicants acting in the capacity of investment adviser, subadviser or depositor to any Fund or in the capacity of principal underwriter for any open-end Fund, UIT, or registered face-amount certificate company. Applicants also state that none of the current or former directors, officers, or employees of the Fund Servicing Applicants had any responsibility for, or had any involvement in, the conduct alleged in the Complaint. Applicants further state that the personnel at Wachovia Securities who were involved in the violations alleged in the Complaint have had no and will not have any future involvement in providing investment advisory, subadvisory, depository or underwriting services to Funds.

5. Applicants state that their inability to continue to provide investment advisory, subadvisory and underwriting services to Funds and serve as depositor to the Registered Separate Accounts would result in potential hardship for the Funds and their shareholders. Applicants state that they will, as soon as reasonably practical, distribute written materials, including an offer to meet in person to discuss the materials, to the boards of directors of the Funds (''Boards'') for which the Applicants serve as investment adviser, investment subadviser or principal underwriter, including the directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of such Funds, and their independent legal counsel as defined in rule 0–1(a)(6) under the Act, relating to the circumstances that led to the Injunction, any impact on the Funds, and the application. Applicants state they will provide the Boards with all information concerning the Injunction and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants also state that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. Applicants state that they have committed substantial resources to establish an expertise in providing advisory and distribution services to Funds, and depository services to the Registered Separate Accounts. Applicants further state that prohibiting them from providing such services would not only adversely affect their businesses, but would also adversely affect over 3700 employees who are involved in those activities.

7. Applicants previously have received exemptions under section 9(c) as the result of conduct that triggered section 9(a) as described in greater detail in the application.

Applicants' Condition:

[2] *Securities and Exchange Commission* v. *Wachovia Securities, LLC,* Judgment on Consent Against Defendant Wachovia Securities, LLC, 09 Civ. 00743 (N.D. Ill. February 17, 2009).

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including, without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order:

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that Applicants and any other Covered Persons are granted a temporary exemption from the provisions of section 9(a), solely with respect to the Injunction, subject to the condition in the application, from February 17, 2009, until the Commission takes final action on their application for a permanent order.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–3841 Filed 2–23–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59406; File No. SR–CBOE–2009–006]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend CBOE Rules Relating to DPMs and LMMs

February 13, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 11, 2009, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] 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 CBOE rules relating to relating to [sic] DPMs and LMMs. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

DPMs are member organizations that function in option classes allocated to them as a Market-Maker, and also are subject to the obligations under Rule 8.85 or as otherwise provided in CBOE's Rules. LMMs, similarly, function in option classes allocated to them as a Market-Maker, and also are subject to other obligations under Rule 8.15A (for Hybrid classes) or as otherwise provided in CBOE's Rules. Recently, CBOE amended its rules to provide DPMs with the flexibility to operate remotely away from CBOE's trading floor as a so-called ''Off-Floor DPM.'' (*See, e.g.*, Rules 8.80 and 8.83.) The purpose of this rule filing is to amend CBOE's rules to provide that CBOE in its discretion may appoint an ''On-Floor LMM'' in option classes in which an ''Off-Floor DPM'' is appointed. Although CBOE does not believe it is necessary for an On-Floor LMM to be appointed in each option class in which an ''Off-Floor DPM'' is appointed, CBOE believes that having an On-Floor LMM in an option class in which an Off-Floor DPM has been appointed provides additional flexibility and may be beneficial.

In connection with this change, CBOE also proposes to amend its rules relating to the obligations of LMMs and LMM participation entitlements, in option classes in which both an On-Floor LMM and an Off-Floor DPM have been appointed. First, CBOE proposes to amend paragraph (b)(i) of Rule 8.15A to provide that in option classes in which both an On-Floor LMM and an Off-Floor DPM have been appointed, the On-Floor LMM shall be obligated to comply with the quoting obligations of Market-Makers in Hybrid classes as set forth in Rule 8.7(d). These obligations generally include a continuous open outcry quoting obligation and the obligation to continuously quote electronically in 60% of the series with less than nine months to expiration of each allocated class. The Off-Floor DPM would continue to be required to meet the continuous electronic quoting obligation set forth in Rule 8.85(a)(i), namely, to continuously quote in at least 90% of the series of each multiply-listed option class allocated to it and in 100% of the series of each singly-listed option class allocated to it. CBOE does not believe it is necessary to require the On-Floor LMM to satisfy the more extensive electronic quoting obligation of DPMs given that the Off-Floor DPM will be performing this function and the On-Floor LMM will not be eligible to receive a participation entitlement for transactions executed electronically. (*See* Rule 8.15B(b).)

CBOE also proposes to amend paragraphs (b)(iv) and (b)(vi) of Rule 8.15A to provide that the obligations set forth therein will be assigned to the Off-Floor DPM in those option classes in which both an On-Floor LMM and an Off-Floor DPM have been appointed. CBOE believes that it is appropriate that these two obligations, which pertain to the prompt initiation of an opening trading rotation and the use of a DPM's account for Linkage, be the responsibility of the Off-Floor DPM given that it will have the principal electronic quoting obligation in the option class and will be eligible to receive a participation entitlement for electronic transactions.

CBOE also proposes to amend Rule 8.15A and Rule 8.15B to provide that in option classes in which both an On-Floor LMM and an Off-Floor DPM have been appointed, the On-Floor LMM may receive a participation entitlement with respect to orders represented in open

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

outcry on CBOE's trading floor. CBOE believes that it is appropriate for the On-Floor LMM to receive a participation entitlement for orders represented in open outcry given that the On-Floor LMM will have a continuous open outcry quoting obligation,[5] is expected to be continually present at the trading station and resolve disputes relating to transactions in the option classes in which the LMM is appointed, make competitive open outcry markets, and promote CBOE in a manner likely to enhance CBOE's ability to compete successfully for order flow in the classes it trades, among other obligations. CBOE notes that its rules currently provide that an Off-Floor DPM shall not receive a participation entitlement with respect to orders represented in open outcry on CBOE's trading floor, so it is reasonable for an On-Floor LMM to receive an entitlement for open outcry transactions given its obligations including the continuous open outcry quoting obligation.

Finally, CBOE notes that the provisions of Rule 8.15A not being amended by this proposed rule change will continue to apply to the On-Floor LMM that is appointed in option classes in which an Off-Floor DPM is appointed. For example, the On-Floor LMM will continue to be obligated to honor its displayed quotations (*See* Rule 8.15A(b)(ii)); perform these obligations for a period of one expiration cycle (*See* Rule 8.15A(b)(iii)); respond to open outcry requests for quotes by a floor broker (*See* Rule 8.15A(b)(v)); and maintain information barriers that are reasonably designed to prevent the misuse of material, non-public information with any affiliates that conduct a brokerage operation in classes allocated to the On-Floor LMM or act as a specialist or Market-Maker in any security underlying options allocated to the LMM, and otherwise comply with the requirements of Rule 4.18 regarding the misuse of material, non-public information (*See* Rule 8.15A(b)(vii)).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) Act[6] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, in that allowing CBOE to appoint an On-Floor LMM in an option class in which an Off-Floor DPM has been appointed provides additional flexibility and, therefore, could be beneficial and contribute to the maintenance of a fair and orderly market.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)(iii) thereunder.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2009–006 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–CBOE–2009–006. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2009–006 and should be submitted on or before March 17, 2009.

[5] Rule 8.7(d) provides that Market-Makers have a continuous open outcry quoting obligation. Specifically, it states ''in response to any request for quote by a floor broker, in-crowd Market-Makers must provide a two-sided market complying with the quote width requirements contained in Rule 8.7(b)(iv) for a minimum number of contracts determined by the Exchange on a class by class basis, which minimum shall be at least one contract and which minimum can vary for non-broker-dealer orders and broker-dealer orders.''

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–3861 Filed 2–23–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59413; File No. SR–NSCC–2009–01]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Addendum O To Allow Admission of Entities That Are Organized in a Country Other Than the U.S. for Admission as Limited Members

February 18, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 28, 2009, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by NSCC. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[2] and Rule 19b–4(f)(4) thereunder[3] so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will permit entities that are organized in a country other than the United States and that are not otherwise subject to U.S. Federal or State regulation to be eligible to become Mutual Fund/Insurance Services Members, Fund Members, and Insurance Carrier/Retirement Services Members.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC 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

Prior to this rule change, NSCC permitted entities that are organized in a country other than the United States and that are not otherwise subject to U.S. Federal or State regulation (''non-U.S. entities'') to become Direct Clearing Corporation Members only. The proposed rule change amends Addendum O to NSCC's Rules and Procedures by expanding the types of membership categories available to non-U.S. entities. Specifically, non-U.S. entities will be able to apply to be Mutual Fund/Insurance Services Members, Fund Members, and Insurance Carrier/Retirement Services Members.[4]

NSCC believes that such change is appropriate because the admission process that is already in place is designed to mitigate the risks posed to NSCC by admission of non-U.S. members. For example, admission is subject to an applicant's demonstration that it meets reasonable standards of financial responsibility, operational capability, and character, and each member must continue to be in a position to demonstrate to NSCC that it meets these standards as an ongoing condition of membership.

Furthermore, Addendum O to NSCC's rules establishes additional admissions criteria applicable to non-U.S. entities that address the unique risks associated with their admission, including: (1) That the entity is not subject to U.S. Federal or State regulation; (2) that the operation of the laws of the entity's home country and time zone differences may impede the successful exercise of NSCC's rights and remedies, particularly in the event of the entity's failure to settle; and (3) that financial information about the non-U.S. entity made available to NSCC for monitoring purposes may be less adequate than information about U.S.-based entities.[5] In addition to executing the standard NSCC membership agreement, Addendum O requires that the non-U.S. entity enter into a series of undertakings and agreements that are designed to address jurisdictional concerns and to assure that NSCC is provided with audited financial information in a format that is acceptable to NSCC. The non-U.S. entity must also be subject to regulation in its home country and be in good standing with its home country regulator. In order to address the risks presented by acceptance of financial statements prepared in non-U.S. GAAP, Addendum O provides for a higher capital requirement than that otherwise applicable for admission under NSCC rules.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act[6] because the proposed policy does not unfairly discriminate against non-U.S. entities seeking admission to NSCC because it appropriately takes into account the unique risks to the clearing corporation raised by their admission.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has not solicited or received written comments relating to the proposed rule change. NSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(4).

[4] Rule 2 and Addendum B address admission of applicants as members of NSCC. Admission of an applicant whose use of NSCC services is limited to mutual fund services and/or insurance and retirement processing services is subject to the following provisions of Addendum B, depending on the particular capacity in which the applicant seeks to act: Section 2 of Addendum B (Mutual Fund/Insurance Services Members); Section 3 of Addendum B (Fund Members); Section 4 of Addendum B (Insurance Carrier/Retirement Services Members). NSCC has not yet established admission criteria applicable to non-U.S entities that are insurance companies. NSCC will file a proposed rule change extending Addendum O to such non-U.S. applicants at such time as it has established applicable criteria.

[5] Addendum O was adopted by NSCC pursuant to Securities Exchange Act Release No. 58344, (Aug. 12, 2008), 73 FR 48413 (Aug. 19, 2008) [File No. SR–NSCC–2007–15]. Certain of the criteria set forth in Addendum O may be waived where inappropriate to a particular applicant or class of applicants (*e.g.*, a foreign government, international or national central securities depositories).

[6] 15 U.S.C. 78q–1(b)(3)(F).

19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(4)[8] thereunder because it effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comment@sec.gov*. Please include File No. SR–NSCC–2009–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NSCC–2009–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. to 3 p.m. Copies of such filing also will be available for inspection and copying at NSCC's principal office and on NSCC's Web site at *http://www.nscc.com/legal/index.html*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. NSCC–2009–01 and should be submitted on or before March 17, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–3860 Filed 2–23–09; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(4).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11663 and #11664]

Missouri Disaster #MO–00036

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Missouri (FEMA–1822–DR), dated 02/17/2009.

Incident: Severe Winter Storms

Incident Period: 01/26/2009 through 01/28/2009

EFFECTIVE DATE: 02/17/2009.

Physical Loan Application Deadline Date: 04/20/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 11/17/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW, Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 02/17/2009, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Howell, Madison, Mississippi, New Madrid, Oregon, Ozark, Pemiscot, Reynolds, Ripley, Scott, Shannon, Stoddard, Stone, Taney, Wayne.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	4.500.
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000.

The number assigned to this disaster for physical damage is 11663B and for economic injury is 11664B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E9–3886 Filed 2–23–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11665 and #11666]

Oklahoma Disaster #OK–00029

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Oklahoma (FEMA–1823–DR), dated 02/17/2009.

Incident: Severe Winter Storm.

Incident Period: 01/26/2009 through 01/28/2009.

Effective Date: 02/17/2009.

Physical Loan Application Deadline Date: 04/20/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 11/17/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 02/17/2009, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Adair, Cherokee, Delaware, Hughes.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	4.500
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11665B and for economic injury is 11666B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E9–3884 Filed 2–23–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11661 and #11662]

Tennessee Disaster #TN–00025

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Tennessee (FEMA–1821–DR), dated 02/17/2009.

Incident: Severe Winter Storms and Flooding.

Incident Period: 01/27/2009 through 01/31/2009.

DATES: *Effective Date:* 02/17/2009.

Physical Loan Application Deadline Date: 04/20/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 11/17/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 02/17/2009, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Dyer, Henry, Lake, Montgomery, Obion, Stewart, Weakley.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	4.500.
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000.

The number assigned to this disaster for physical damage is 11661B and for economic injury is 11662B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E9–3885 Filed 2–23–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Northern District of California, San Jose Division, dated March 3, 2008, the United States Small Business Administration hereby revokes the license of Milepost Ventures, L.P., a Delaware limited partnership, to function as a small business investment company under the Small Business Investment Company License No. 09/79–0417 issued to Milepost Ventures, L.P. on December 4, 1989 and said license is hereby declared null and void as of March 3, 2008.

United States Small Business Administration.

Dated: February 12, 2009.

Harry E. Haskins,

Deputy Associate Administrator for Investment.

Memorandum

Date: February 2, 2009.

To: Jacqueline K. White, Chief, Administration Information Branch.

From: Deputy Associate Administrator for Investment.

Subject: Publication of License Surrender. Milepost Investment, L.P., License # 09/79–0417.

Enclosed are the original, five hard copies, and a computer disk copy of the Notice of License Surrender of a Small Business Investment Company License. I certify that the hard copy and the disk copy match.

Please have the attached Notice of Surrender of a Small Business Investment Company License published in the **Federal Register** and return one copy for our office records.

If you have any questions about this **Federal Register** Notice request, please contact Terry George 202–619–0504.

Thank you in advance for your cooperation.

Harry E. Haskins,

Deputy Associate Administrator for Investment.

Attachment: 5 copies and 1 disk.

Legal

Date

[FR Doc. E9–3881 Filed 2–23–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court of the Southern District of New York, dated August 19, 2008, the United States Small Business Administration hereby revokes the license of Winfield Capital Corp., a New York Corporation, to function as a small business investment company under the Small Business Investment Company License No. 02/02–0292 issues to Winfield Capital Corp. on April 19, 1972 and said license is hereby declared null and void as of August 19, 2008.

United States Small Business Administration

Dated: February 12, 2009.

Harry E. Haskins,

Deputy Associate Administrator for Investment.

MEMORANDUM

Date: February 2, 2009.

To: Jacqueline K. White, Chief, Administration Information Branch.

From: Deputy Associate Administrator for Investment.

Subject: Publication of License Surrender.Winfield Capital Corp. License #02/02–0292

Enclosed are the original, five hard copies, and a computer disk copy of the Notice of License Surrender of a Small Business Investment Company License. I certify that the hard copy and the disk copy match.

Please have the attached Notice of Surrender of a Small Business Investment Company License published in the **Federal Register** and return one copy for our office records.

If you have any questions about this **Federal Register** Notice request, please contact Terry George at 202–619–0504.

Thank you in advance for your cooperation.

Harry E. Haskins,
Deputy Associate Administrator for Investment.

Attachment: 5 copies and 1 disk.

Legal

Date

[FR Doc. E9–3882 Filed 2–23–09; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 6531]

30-Day Notice of Proposed Information Collection: Department of State Acquisition Regulation (DOSAR), OMB Control Number 1405–0050

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Department of State Acquisition Regulation (DOSAR).
- *OMB Control Number:* 1405–0050.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Administration, Office of the Procurement Executive (A/OPE).
- *Form Number:* N/A.
- *Respondents:* Any business, other for-profit, individual, not-for-profit, or household organization wishing to receive Department of State contracts.
- *Estimated Number of Respondents:* 3,166.
- *Estimated Number of Responses:* 3,166.
- *Average Hours per Response:* Varies.
- *Total Estimated Burden:* 275,970.
- *Frequency:* On occasion.
- *Obligation to Respond:* Voluntary.

DATE(S): Submit comments to the Office of Management and Budget (OMB) for up to 30 days from February 24, 2009.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

- *E-mail: Katherine_T._Astrich@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Mail (paper, disk, or CD–ROM submissions):* Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- *Fax:* 202–395–6974.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Barbara Latvanas, Procurement Analyst, Office of the Procurement Executive, Department of State, Washington, DC 20522, who may be reached on 703–516–1755 or at *LatvanasBA@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

This information collection covers pre-award and post-award requirements of the DOSAR. During the pre-award phase, information is collected to determine which bids or proposals offer the best value to the U.S. Government. Post-award actions include monitoring the contractor's performance; issuing modifications to contracts; dealing with unsatisfactory performance; issuing payments to the contractor; and closing out the contract upon its completion.

Methodology

Information is collected from prospective offerors to evaluate their proposals. The responses provided by the public are part of the offeror's proposals in response to Department solicitations. This information may be submitted electronically (through fax or e-mail), or may require a paper submission, depending upon complexity. After contract award, contractors are required to submit information, on an as-needed basis, and relate to the occurrence of specific circumstances.

Dated: February 12, 2009.

Corey M. Rindner,
Procurement Executive, Bureau of Administration, Department of State.

[FR Doc. E9–3807 Filed 2–23–09; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2009–08]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: This notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before March 16, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA–2008–1260 using any of the following methods:

- *Government-Wide Rulemaking Web Site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Docket:* To read background documents or comments received, go to

http://www.regulations.gov at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Background

On February 11, 2009 (74 FR 6945), the FAA published a petition for exemption from the Aeronautical Repair Station Association. However, the description of relief sought was inaccurate. This notice clarifies the petitioner's request.

The Correction

In the issue of February 11, 2009, on page 6945, in the third column, in the Description of Relief Sought section, the summary should read ''On behalf of its members, the Aeronautical Repair Station Association (ARSA) seeks an exemption from part 121, appendices I and J. Specifically, ARSA seeks an exemption for any person(s) using LONG–LOK Fasteners Corporation to accomplish Airworthiness Directive (AD) 93–05–16, any entities called to perform required work in an AD without an existing FAA/DOT drug and alcohol program and any person(s) performing alterations for a covered employer.''

FOR FURTHER INFORMATION CONTACT: Tyneka Thomas (202) 267–7626 or Laverne Brunache (202) 267–3133, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. E9–3895 Filed 2–23–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1998–4334; FMCSA–2000–7363; FMCSA–2000–7918; FMCSA–2000–8398; FMCSA–2002–12844; FMCSA–2002–13411; FMCSA–2004–19477; FMCSA–2006–25246; FMCSA–2006–26066]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 23 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective March 23, 2009. Comments must be received on or before March 26, 2009.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–1998–4334; FMCSA–2000–7363; FMCSA–2000–7918; FMCSA–2000–8398; FMCSA–2002–12844; FMCSA–2002–13411; FMCSA–2004–19477; FMCSA–2006–25246; FMCSA–2006–26066, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://www.DocketInfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 23 individuals who have requested a renewal of their exemption in accordance with FMCSA procedures. FMCSA has evaluated these 23 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

David W. Ball, Mark L. Braun, Richard A. Brown, Jr., Willie Burnett, Jr., Donald K. Driscoll, Elias Gomez, Jr., Richard G. Gruber, Richard T. Hatchel, William G. Holland, Bruce G. Horner, Leon E. Jackson, Gerald D. Larson, Thomas F. Marczewski, Roy E. Mathews, James T. McGraw, Jr., Carl A. Michel, Sr., Robert A. Moss, Harry M. Oxendine, Bobby G. Pool, Sr., Herbert W. Smith, Ronald Watt, Harry C. Weber, Yu Weng.

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 23 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 66226; 64 FR 16517; 65 FR 66286; 66 FR 13825; 68 FR 13360; 70 FR 12265; 72 FR 11426; 65 FR 78256; 66 FR 16311; 67 FR 68719; 68 FR 2629; 69 FR 71100; 72 FR 1053; 70 FR 7545; 67 FR 76439; 68 FR 10298; 72 FR 7812; 69 FR 64806; 70 FR 2705; 72 FR 1056; 72 FR 180; 72 FR 9397; 71 FR 63379; 72 FR 1050). Each of these 23 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by March 26, 2009.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 23 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: February 11, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–3903 Filed 2–23–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2009–0001–N–4]

Information Collection Requirement (ICR)

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirement (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on December 16, 2008 (73 FR 76442).

DATES: Comments must be submitted on or before March 26, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., 3rd Floor, Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292), or Ms. Nakia Jackson, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., 3rd Floor, Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6073). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On December 16, 2008, FRA published a 60-day notice in the **Federal Register** soliciting comment

on this ICR that the agency was seeking OMB approval. 73 FR 76442. FRA received no comments after issuing this notice. Accordingly, DOT announces that these information collection activities have been evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.10(a).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describes the nature of the information collection requirement (ICR) and the expected burden. The revised requirement is being submitted for clearance by OMB as required by the PRA.

Title: Notice Requesting Expressions of Interest in Implementing a High-Speed Inter-City Passenger Rail Corridor.

OMB Control Number: 2130—New.

Type of Request: Regular approval of a new collection of information.

Affected Public: 50 states, District of Columbia, Amtrak, eligible entities.

Abstract: Section 502 of the Passenger Rail Investment and Improvement Act of 2008, Public Law 110–690 (October 16, 2008), requires the Secretary of Transportation to ''issue a request for proposals for projects for the financing, design, construction, operation, and maintenance of a high-speed intercity passenger rail system operating within'' either the Northeast Corridor or a Federally-designated high-speed rail (HSR) corridor. To satisfy this requirement, FRA is soliciting and encouraging the submission of Expressions of Interest for potential projects to finance, design, construct, operate, and maintain an improved HSR intercity passenger system in the Northeast Corridor or in one of ten Federally-designated corridors. FRA envisions this as the first phase of a qualification process that Congress may follow with more specific actions regarding particular concepts in one or more corridors. Section 502 prescribes that Expressions of Interest received will be considered by FRA and possibly by commissions, representing affected and involved governors, mayors, freight railroads, transit authorities, labor organizations, and Amtrak. The results of these reviews will be summarized in one or more reports to Congress, which will make recommendations for further action regarding no more than one project concept for each corridor. FRA envisions this as the first phase of a qualification process that Congress may follow with more specific actions regarding particular concepts in one or more corridors.

Although authorized, no funds have been appropriated to support implementation of HSR under this program, and the availability of such funds in the future is not known. Respondents to FRA's request in the December 16, 2008, **Federal Register** (73 FR 76443) acknowledge, by virtue of their response, that the likelihood of future funding and implementation of the projects covered by that notice is unknown, and that the Federal Government will not be liable for any costs incurred in the preparation of responses to this notice.

The information collected will be used by the Federal Railroad Administration (FRA), commissions to be formed in accordance with Section 502, and Congress. The collection of information—responses that describe high speed rail proposals—will be used to inform the Department and Congress about the benefits to the public and the national transportation system from high speed rail proposals received. Upon receipt of responses and after the close of the Expression of Interest solicitation, FRA will evaluate them and determine if each Expression of Interest is complete and if there is evidence provided in the response that would support conclusions, based on criteria specified in Section 502. If FRA determines that one or more Expressions of Interest satisfy this screening evaluation, FRA would form a commission for each relevant corridor to review and consider the response(s).

Annual Estimated Burden Hours: 34,063 hours.

Addressee: Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via e-mail to OMB at the following address: *oira_submissions@omb.eop.gov*.

Comments are Invited on the Following: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. §§ 3501–3520.

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

Kimberly Orben,

Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. E9–3901 Filed 2–23–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 18, 2009

The Department of Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, and 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 26, 2009 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–XXXX.

Type of Review: New Collection.

Title: Form 13997, Validating Your TIN and Reasonable Cause.

Form: 13997.

Description: Under the provisions of Internal Revenue Code Section (IRC §) 6039E, Information Concerning Resident Status, individuals are required to provide certain information (see IRC

§ 6039E(b)) with their application for a U.S. passport or with their application for permanent U.S. residence. This form will be an attachment to Letter 4318 that is being drafted to inform the individual about the IRC provisions, the penalty, and to request them to complete this form and return it to the IRS.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 2,000 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Shagufta Ahmed (202) 395–7873, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E9–3900 Filed 2–23–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0609]

Proposed Information Collection (Survey of Veteran Enrollees' Health and Reliance Upon VA) Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments for information needed to survey veteran enrollees' health status and reliance on VA's health care services.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 27, 2009.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Mary Stout, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or e-mail: *mary.stout@va.gov.* Please refer to ''OMB Control No. 2900–0609'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Mary Stout at (202) 461–5867 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: Survey of Veteran Enrollees' Health and Reliance Upon VA, VA Form 10–21034g.

OMB Control Number: 2900–0609.

Type of Review: Extension of a currently approved collection.

Abstract: Public Law 104–262, The Veterans Health Care Eligibility Reform Act of 1996, requires VA implement a priority-based enrollment system. VA must enroll veterans by specified priorities as far down the priorities as the available resources permit. The number of priority levels to which VHA will be able to deliver care will be a function of annual funding levels and utilization of health care services by enrollees. Additionally, eligibility reform has brought about the ever-increasing need for VA to plan and budget for the evolving clinical care needs of its extremely dynamic enrollee population at risk of need or use of VA care.

There is no valid, recent information available in administrative databases on all enrollees' health status, income, and their reliance upon the VA system. The magnitude of changes each year in enrollees, their characteristics, and system policies make annual surveys necessary to capture this critical information for input into VHA's Health Care Services Demand Model. The survey will provide VA with current information for sound decisions that affect the entire VA health care delivery system and the veterans it serves. VA Form 10–21034g will be used to provide the survey data on morbidity and reliance that is critical to obtaining accurate projections of VA's ability to service veterans who are seeking VA health care services. The projections will also be used to support VA's Capital Asset Realignment for Enhanced Services initiative and will also serve as the basis for VA's new emphasis on population-based budget formulation, policy scenario testing, and strategic planning.

Affected Public: Individuals or households, and Federal Government.

Estimated Annual Burden: 10,900 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 42,200.

Dated: February 17, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–3867 Filed 2–23–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0128]

Agency Information Collection (Notice of Lapse—Government Life Insurance) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 26, 2009.

ADDRESSES: Submit written comments on the collection of information through

www.Regulations.gov; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0128'' in any correspondence.

FOR FURTHER INFORMATION CONTACT:

Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0128.''

SUPPLEMENTARY INFORMATION:

Titles:

a. Notice of Lapse—Government Life Insurance, VA Form 29–389.

b. Application for Reinstatement, VA Form 29–389–1.

OMB Control Number: 2900–0128.

Type of Review: Extension of a currently approved collection.

Abstract: VA Forms 29–389 and 29–389–1 are used to inform claimants that their government life insurance has lapsed or will lapse due to non payment of premiums. The claimant must complete the application to reinstate the insurance and to elect to pay the past due premiums. VA uses the data collected to determine the claimant's eligibility for reinstatement of such insurance.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 15, 2008, at page 76100.

Affected Public: Individuals or Households.

Estimated Annual Burden:

a. VA Form 29–389—3,399 hours.

b. VA Form 29–389–1—1,060 hours.

Estimated Average Burden per Respondent:

a. VA Form 29–389—12 minutes.

b. VA Form 29–389–1—10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VA Form 29–389—16,993.

b. VA Form 29–389–1—6,359.

Dated: February 17, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–3873 Filed 2–23–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0073]

Agency Information Collection (VA Enrollment Certification) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 26, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0073'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0073.''

SUPPLEMENTARY INFORMATION:

Title: VA Enrollment Certification, VA Form 22–1999.

OMB Control Number: 2900–0073.

Type of Review: Extension of a currently approved collection.

Abstract: School officials and employers complete VA Form 22–1999 to report and certify a claimant's enrollment in an educational program. The data is used to determine the amount of benefits payable and whether the claimant requested an advanced or accelerated payment.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 15, 2008, at page 76101.

Affected Public: Not-for-profit institutions.

Estimated Annual Burden:

a. Electronically—104,262 hours.

b. Paper copy—55,855 hours.

Estimated Average Burden per Respondent:

c. Electronically—8 minutes.

d. Paper copy—10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. Electronically—781,967.

b. Paper copy—335,129.

Dated: February 17, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–3874 Filed 2–23–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0679]

Agency Information Collection (Certification of Change or Correction of Name) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 26, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0679'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0679.''

SUPPLEMENTARY INFORMATION:

Title: Certification of Change or Correction of Name, VA Form 29–586.

OMB Control Number: 2900–0679.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 29–586 to certify a change or correction to their name on Government Life Insurance policies.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 15, 2008, at pages 76099–76100.

Affected Public: Individuals or households.

Estimated Annual Burden: 20 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 120.

Dated: February 17, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–3877 Filed 2–23–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900—New (uSPEQ®)]

Proposed Information Collection (uSPEQ® Consumer Survey Experience (Rehabilitation)) Activity; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to measure veterans' experience in VA's rehabilitation programs.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 27, 2009.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Mary Stout, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *mary.stout@va.gov.* Please refer to ''OMB Control No. 2900—New (uSPEQ®)'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Mary Stout (202) 461–5867 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: uSPEQ® Consumer Survey Experience (Rehabilitation).

OMB Control Number: 2900–New (uSPEQ®).

Type of Review: New collection.

Abstract: uSPEQ® (pronounced *you speak*) survey will be used to gather input from veterans regarding their satisfaction with VA's rehabilitation programs. VA will use the data collected to continue quality improvement, informed programmatic development, and to identify rehabilitation program strengths and weaknesses.

Affected Public: Individuals and Households.

Estimated Annual Burden: 32,000 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 384,000.

Dated: February 17, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–3879 Filed 2–23–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0386]

Agency Information Collection (Interest Rate Reduction Refinancing Loan Worksheet) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 26, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0386'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 565–7870 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0386.''

SUPPLEMENTARY INFORMATION:

Title: Interest Rate Reduction Refinancing Loan Worksheet, VA Form 26–8923.

OMB Control Number: 2900–0386.

Type of Review: Extension of a currently approved collection.

Abstract: Lenders are required to submit VA Form 26–8923, to request a guaranty on all interest rate reduction refinancing loans and provide a receipt as proof that the funding fee was paid or evidence that a claimant was exempt from such fee. VA uses the data collected to ensure lenders computed

the funding fee and the maximum permissible loan amount for interest rate reduction refinancing loans correctly.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 15, 2008, at pages 76098–76099.

Affected Public: Business or other for profit.

Estimated Annual Burden: 5,000 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 30,000.

Dated: February 17, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–3880 Filed 2–23–09; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
February 24, 2009

Part II

Environmental Protection Agency

40 CFR Part 86, 89, et al.

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86, 89, 90, 1027, 1033, 1042, 1048, 1054, 1060, 1065, and 1068

[EPA–HQ–OAR–2005–0047; FRL–8750–3]

RIN 2060–AL92

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Regulations Requiring Onboard Diagnostic Systems on 2010 and Later Heavy-Duty Engines Used in Highway Applications Over 14,000 Pounds; Revisions to Onboard Diagnostic Requirements for Diesel Highway Heavy-Duty Vehicles Under 14,000 Pounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In 2001, EPA finalized a new, major program for highway heavy-duty engines. That program, the Clean Diesel Trucks and Buses program, will result in the introduction of advanced emissions control systems such as catalyzed diesel particulate filters (DPF) and catalysts capable of reducing harmful nitrogen oxide (NO_X) emissions. This final rule will require that these advanced emissions control systems be monitored for malfunctions via an onboard diagnostic system (OBD), similar to those systems that have been required on passenger cars since the mid-1990s. This final rule will require manufacturers to install OBD systems that monitor the functioning of emission control components and alert the vehicle operator to any detected need for emission related repair. This final rule will also require that manufacturers make available to the service and repair industry information necessary to perform repair and maintenance service on OBD systems and other emission related engine components. Lastly, this final rule revises certain existing OBD requirements for diesel engines used in heavy-duty vehicles under 14,000 pounds.

DATES: This rule is effective on April 27, 2009. The incorporation by reference of certain publications listed in this regulation is approved by the Director of the Federal Register as of April 27, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2005–0047. 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., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Todd Sherwood, U.S. EPA, National Vehicle and Fuel Emissions Laboratory, Assessment and Standards Division, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone (734) 214–4405, fax (734) 214–4816, e-mail *sherwood.todd@epa.gov*.

SUPPLEMENTARY INFORMATION:

Regulated Entities

This action will affect you if you produce or import new heavy-duty engines which are intended for use in highway vehicles such as trucks and buses, or produce or import such highway vehicles, or convert heavy-duty vehicles or heavy-duty engines used in highway vehicles to use alternative fuels.

The following table gives some examples of entities that may have to follow the regulations. But because these are only examples, you should carefully examine the regulations in 40 CFR part 86. If you have questions, call the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble:

Category	NAICS codes [a]	SIC codes [b]	Examples of potentially regulated entities
Industry	336111 336112 336120	3711	Motor Vehicle Manufacturers; Engine and Truck Manufacturers.
Industry	811112 811198 541514	7533 7549 8742	Commercial Importers of Vehicles and Vehicle Components.
Industry	336111 336312 422720 454312 811198 541514 541690	3592 3714 5172 5984 7549 8742 8931	Alternative fuel vehicle converters.

[a] North American Industry Classification Systems (NAICS).
[b] Standard Industrial Classification (SIC) system code.

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I. Overview

A. Background

Section 202(m) of the CAA, 42 U.S.C. 7521(m), directs EPA to promulgate regulations requiring 1994 and later model year light-duty vehicles (LDVs) and light-duty trucks (LDTs) to contain an OBD system that monitors emission-related components for malfunctions or deterioration ''which could cause or result in failure of the vehicles to comply with emission standards established'' for such vehicles. Section 202(m) also states that, ''The Administrator may, in the Administrator's discretion, promulgate regulations requiring manufacturers to install such onboard diagnostic systems on heavy-duty vehicles and engines.''

On February 19, 1993, we published a final rule requiring manufacturers of light-duty applications to install such OBD systems on their vehicles beginning with the 1994 model year (58 FR 9468). The OBD systems must monitor emission control components for any malfunction or deterioration that could cause emissions to exceed certain emission thresholds. The regulation also required that the driver be notified of any need for repair via a dashboard light, or malfunction indicator light (MIL), when the diagnostic system detected a problem. We also allowed optional compliance with California's second phase OBD requirements, referred to as OBDII (13 CCR 1968.1), for purposes of satisfying the EPA OBD requirements. Since publishing the 1993 OBD final rule, EPA has made several revisions to the OBD requirements, most of which served to align the EPA OBD requirements with revisions to the California OBDII requirements (13 CCR 1968.2).

On August 9, 1995, EPA published a final rulemaking that set forth service information regulations for light-duty vehicles and light-duty trucks (60 FR 40474). These regulations, in part, required each Original Equipment Manufacturer (OEM) to do the following: (1) List all of its emission-related service and repair information on a Web site called FedWorld

(including the cost of each item and where it could be purchased); (2) either provide enhanced information to equipment and tool companies or make its OEM-specific diagnostic tool available for purchase by aftermarket technicians, and (3) make reprogramming capability available to independent service and repair professionals if its franchised dealerships had such capability. These requirements are intended to ensure that aftermarket service and repair facilities have access to the same emission-related service information, in the same or similar manner, as that provided by OEMs to their franchised dealerships. These service information availability requirements have been revised since that first final rule in response to changing technology among other reasons. (68 FR 38428)

In October of 2000, we published a final rule requiring OBD systems on heavy-duty vehicles and engines up to 14,000 pounds GVWR (65 FR 59896). In that rule, we expressed our intention of developing OBD requirements in a future rule for vehicles and engines used in vehicles over 14,000 pounds. We expressed this same intention in our 2007HD highway final rule (66 FR 5002) which established new heavy-duty highway emissions standards for 2007 and later model year engines. In June of 2003, we published a final rule extending service information availability requirements to heavy-duty vehicles and engines weighing up to 14,000 pounds GVWR. We declined extending these requirements to engines above 14,000 pounds GVWR at least until such engines are subject to OBD requirements.

On January 18, 2001, EPA established a comprehensive national control program—the Clean Diesel Truck and Bus program—that regulates the heavy-duty vehicle and its fuel as a single system. (66 FR 5002) As part of this program, new emission standards will begin to take effect in model year 2007 and will apply to heavy-duty highway engines and vehicles. These standards are based on the use of high-efficiency catalytic exhaust emission control devices or comparably effective advanced technologies. Because these devices are damaged by sulfur, the regulation also requires the level of sulfur in highway diesel fuel be reduced by 97 percent.[1]

On January 24, 2007, we proposed new OBD requirements for highway engines used in vehicles greater than 14,000 pounds (72 FR 3200). Today's action finalizes those proposed requirements. Today's action also requires new availability requirements for emission-related service information, also proposed in the January 24, 2007 action, that will make this information more widely available to the industry servicing vehicles over 14,000 pounds.

B. What Is EPA Requiring?

1. OBD Requirements for Engines Used in Highway Vehicles Over 14,000 Pounds GVWR

We believe that OBD requirements should be extended to include over 14,000 pound heavy-duty vehicles and engines for many reasons. In the past, heavy-duty diesel engines have relied primarily on in-cylinder modifications to meet emission standards. For example, emission standards have been met through changes in fuel timing, piston design, combustion chamber design, charge air cooling, use of four valves per cylinder rather than two valves, and piston ring pack design and location improvements. In contrast, the 2004 and 2007 emission standards represent a different sort of technological challenge that are being met with the addition of exhaust gas recirculation (EGR) systems and the addition of exhaust aftertreatment devices such as diesel particulate filters (DPF), sometimes called PM traps, and NO_X catalysts. Such ''add on'' devices can experience deterioration and malfunction that, unlike the engine design elements listed earlier, may go unnoticed by the driver. Because deterioration and malfunction of these devices can go unnoticed by the driver, and because their primary purpose is emissions control, and because the level of emission control is on the order of 50 to 99 percent, some form of diagnosis and malfunction detection is crucial. We believe that such detection can be effectively achieved by employing a well designed OBD system.

The same is true for gasoline heavy-duty vehicles and engines. While emission control is managed with both engine design elements and aftertreatment devices, the catalytic converter is the primary emission control feature accounting for over 95 percent of the emission control. We believe that monitoring the emission control system for proper operation is critical to ensure that new vehicles and engines certified to the very low emission standards set in recent years continue to meet those standards throughout their full useful life.

Further, the industry trend is clearly toward increasing use of computer and electronic controls for both engine and powertrain management, and for emission control. In fact, the heavy-duty industry has already gone a long way, absent any government regulation, to standardize computer communication protocols.[2] Computer and electronic control systems, as opposed to mechanical systems, provide improvements in many areas including, but not limited to, improved precision and control, reduced weight, and lower cost. However, electronic and computer controls also create increased difficulty in diagnosing and repairing the malfunctions that inevitably occur in any engine or powertrain system. Today's OBD requirements will build on the efforts already undertaken by the industry to ensure that key emissions related components will be monitored in future heavy-duty vehicles and engines and that the diagnosis and repair of those components will be as efficient and cost effective as possible.

Lastly, heavy-duty engines and, in particular, diesel engines tend to have very long useful lives. With age comes deterioration and a tendency toward increasing emissions. With the OBD systems we are requiring, we expect that these engines will continue to be properly maintained and therefore will continue to emit at low emissions levels even after accumulating hundreds of thousands and even a million miles.

For the reasons laid out above, most manufacturers of vehicles, trucks, and engines have incorporated some type of OBD system into their products that are capable of identifying when certain types of malfunctions occur, and in what systems. In the heavy-duty industry, those OBD systems traditionally have been geared toward detecting malfunctions causing drivability and/or fuel economy related problems. Without specific requirements for manufacturers to include OBD mechanisms to detect emission-related problems, those types of malfunctions that could result in high emissions without a corresponding adverse drivability or fuel economy impact could go unnoticed by both the driver and the repair technician. The resulting increase in emissions and detrimental impact on air quality could

[1] Note that the 2007HD highway rule contained new emissions standards for gasoline engines as well as diesel engines.

[2] See ''On-Board Diagnostics, A Heavy Duty Perspective,'' SAE 951947; ''Recommended Practice for a Serial Control and Communications Vehicle Network,'' SAE J1939 which may be obtained from Society of Automotive Engineers International, 400 Commonwealth Dr., Warrendale, PA, 15096–0001; and ''Road Vehicles-Diagnostics on Controller Area Network (CAN)—Part 4: Requirements for emission-related systems,'' ISO 15765–4:2001 which may be obtained from the International Organization for Standardization, Case Postale 56, CH–1211 Geneva 20, Switzerland.

be avoided by incorporating an OBD system capable of detecting emission control system malfunctions.

2. Requirements That Service Information Be Made Available

We are requiring that makers of engines that go into vehicles over 14,000 pounds make available to any person engaged in repair or service all information necessary to make use of the OBD systems and for making emission-related repairs, including any emissions-related information that is provided by the OEM to franchised dealers. This information includes, but is not limited to, manuals, technical service bulletins (TSBs), a general description of the operation of each OBD monitor, etc. We discuss the new requirements further in section III of this preamble.

The new requirements are similar to those required currently for all 1996 and newer light-duty vehicles and light-duty trucks and 2005 and newer heavy-duty applications up to 14,000 pounds. See section III for a complete discussion of the new service information provisions. Note that information for making emission-related repairs does not include information used to design and manufacture parts, but it may include OEM changes to internal calibrations and other indirect information, as discussed in section III.

3. OBD Requirements for Diesel Heavy-Duty Vehicles and Engines Used in Vehicles Under 14,000 Pounds

We are also making some changes to the existing diesel OBD requirements for heavy-duty applications under 14,000 pounds (i.e., 8,500 to 14,000 pounds). Some of these changes are being made for immediate implementation to relax some of the requirements that we currently have in place for 8,500 to 14,000 pound applications that cannot be met by diesels without granting widespread deficiencies to industry. Other changes are being made for the 2010 and later model years since they represent an increase in the stringency of our current OBD requirements and, therefore, some leadtime is necessary for manufacturers to comply. All of the changes being made for 8,500 to 14,000 pound diesel applications will result in OBD emissions thresholds identical, for all practical purposes, to the OBD thresholds for over 14,000 pound applications.

4. Technical Amendments for Other Programs

We are finalizing a variety of technical amendments in this final rule. Most of these changes involve minor adjustments or corrections to the regulations we adopted on October 8, 2008 (73 FR 59034) and on June 30, 2008 (73 FR 37096). See the memorandum in the docket entitled ''Technical Amendments to EPA Regulations'' for a description of these changes.[3]

C. Why Is EPA Promulgating These Requirements?

1. Highway Engines and Vehicles Contribute to Serious Air Pollution Problems

The pollution emitted by heavy-duty highway engines contributes greatly to our nation's continuing air quality problems. Our 2007HD highway rule was designed to address these serious air quality problems. These problems include premature mortality, aggravation of respiratory and cardiovascular disease, aggravation of existing asthma, acute respiratory symptoms, chronic bronchitis, and decreased lung function. Numerous studies also link diesel exhaust to increased incidence of lung cancer. We believe that exposure to diesel exhaust is likely to be carcinogenic to humans by inhalation and that this cancer hazard exists for occupational and environmental levels of exposure.

Our 2007HD highway rule regulates the heavy-duty vehicle and its fuel as a single system. As part of this program, new emission standards began to take effect in model year 2007 and are phased-in through model year 2010, and will apply to heavy-duty highway engines and vehicles. These standards are based on the use of high-efficiency catalytic exhaust emission control devices or comparably effective advanced technologies and a cap on the allowable sulfur content in both diesel fuel and gasoline.

In the 2007HD highway final rule, we estimated that, by 2007, heavy-duty trucks and buses would account for about 28 percent of nitrogen oxides emissions and 20 percent of particulate matter emissions from mobile sources. In some urban areas, the contribution is even greater. The 2007HD highway program will reduce particulate matter and oxides of nitrogen emissions from heavy-duty engines by 90 percent and 95 percent below current standard levels, respectively. In order to meet these more stringent standards for diesel engines, the program calls for a 97 percent reduction in the sulfur content of diesel fuel. As a result, diesel vehicles will achieve gasoline-like exhaust emission levels. We have also established more stringent standards for heavy-duty gasoline vehicles, based in part on the use of the low sulfur gasoline that will be available when the standards go into effect.

2. Emissions Control of Highway Engines and Vehicles Depends on Properly Operating Emissions Control Systems

The emissions reductions and resulting health and welfare benefits of the 2007HD highway program will be dramatic when fully implemented. By 2030, the program will reduce annual emissions of nitrogen oxides, nonmethane hydrocarbons, and particulate matter by a projected 2.6 million, 115,000 and 109,000 tons, respectively. However, to realize those large emission reductions and health benefits, the emission control systems on heavy-duty highway engines and vehicles must continue to provide the 90 to 95 percent emission control effectiveness throughout their operating life. Today's OBD requirements, in conjunction with/support of EPA's existing compliance programs, will help to ensure that emission control systems continue to operate properly by detecting when those systems malfunction, by then notifying the driver that a problem exists that requires service and, lastly, by informing the service technician what the problem is so that it can be properly repaired.

3. Basis for Action Under the Clean Air Act

Section 202(m) of the CAA, 42 U.S.C. 7521(m), directs EPA to promulgate regulations requiring 1994 and later model year light-duty vehicles (LDVs) and light-duty trucks (LDTs) to contain an OBD system that monitors emission-related components for malfunctions or deterioration ''which could cause or result in failure of the vehicles to comply with emission standards established'' for such vehicles. Section 202(m) also states that, ''The Administrator may, in the Administrator's discretion, promulgate regulations requiring manufacturers to install such onboard diagnostic systems on heavy-duty vehicles and engines.''

Section 202(m)(5) of the CAA states that the Administrator shall require manufacturers to, ''provide promptly to any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines * * * with any and all information needed to make use of the emission control diagnostics system prescribed under this subsection and such other information including

[3] See Document ID No. EPA–HQ–OAR–2005–0047–0057. Also see Document ID No. EPA–HQ–OAR–2005–0047–0058.

instructions for making emission related diagnosis and repairs.''

4. The Importance of a Nationwide HDOBD Program

In 2005, the California Air Resources Board put into place HDOBD requirements.[4] More recently, we granted a waiver from federal preemption to the State of California that allows them to implement the HDOBD program (73 FR 52042). Given the nature of the heavy-duty trucking industry in the United States and the importance of the free and open movement of goods across state borders, we believe that a consistent nationwide HDOBD program is a desirable outcome. We have worked closely with California on our proposal and with both California and industry stakeholders on this final rule, in an effort to develop a consistent set of HDOBD requirements. As a result, the program we are finalizing today is consistent with the California program in almost all important aspects. We believe that, while minor differences exist in the requirements we are promulgating today and the California requirements, we will end up with OBD systems that will be compliant with both our federal program and the California program. Promulgating and implementing this final rule is an important step in our efforts working with the California Air Resources Board to develop a consistent national program.

5. Worldwide Harmonized OBD (WWH–OBD)

The Worldwide Harmonized OBD effort (WWH–OBD) is part of the United Nations Economic Commission for Europe. We discussed this effort in detail in our proposal. In line with what we said in our proposal, while the WWH–OBD global technical regulation (gtr) is consistent with many of the specific requirements of our final rule, it is not currently as comprehensive (e.g., it does not contain the same level of detail with respect to certification requirements and enforcement provisions). For that reason, at this time, we do not believe that the gtr could fully replace what is in our final rule. It is important to note that California had HDOBD requirements in place prior to the WWH–OBD gtr being adopted as a final document. The California HDOBD requirements were analogous to the WWH–OBD requirements, but were not identical. At industry's request, we have patterned both our proposal and final rule after the California regulation. Note that we have an obligation to one day propose the gtr for consideration as a U.S. regulation, and it is our expectation that working together with industry and other stakeholders we will determine the appropriate process and requirements to incorporate the WWH–OBD requirements into our regulatory structure.

II. How Have the Proposed OBD Requirements Been Changed for This Final Rule and When Will They Be Implemented?

The following subsections describe how we have changed the proposed OBD monitoring requirements in this final rule. We also describe the timelines for their implementation. The requirements are indicative of our goal for the program which is a set of OBD monitors that provide robust diagnosis of the emission control system. Our intention is to provide industry sufficient time and experience with satisfying the demands of the OBD program. While their engines already incorporate OBD systems, those systems are generally less comprehensive and do not monitor the emission control system in the ways we are requiring. Additionally, the OBD requirements represent a new set of technological requirements and a new set of certification requirements for the industry in addition to the 2007HD highway program and the challenging emission standards for PM and NO_X and other pollutants to be implemented in 2010. As a result, we believe the monitoring requirements and timelines outlined in this section appropriately weigh the need for OBD monitors on the emission control system and the need to gain experience with not only those monitors but also the newly or recently added emission control hardware.

The changes we have made to the proposed requirements are the result of comments received on our proposal and meetings with stakeholders held in the time between proposal and final rule. The changes are also the result of our collaboration with CARB staff. For a detailed summary and analysis of the comments we received, and the rationale behind the changes made for this final rule, refer to the Summary and Analysis document contained in the docket for this rule.

In general, the remainder of this preamble—in particular, sections II.B through II.H—presents the changes made to the final OBD requirements relative to the proposed OBD requirements. As such, we do not restate details of the proposed requirements unless it is necessary to do so for clarity. Of interest to readers when comparing the final OBD regulatory text to the proposed OBD regulatory text is that we have moved all of the requirements for over 14,000 pound OBD into § 86.010–18. Where certain requirements are not applicable until 2013 or 2016, etc., the regulatory text in § 86.010–18 makes that clear. In our proposal, we had separated out the requirements for model year 2013 into § 86.013–18 and those for 2016 into § 86.016–18 and those for 2019 into § 86.019–18. This created some confusion and we decided that it would be easier to read the regulations if we restructured things such that all the requirements appear in one section. We have done so in the final rule and have placed all requirements for over 14,000 pound OBD in § 86.010–18. This is also true for OBD requirements on heavy-duty engines under 14,000 pounds where we have moved proposed provisions for model years 2010 through 2012 and 2013 and later from proposed §§ 86.010–17 and 86.013–17, respectively to final § 86.007–17 with appropriate mention of when requirements apply to specific model years. The same holds true for proposed §§ 86.1806–07, 86.1806–10, and 86.1806–13, for OBD systems on under 14,000 pound vehicles, where all final OBD requirements can be found in § 86.1806–05 with appropriate mention of when requirements apply to specific model years.

The remainder of Section II below highlights the changes made to our proposed requirements relative to the final rule. The reader is directed to the more detailed discussion that follows and/or is found in our Summary and Analysis of Comments document contained in the docket. However, Table II–1 provides a brief summary of the changes made although this tabular summary is not meant to provide a thorough explanation of each change. For a thorough explanation, refer to the more detailed discussion below and/or the Summary and Analysis of Comments.

[4] See 13 CCR 1971.1.

TABLE II–1—SUMMARY OF CHANGES IN THE FINAL REGULATIONS RELATIVE TO THE PROPOSED REGULATIONS

[Please refer to the text for acronym definitions]

Change	Discussed in preamble section	Regulatory cite
Restructuring—§§ 86.013–18, 86.016–18, 86.019–18 have been moved into § 86.010–18 with appropriate date qualifiers.	II Introduction	All >14,000 pound OBD text now in § 86.010–18.
Allow EPA to certify systems demonstrated to comply with CARB HDOBD (13 CCR 1971.1)	II.A.5	§ 86.010–18(a)(5).
Changed MIL location requirement to read "primary driver's side" rather than "driver's side" to accommodate vehicles with both left and right side steering.	*	§ 86.010–18(b)(1)(i).
Slight change to erasure of pending DTC upon storage of MIL-on DTC	II.A.2	§ 86.010–18(b)(2)(ii).
Change to the permanent DTC erasure provisions	II.F.4	§ 86.010–18(b)(3)(iii)(A)–(D).
Minor revisions, for clarity, to the general provisions governing monitoring conditions	*	§ 86.010–18(c)(3).
Added clarifying text to general provisions governing in-use performance tracking	*	§ 86.010–18(d).
Revision to trip definition, in the context of rate based monitoring, for denominator incrementing on diesel engines.	II.E.1	§ 86.010–18(d)(4)(ii)(B).
Change to idle definition in specifications for incrementing the denominator (from vehicle speed ≤1 mph to "engine speed less than or equal to 200 rpm above normal warmed up idle or vehicle speed ≤1 mph").	II.E.2	§ 86.010–18(d)(4)(ii)(C).
Added text stating that monitors must run over test that gives the most robust monitor rather than most stringent monitor.	II.A.4	§ 86.010–18(f)(1)(i).
Added text to identify in certification documentation which test cycle would provide the most stringent and/or the most robust monitor.	*	§ 86.010–18(f)(1)(ii).
Added text stating that OBD-specific IRAFs need not be included in OBD threshold determinations.	II.A.4	§ 86.010–18(f)(2).
Revision to NO_X malfunction thresholds for NO_X catalyst systems and NO_X sensors (2010–2012 only).	II.B.6; II.B.7; II.B.9 (and shown in Table II.B–1.	§ 86.010–18(g), Table 1.
Added provision to diesel fuel system pressure, timing, and quantity malfunction criteria allowing unit injector systems to conduct functional checks during model years 2010 to 2012.	II.B.1	§ 86.010–18(g)(1)(ii)(A)–(C).
Added new paragraph allowing diesel unit injector systems to combine into one malfunction the three separate malfunction criteria of pressure, timing, and quantity.	II.B.1	§ 86.010–18(g)(1)(ii)(D).
Minor changes to diesel fuel system monitoring conditions consistent with changes to malfunction criteria.	II.B.1	§ 86.010–18(g)(1)(iii)(A) & (B).
Diesel engine misfire malfunction criteria for multiple continuous misfire changed from "more than one cylinder" to "more than one or more than one but less than half (if approved)".	II.B.2	§ 86.010–18(g)(2)(ii)(A).
Minor change to diesel EGR monitoring conditions (i.e., a change to the proposed monitoring conditions) which allows for temporary disables of "continuous monitoring".	II.B.3	§ 86.010–18(g)(3)(iii)(D).
Diesel turbo boost malfunction criteria changed to note "for engines so equipped" where appropriate.	II.B.4	§ 86.010–18(g)(4)(ii)(A)–(C).
Added a new diesel turbo boost monitoring condition that allows for temporary disables of "continuous monitoring".	II.B.4	§ 86.010–18(g)(4)(iii)(D).
Removed text noting that NMHC conversion over a DPF is required under paragraph (g)(8) and added clarifying text that monitoring of NMHC conversion over a DPF is not required.	II.B.8	§ 86.010–18(g)(5)(i).
Removal of malfunction thresholds from diesel NMHC catalyst malfunction criteria	II.B.5	§ 86.010–18(g)(5)(ii)(A).
Added "delta temperature within time period" provision to diesel NMHC aftertreatment assistance malfunction criteria.	II.B.5	§ 86.010–18(g)(5)(ii)(B).
Removal of proper feedgas generation malfunction criteria for diesel NMHC catalysts	II.B.5	§ 86.010–18(g)(5)(ii)(B).
Added provision to forego monitoring of diesel NMHC catalysts located downstream of a DPF provided their malfunction will not result in failure of the NMHC emission standard.	II.B.5	§ 86.010–18(g)(5)(ii)(B).
Change to the DPF malfunction criteria—addition of an optional malfunction criteria for DPF filtering performance for model years 2010 to 2012.	II.B.8	§ 86.010–18(g)(8)(ii)(A).
Change to the DPF malfunction criteria—removal of NMHC conversion monitoring	II.B.8	§ 86.010–18(g)(8)(ii)(D)**.
Added new monitoring conditions applicable to those systems using the optional DPF malfunction criteria of § 86.010–18(g)(8)(ii)(A).	II.B.8	§ 86.010–18(g)(8)(iii).
Added provision that allows Administrator to approve limited misfire monitor disablement for gasoline engines.	II.C	§ 86.010–18(h)(2)(iii)(D).
Added provision that allows misfire monitor disables for gasoline engines with >8 cylinders	II.C	§ 86.010–18(h)(2)(iii)(E).
Added phrase allowing lower thermostat regulating temperature requirement for ambient temperatures between 20–50 degrees F.	II.D.2	§ 86.010–18(i)(1)(ii)(A).
Added phrase "With Administrator approval" to the provision allowing alternative thermostat malfunction criteria.	*	§ 86.010–18(i)(1)(ii)(B).
Change to the comprehensive component monitoring requirements such that components must be monitored if their malfunction can cause emissions to exceed standards rather than affect emissions during any reasonable driving condition.	II.D.4	§ 86.010–18(i)(3)(i)(A).
Change to diesel engine glow plug malfunction criteria for 2010–2012	II.D.4	§ 86.010–18(i)(3)(iii)(D).
Added provision stating that monitoring of wait-to-start lamp and MIL circuit is not required for systems using light-emitting diodes versus incandescent bulbs.	II.A.2	§ 86.010–18(i)(3)(iii)(E).

TABLE II–1—SUMMARY OF CHANGES IN THE FINAL REGULATIONS RELATIVE TO THE PROPOSED REGULATIONS—Continued

[Please refer to the text for acronym definitions]

Change	Discussed in preamble section	Regulatory cite
Removed introductory text to the standardization requirements (done to provide greater clarity).	*	§ 86.010–18(k)(1).
Removal of SAE J2534 from the OBD section (it remains in the Service Information Availability requirements of § 86.010–38(j)).	*	§ 86.010–18(k)(1)(i)(H)**.
Added text allowing the Administrator to approve alternative DLC locations	II.F.2	§ 86.010–18(k)(2)(i).
Added text allowing data link signals to report an error state or other predefined status indicator if they are defined for those signals in the SAE J1979/J1939 specifications.	*	§ 86.010–18(k)(4)(ii).
Added the phrase "to the extent possible" to the provision to use separate DTCs for out-of-range and circuit checks.	*	§ 86.010–18(k)(4)(iv)(B).
Added provision to allow for multiple CAL IDs with Administrator approval provided CAL IDs response is in order of highest to lowest priority.	II.F.4	§ 86.010–18(k)(4)(vi).
Added provision to require multiple CVNs if using multiple CAL IDs as allowed under newly added provision in (k)(4)(vi).	II.F.4	§ 86.010–18(k)(4)(vii)(A).
Added provision allowing, for 2010–2012, a default value for the CVN for systems that are not field programmable.	*	§ 86.010–18(k)(4)(vii)(A).
Revised CVN calculation requirement from "once per drive cycle" to "once per ignition cycle"	*	§ 86.010–18(k)(4)(vii)(C).
Change to idle definition in engine run-time tracking (from vehicle speed ≤1 mph to "engine speed less than or equal to 200 rpm above normal warmed-up idle or vehicle speed ≤1 mph").	II.F.4; II.F.5	§ 86.010–18(k)(6)(i)(B).
Added new certification demonstration provisions for systems using the optional DPF monitoring provisions.	*	§ 86.010–18(l)(3)(i)(H).
Added new documentation provisions for systems meeting § 86.010–18 with a system designed to CARB 13 CCR 1971.1.	II.A.5	§ 86.010–18(m)(3).
Added a provision that allows Administrator to approve alternative engine ratings as parent ratings in 2010–2012.	II.G.1	§ 86.010–18(o)(1)(i).
Added a provision that allows Administrator to approve alternative engine ratings as parent ratings in 2010–2012.	II.G.1	§ 86.010–18(o)(2)(ii)(B).
Added text to make clear that for all engine ratings in years 2019+, the certification emissions thresholds apply in-use (provides clarification, no change to original intent).	*	§ 86.010–18(p)(4)(i).
Revised 2007–2009 and 2010–2012 engine certification NO_X thresholds from FEL+0.5 to FEL+0.6 (for 8500–14K pound diesel engines).	Table II.H–2	§ 86.007–17(b) & § 86.007–30(f).
Added definition of "engine and engine system" applicable to OBD	*	§ 86.010–2.
Moved definition of "OBD group" from § 86.013–2 to § 86.010–2	*	§ 86.010–2.
Added "delta temperature within time period" provision to NMHC malfunction description for engine certifications.	II.H.3	§ 86.007–17(b) & § 86.007–30(f).
Removed 2010–2012 & 2013+ engine certification NMHC thresholds for DPFs (8500–14K pound diesel engines).	Table II.H–2	§ 86.007–17(b) & § 86.007–30(f).
Change to the DPF malfunction criteria—addition of an optional malfunction criteria for DPF filtering performance.	II.H.2	§ 86.007–17(b) & § 86.007–30(f).
§ 86.013–17 moved to § 86.007–17 with appropriate date qualifiers (8500–14K pound diesel engines; no content change, just formatting).	II.A	§ 86.007–17(b).
§ 86.013–30 moved to § 86.007–30 with appropriate date qualifiers (8500–14K pound diesel engines; no content change, just formatting).	II.A	§ 86.007–30(f).
Revised 2007–2009 vehicle certification NO_X thresholds from 3x to 4x the standard (8500–14K pound diesel vehicles).	Table II.H–2	§ 86.1806–05(n) & (o).
Revised 2010–2012 vehicle certification NO_X thresholds for NO_X catalysts and NO_X sensors from +0.3 to +0.6 (8500–14K pound diesel vehicles).	Table II.H–2	§ 86.1806–05(n) & (o).
Added "delta temperature within time period" provision to NMHC malfunction description for vehicle certifications.	II.H.3	§ 86.1806–05(n) & (o).
Removed 2010–2012 & 2013+ vehicle certification NMHC thresholds for DPFs (8500–14K pound diesel vehicles).	Table II.H–2	§ 86.1806–05(n) & (o).
Added the phrase "and superseding sections" to the provision for optional chassis certification of diesel vehicles.	*	§ 86.1863–07.

* Items not discussed in the preamble since we consider them to be very minor.

** This is the applicable citation for the proposed regulatory text, but this paragraph contains different text (due to renumbering) or has been removed in the final regulatory text.

A. General OBD System Requirements

1. The OBD System

The OBD system must be designed to operate for the actual life of the engine in which it is installed. Further, the OBD system cannot be programmed or otherwise designed to deactivate based on age and/or mileage of the vehicle during the actual life of the engine. This requirement does not alter existing law and enforcement practice regarding a manufacturer's liability for an engine beyond its regulatory useful life, except where an engine has been programmed or otherwise designed so that an OBD system deactivates based on age and/or mileage of the engine.

In addition, computer coded engine operating parameters cannot be changeable without the use of specialized tools and procedures (e.g. soldered or potted computer

components or sealed (or soldered) computer enclosures). Upon Administrator approval, certain product lines may be exempted from this requirement if those product lines can be shown to not need such protections. In making the approval decision, the Administrator will consider such things as the current availability of performance chips, performance capability of the engine, and sales volume.

2. Malfunction Indicator Light (MIL) and Diagnostic Trouble Codes (DTC)

Consistent with our proposal, the final rule requires that upon detecting a malfunction within the emission control system,[5] the OBD system must make some indication to the driver so that the driver can take action to get the problem repaired. A dashboard malfunction indicator light (MIL) must be illuminated to inform the driver that a problem exists that needs attention. Upon illumination of the MIL, a diagnostic trouble code (DTC) must be stored in the engine's computer that identifies the detected malfunction. This DTC can then be read by a service technician to assist in making the necessary repair.

Because the MIL is meant to inform the driver of a detected malfunction, we are requiring that the MIL be located on the driver's side instrument panel and be of sufficient illumination and location to be readily visible under all lighting conditions. We are requiring that the MIL be amber (yellow) in color when illuminated because yellow is synonymous with the notion of a ''cautionary warning''; the use of red for the MIL will be strictly prohibited because red signifies ''danger'' which is not the proper message for malfunctions detected according to today's rule. Further, we are requiring that, when illuminated, the MIL display the International Standards Organization (ISO) engine symbol shown in Table II.A–1 because this symbol has become accepted after more than 10 years of light-duty OBD as a communicator of engine and emissions system related problems. We are also requiring that there be only one MIL used to indicate all malfunctions detected by the OBD system on a single vehicle. We believe this is important to avoid confusion over multiple lights and, potentially, multiple interpretations of those lights.

Generally, a manufacturer would be allowed sufficient time to be certain that a malfunction truly exists before illuminating the MIL. No one benefits if the MIL illuminates spuriously when a real malfunction does not exist. Thus, for most OBD monitoring strategies, manufacturers will not be required to illuminate the MIL until a malfunction clearly exists which will be considered to be the case when the same problem has occurred on two sequential driving cycles.[6]

Table II.A-1. ISO Warning Light Symbol

ISO 2575:2004 Designation	Displayed Symbol
F01	

To keep this clear in the onboard computer, we are requiring that the OBD system make certain distinctions between the problems it has detected, and that the system maintain a strict logic for diagnostic trouble code (DTC) storage/erasure and for MIL illumination/extinguishment. Whenever the enable criteria for a given monitor are met, we would expect that monitor to run. For continuous monitors, this would be during essentially all engine operation.[7] For non-continuous monitors, it would be during only a subset of engine operation.[8] In general, we are requiring that non-continuous monitors make a diagnostic decision just once per drive cycle that contains operation satisfying the enable criteria for the given monitor.

When a problem is first detected, we are requiring that a ''pending'' DTC be stored. If, during the subsequent drive cycle that contains operation satisfying the enable criteria for the given monitor, a problem in the components/system is not again detected, the OBD system would declare that a malfunction does not exist and would, therefore, erase the pending DTC. However, if, during the subsequent drive cycle that contains operation satisfying the enable criteria for the given monitor, a problem in the component/system is again detected, a malfunction has been confirmed and, hence, a ''confirmed'' or ''MIL-on'' DTC would be stored.[9] Upon storage of a MIL-on DTC, the pending DTC would either remain stored or be erased, depending on what the manufacturer determines to be the most effective approach. Consistent with the proposal, the final rule does not stipulate which communication protocol be used. Upon storage of the MIL-on DTC, the MIL must be illuminated.[10] Also at this time, a ''permanent'' DTC would be stored (see section II.F.4 for more details regarding permanent DTCs).[11]

As we proposed, we are requiring that, after three subsequent drive cycles that contain operation satisfying the enable criteria for the given monitor without any recurrence of the previously detected malfunction, the MIL should be extinguished (unless there are other MIL-on DTCs stored for which the MIL must also be illuminated), the permanent DTC should be erased, but a ''previous-MIL-

[5] What constitutes a ''malfunction'' for over 14,000 pound applications under today's action is covered in section II.B for diesel engines, section II.C for gasoline engines, and section II.D for all engines.

[6] Generally, a ''driving cycle'' or ''drive cycle'' consists of engine startup and engine shutoff or consists of four hours of continuous engine operation.

[7] A ''continuous'' monitor—if used in the context of monitoring conditions for circuit continuity, lack of circuit continuity, circuit faults, and out-of-range values—means sampling at a rate no less than two samples per second. If a computer input component is sampled less frequently for engine control purposes, the signal of the component may instead be evaluated each time sampling occurs.

[8] A ''non-continuous'' monitor being a monitor that runs only when a limited set of operating conditions occurs.

[9] Different industry standards organizations—the Society of Automotive Engineers (SAE) and the International Standards Organization (ISO)—use different terminology to refer to a ''MIL-on'' DTC. For clarity, we use the term ''MIL-on'' DTC throughout this preamble to convey the concept and not any requirement that standard making bodies use the term in their standards.

[10] Throughout this final rule, we refer to MIL illumination to mean a steady, continuous illumination during engine operation unless stated otherwise. This contrasts with the MIL illumination logic used by many engine manufacturers today by which the MIL would illuminate upon detection of a malfunction but would remain illuminated only while the malfunction was actually occurring. Under this latter logic, an intermittent malfunction or one that occurs under only limited operating conditions may result in a MIL that illuminates, extinguishes, illuminates, etc., as operating conditions change.

[11] A permanent DTC must be stored in a manner such that electrical disconnections do not result in their erasure (i.e., they must be stored in non-volatile random access memory (NVRAM)).

on'' DTC should remain stored.[12] We are requiring that the previous-MIL-on DTC remain stored for 40 engine warmup cycles after which time, provided the identified malfunction has not been detected again and the MIL is presently not illuminated for that malfunction, the previous-MIL-on DTC can be erased.[13] However, if an illuminated MIL is not extinguished, or if a MIL-on DTC is not erased, by the OBD system itself but is instead erased via scan tool or battery disconnect (which would erase all non-permanent, volatile memory), the permanent DTC must remain stored. This way, permanent DTCs can only be erased by the OBD system itself and cannot be erased through human interaction with the system.

As proposed, we are allowing the manufacturer, upon Administrator approval, to use alternative statistical MIL illumination and DTC storage protocols to those described above (i.e., alternatives to the ''first trip—pending DTC, second strip—MIL-on DTC logic). The Administrator will consider whether the manufacturer provided data and/or engineering evaluation adequately demonstrates that the alternative protocols can evaluate system performance and detect malfunctions in a manner that is equally effective and timely. Alternative strategies requiring, on average, more than six driving cycles for MIL illumination would probably not be accepted.

As proposed, upon storage of either a pending DTC and/or a MIL-on DTC, we are requiring that the computer store a set of ''freeze frame'' data. These freeze frame data will provide a snap shot of engine operating conditions present at the time the malfunction occurred and was detected. This information serves the repair technician in diagnosing the problem and conducting the proper repair. The freeze frame data should be stored upon storage of a pending DTC. If the pending DTC matures to a MIL-on DTC, the manufacturer can choose to update the freeze frame data or retain the freeze frame stored in conjunction with the pending DTC. Likewise, any freeze frame stored in conjunction with any pending or MIL-on DTC should be erased upon erasure of the DTC. Further information concerning the freeze frame requirement and the data required in the freeze frame is presented in section II.F.4, below.

As proposed, we are also requiring that the OBD system illuminate the MIL and store a MIL-on DTC to inform the vehicle operator whenever the engine enters a mode of operation that can affect the performance of the OBD system. If such a mode of operation is recoverable (i.e., operation automatically returns to normal at the beginning of the following ignition cycle[14]), then in lieu of illuminating the MIL when the mode of operation is entered, the OBD system may wait to illuminate the MIL and store the MIL-on DTC if the mode of operation is again entered before the end of the next ignition cycle. We are requiring this because many operating strategies are designed such that they continue automatically through to the next key-off. Regardless, upon the next key-on, the engine control would start off in ''normal'' operating mode and would return to the ''abnormal'' operating mode only if the condition causing the abnormal mode was again encountered. In such cases, we are allowing that the MIL be illuminated during the second consecutive drive cycle during which such an ''abnormal'' mode is engaged.[15]

Whether or not the ''abnormal'' mode of operation is recoverable, in this context, has nothing to do with whether the detected malfunction goes away or stays. Instead, it depends solely on whether or not the engine, by design, will stay in abnormal operating mode on the next key-on. We are requiring this MIL logic because often the diagnostic (i.e., monitor) that caused the engine to enter abnormal mode cannot run again once the engine is in the abnormal mode. So, if the MIL logic associated with abnormal mode activation was always a two-trip diagnostic, abnormal mode activation would set a pending DTC on the first trip and, since the system would then be stuck in that abnormal operating mode and would never be able to run the diagnostic again, the pending DTC could never mature to a MIL-on DTC nor illuminate the MIL. Hence, the MIL must illuminate upon the first entry into such an abnormal operating mode. If such a mode is recoverable, the engine will start at the next key-on in ''normal'' mode allowing the monitor to run again and, assuming another detection of the condition, the system would set a MIL-on DTC and illuminate the MIL.

As proposed, the OBD system need not store a DTC nor illuminate the MIL upon abnormal mode operation if other telltale conditions would result in immediate action by the driver. Such telltale conditions would be, for example, an overt indication like a red engine shut-down warning light. The OBD system also need not store a DTC nor illuminate the MIL upon abnormal mode operation if the mode is indeed an auxiliary emission control device (AECD) approved by the Administrator.

There may be malfunctions of the MIL itself that would prevent it from illuminating. A repair technician—or possibly an I/M inspector—would still be able to determine the status of the MIL (i.e., commanded ''on'' or ''off'') by reading electronic information available through a scan tool, but there would be no indication to the driver of an emissions-related malfunction should one occur. Unidentified malfunctions may cause excess emissions to be emitted from the vehicle and may even cause subsequent deterioration or failure of other components or systems without the driver's knowledge. In order to prevent this, the manufacturer must ensure that the MIL is functioning properly. For this reason and consistent with our proposal, we are requiring two checks of the functionality of the MIL itself. First, the MIL will be required to illuminate for a minimum of five seconds when the vehicle is in the key-on, engine-off position. This allows an interested party to check the MIL's functionality simply by turning the key to the key-on position. While the MIL would be physically illuminated during this functional check, the data stream value for the MIL command status would be required to indicate ''off'' during this check unless, of course, the MIL was currently being commanded ''on'' for a detected malfunction. This functional check of the MIL is not required during vehicle operation in the key-on, engine-off position subsequent to the initial engine cranking of an ignition cycle (e.g., due to an engine

[12] This general ''three trip'' condition for extinguishing the MIL is true for all but two diesel systems/monitors—the misfire monitor and the SCR system—and three gasoline systems/monitors—the fuel system, the misfire monitor, and the evaporative system—which have further conditions on extinguishing the MIL. This is discussed in more detail in sections II.B and II.C.

[13] For simplicity, the discussion here refers to ''previous-MIL-on'' DTCs only. The ISO 15765 standard and the SAE J1939 standard use different terms to refer to the concept of a previous-MIL-on DTC. Our intent is to present the concept of our proposal in this preamble and not to specify the terminology used by these standard making bodies.

[14] ''Ignition Cycle'' means a drive cycle that begins with engine start and includes an engine speed that exceeds 50 to 150 rotations per minute (rpm) below the normal, warmed-up idle speed (as determined in the drive position for vehicles equipped with an automatic transmission) for at least two seconds plus or minus one second.

[15] Note that we use the term ''abnormal'' to refer to an operating mode that the engine is designed to enter upon determining that ''normal'' operation cannot be maintained. Therefore, the term ''abnormal'' is somewhat of a misnomer since the engine is doing what it has been designed to do. Nonetheless, the abnormal operating mode is clearly not the operating mode the manufacturer has intended for optimal operation. Such operating modes are sometimes referred to as ''default'' operating modes or ''limp-home'' operating modes.

stall or other non-commanded engine shutoff).

The second functional check of the MIL is a circuit continuity check of the electrical circuit that is used to illuminate the MIL to verify that the circuit is not shorted or open (e.g., a burned out bulb). While there would not be an ability to illuminate the MIL when such a malfunction is detected, the electronically readable MIL command status in the onboard computer would be changed from commanded ''off'' to ''on''. This would allow the truck owner or fleet maintenance staff to quickly determine whether an extinguished MIL means ''no malfunctions'' or ''broken MIL.'' It would also serve, should it become of interest in the future, complete automation of the I/M process by eliminating the need for inspectors to input manually the results of their visual inspections. Feedback from passenger car I/M programs indicates that the current visual bulb check performed by inspectors is subject to error and results in numerous vehicles being falsely failed or passed. By requiring monitoring of the circuit itself, the entire pass/fail criteria of an I/M program could be determined by the electronic information available through a scan tool, thus better facilitating quick and effective inspections and minimizing the chance for manually-entered errors. Unlike our proposal, the final rule does not require this circuit continuity check of the MIL circuit for systems that employ light emitting diode (LED) MILs.[16] These systems are very robust and circuit checks are very difficult and, we believe, unnecessary. We do not want to discourage their use or encourage use of bulb-based MILs over LED MILs via our OBD requirements.

As proposed, the MIL may be used to indicate readiness status in a standardized format (see Section II.F) in the key-on, engine-off position. Readiness status is a term used in light-duty OBD that refers to a vehicle's readiness for I/M inspection. For a subset of monitors—those that are non-continuous monitors for which an emissions threshold exists (see sections II.B and II.C for more on emissions thresholds)—a readiness status indicator must be stored in memory to indicate whether or not that particular monitor has run enough times to make a diagnostic decision. Until the monitor has run sufficient times, the readiness status would indicate ''not ready''. Upon running sufficient times, the readiness status would indicate ''ready.'' This serves to protect against drivers disconnecting their battery just prior to the I/M inspection so as to erase any MIL-on DTCs. Such an action would simultaneously set all readiness status indicators to ''not ready'' resulting in a notice to return to the inspection site at a future date. Readiness indicators also help repair technicians because, after completing a repair, they can operate the vehicle until the readiness status indicates ''ready'' and, provided no DTCs are stored, know that the repair has been successful. We are requiring that HDOBD systems follow this same readiness status logic as used for years in light-duty OBD both to assist repair technicians and to facilitate potential future HDOBD I/M programs.

We are also allowing the manufacturer, upon Administrator approval, to use the MIL to indicate which, if any, DTCs are currently stored (e.g., to ''blink'' the stored codes). The Administrator will approve the request if the manufacturer can demonstrate that the method used to indicate the DTCs will not be unintentionally activated during any inspection test or during routine driver operation.

3. Monitoring Conditions

a. Background

Given that the intent of the OBD requirements is to monitor the emission control system for proper operation, it is logical that the OBD monitors be designed such that they monitor the emission control system during typical driving conditions. While many OBD monitors would be designed such that they are continuously making decisions about the operational status of the engine, many—and arguably the most critical—monitors are not so designed. For example, an OBD monitor whose function is to monitor the active fuel injection system of a NO_X adsorber or a DPF cannot be continuously monitoring that function since that function occurs on an infrequent basis. This OBD monitor presumably would be expected to ''run,'' or evaluate the active injection system, during an actual fuel injection event.

For this reason, manufacturers are allowed to determine the most appropriate times to run their non-continuous OBD monitors. This way, they are able to make an OBD evaluation either at the operating condition when an emission control system is active and its operational status can best be evaluated, and/or at the operating condition when the most accurate evaluation can be made (e.g., highly transient conditions or extreme conditions can make evaluation difficult). Importantly, manufacturers are prohibited from using a monitoring strategy that is so restrictive such that it rarely or never runs. To help protect against monitors that rarely run, we are requiring an ''in-use monitor performance ratio'' requirement which is detailed in section II.E.

The set of operating conditions that must be met so that an OBD monitor can run are called the ''enable criteria'' for that given monitor. These enable criteria are often different for different monitors and may well be different for different types of engines. A large diesel engine intended for use in a Class 8 truck would be expected to see long periods of relatively steady-state operation while a smaller engine intended for use in an urban delivery truck would be expected to see a lot of transient operation. Manufacturers will need to balance between a rather loose set of enable criteria for their engines and vehicles given the very broad range of operation HD highway engines see and a tight set of enable criteria given the desire for greater monitor accuracy.

b. General Monitoring Conditions

i. Monitoring Conditions for All Engines

As guidance to manufacturers, we are providing the following criteria to assist manufacturers in developing their OBD enable criteria. These criteria will be used by the Agency during our OBD certification approval process to ensure that monitors run on a frequent basis during real world driving conditions. These criteria will be:

- The monitors should run during conditions that are technically necessary to ensure robust detection of malfunctions (e.g., to avoid false passes and false indications of malfunctions);
- The monitor enable criteria should ensure monitoring will occur during normal vehicle operation; and,
- Monitoring should occur during at least one test used by EPA for emissions verification—either the HD Federal Test Procedure (FTP) transient cycle, or the Supplementary Emissions Test (SET).[17]

As discussed in more detail in sections II.B through II.D, we are requiring that manufacturers define the monitoring conditions, subject to Administrator approval, for detecting the malfunctions required by this rule. The Administrator would determine if the monitoring conditions proposed by the manufacturer for each monitor abide by the above criteria.

In general, except as noted in sections II.B through II.D, the regulation requires

[16] See proposed § 86.010–18(i)(3)(iii)(E) and compare to the final § 86.010–18(i)(3)(iii)(E).

[17] See 40 CFR part 86, subpart N for details of EPA's test procedures.

each monitor to run at least once per driving cycle in which the applicable monitoring conditions are met. It also requires certain monitors to run continuously throughout the driving cycle. These include a few threshold monitors (e.g., fuel system monitor) and most circuit continuity monitors. While a basic definition of a driving cycle (e.g., from ignition key-on and engine startup to engine shutoff) has been sufficient for passenger cars, the driving habits of many types of vehicles in the heavy-duty industry dictate an alternate definition. Specifically, many heavy-duty operators will start the engine and leave it running for an entire day or, in some cases, even longer. As such, any period of continuous engine-on operation of four hours will be considered a complete driving cycle. A new driving cycle would begin following such a four hour period, regardless of whether or not the engine had been shut down. Thus, the ''clock'' for monitors that are required to run once per driving cycle would be reset to run again (in the same key-on engine start or trip) once the engine has been operated beyond four hours continuously. This would avoid an unnecessary delay in detection of malfunctions simply because the heavy-duty vehicle operator has elected to leave the vehicle running continuously for an entire day or days at a time.

Consistent with our proposal, manufacturers may request Administrator approval to define monitoring conditions that are not encountered during the FTP cycle. In evaluating the manufacturer's request, the Administrator will consider the degree to which the requirement to run during the FTP cycle restricts in-use monitoring, the technical necessity for defining monitoring conditions that are not encountered during the FTP cycle, data and/or an engineering evaluation submitted by the manufacturer which demonstrate that the component/system does not normally function, or monitoring is otherwise not feasible, during the FTP cycle, and, where applicable, the ability of the manufacturer to demonstrate that the monitoring conditions will satisfy the minimum acceptable in-use monitor performance ratio requirement as defined below.

ii. In-Use Performance Tracking Monitoring Conditions

In addition to the general monitoring conditions above, and consistent with our proposal, we are requiring manufacturers to implement software algorithms in the OBD system to individually track and report in-use performance of the following monitors in the standardized format specified in section II.E:

- Diesel NMHC converting catalyst(s)
- Diesel NO_X converting catalyst(s)
- Gasoline catalyst(s)
- Exhaust gas sensor(s)
- Gasoline evaporative system
- Exhaust gas recirculation (EGR) system
- Variable valve timing (VVT) system
- Gasoline secondary air system
- Diesel particulate filter system
- Diesel boost pressure control system
- Diesel NO_X adsorber(s)

The OBD system is not required to track and report in-use performance for monitors other than those specifically identified above.

iii. In-Use Performance Ratio Requirement

We are also requiring manufacturers to define, for all 2013 and subsequent model year engines, monitoring conditions that, in addition to meeting the general monitoring conditions, ensure that certain monitors yield an in-use performance ratio (which monitors and the details that define the performance ratio are defined in section II.E) that meets or exceeds the minimum acceptable in-use monitor performance ratio for in-use vehicles. As proposed, we are requiring a minimum acceptable in-use monitor performance ratio of 0.100 for all monitors specifically required to track in-use performance. This means that the monitors listed in section II.A.3.ii above must run and make valid diagnostic decisions during 10 percent of the vehicle's trips. We intend to work with industry during the initial years of implementation to gather data on in-use performance ratios and may revise this ratio as appropriate depending on what we learn.

Note that manufacturers may not use the calculated ratio (or any element thereof), or any other indication of monitor frequency, as a monitoring condition for a monitor. For example, the manufacturer would not be allowed to use a low ratio to enable more frequent monitoring through diagnostic executive priority or modification of other monitoring conditions, or to use a high ratio to enable less frequent monitoring.

4. Determining the Proper OBD Malfunction Criteria

For determining the malfunction criteria for monitors associated with an emissions threshold (see sections II.B and II.C for more on emissions thresholds), we are requiring manufacturers to determine the appropriate emissions test cycle during which their monitors will run. Unlike our proposal, we have removed the requirement that the manufacturer choose the cycle over which the most stringent monitor would result.[18] We have made this change to provide manufacturers the flexibility to develop robust monitors that meet all applicable requirements of the rule rather than requiring the most stringent monitor with disregard for its robustness. That said, the Administrator retains the right to challenge the manufacturer's choice of cycles. While we do not necessarily anticipate challenging a manufacturer's determination of which test cycle to use, the final regulations make clear that the manufacturer should be prepared, perhaps with test data, to justify their determination.

We are eliminating our requirement that, for engines equipped with emission controls that experience infrequent regeneration events (e.g., a DPF and/or a NO_X adsorber), a manufacturer must adjust the emission test results for monitors that are required to indicate a malfunction before emissions exceed a certain emission threshold.[19] For each such monitor, the manufacturer need not adjust the emission result as done in accordance with the provisions of section 86.004–28(i) with the component for which the malfunction criteria are being established having been deteriorated to the malfunction threshold. As proposed, the adjusted emission value would have to have been used for purposes of determining whether or not the applicable emission threshold is exceeded.

As we noted in our proposal, we believe that this adjustment process for monitors of systems that experience infrequent regeneration events makes sense and will result in robust monitors, we also believe that it could prove to be overly burdensome for manufacturers. For example, a NO_X adsorber threshold being evaluated by running an FTP using a ''threshold'' part (i.e., a NO_X adsorber deteriorated such that tailpipe emissions are at the applicable thresholds) may be considered acceptable provided the NO_X adsorber does not regenerate during the test, but it may be considered unacceptable if the NO_X adsorber does happen to regenerate during the test. This could happen because emissions would be expected to increase slightly during the regeneration event thereby causing emissions to be

[18] See proposed § 86.010(f)(1)(i) and compare to final § 86.010–18(f)(1)(i).

[19] See proposed § 86.010–18(f)(2) and compare to final § 86.010–18(f)(2).

slightly above the applicable threshold. This would require the manufacturer to recalibrate the NO_X adsorber monitor to detect at a lower level of deterioration to ensure that a regeneration event would not cause an exceedance of the threshold during an emissions test. After such a recalibration, the emissions occurring during the regeneration event would be lower than before because the new ''threshold'' NO_X adsorber would have a slightly higher conversion efficiency. We are concerned that manufacturers may find themselves in a difficult iterative process calibrating such monitors that, in the end, will not be correspondingly more effective. We discuss this in more detail in our Summary and Analysis of Comments document contained in the docket for this rule.

5. Demonstrating Compliance With CARB Requirements

We did not propose that manufacturers be given the opportunity to demonstrate compliance with CARB OBD requirements for the purpose of satisfying federal OBD. We have long had such a provision in our OBD requirements for under 14,000 pound applications. For the final rule, we have included such a provision but want to make clear that this provision should not be interpreted as meaning that a CARB approval equates to an EPA approval.[20] We believe that CARB OBD requirements will be as stringent if not more so than EPA OBD requirements. As such, should a manufacturer demonstrate, and the Administrator determine, that an OBD system complies with the CARB requirements, it would be acceptable for EPA certification. We believe this will lead to an eventual national program.

6. Temporary Provisions To Address Hardship Due to Unusual Circumstances

We have added a new ''temporary hardship'' provision for the final rule.[21] Under this new provision, EPA may allow a manufacturer to sell non-compliant engines for a short time period provided the Administrator determines that the non-compliance is for reasons outside the manufacturer's control. Examples of such reasons may be fires in manufacturer or supplier plants, or ''acts of God'' such as floods, tornados, or hurricanes that have created unforeseen delays in a manufacturer's ability to comply.

This provision is meant to be used for only a limited time (e.g., one to three months) and permission to use the provision would not be granted for the purpose of delaying implementation for a model year. Further, the provision includes in it an expectation that non-compliances would be corrected as quickly as possible, and we would require that the manufacturer submit a plan detailing how the non-compliances will be corrected. The plan must be submitted in conjunction with any requests to make use of this provision and would be subject to Administrator approval. Note also that we fully intend to enforce the manufacturer's plan to ensure that any engines sold as non-compliant would be corrected.

B. Monitoring Requirements and Timelines for Diesel-Fueled/Compression-Ignition Engines

Table II.B–1 summarizes the diesel fueled compression ignition emissions thresholds at which point a component or system has failed to the point of requiring an illuminated MIL and a stored DTC. Some of these thresholds—specifically, the NO_X aftertreatment and NO_X sensor thresholds for 2010 through 2012—differ from what was proposed. The differences serve to make the OBD threshold less stringent than proposed for the purpose of matching thresholds with technological capabilities.[22] We have also eliminated the NMHC catalyst thresholds. We discuss the reasons for these changes in brief in the sections that follow and in more detail in our Summary and Analysis of Comments document contained in the docket for this rule. More detail regarding the final monitoring requirements, implementation schedules, and liabilities can be found in the sections that follow.

TABLE II.B–1—EMISSIONS THRESHOLDS FOR DIESEL FUELED CI ENGINES OVER 14,000 POUNDS

Component/monitor	MY	NMHC	CO	NO_X	PM
NO_X catalyst system	2010–2012	.....	.....	+0.6	.....
	2013+	.....	.....	+0.3	.....
DPF system	2010–2012	2.5x	.....	.....	0.05/+0.04
	2013+	2x	.....	.....	0.05/+0.04
Air-fuel ratio sensors upstream	2010–2012	2.5x	2.5x	+0.3	0.03/+0.02
	2013+	2x	2x	+0.3	0.03/+0.02
Air-fuel ratio sensors downstream	2010–2012	2.5x	.....	+0.3	0.05/+0.04
	2013+	2x	.....	+0.3	0.05/+0.04
NO_X sensors	2010–2012	.....	.....	+0.6	0.05/+0.04
	2013+	.....	.....	+0.3	0.05/+0.04
''Other monitors'' with emissions thresholds (see section II.B)	2010–2012	2.5x	2.5x	+0.3	0.03/+0.02
	2013+	2x	2x	+0.3	0.03/+0.02

Notes: MY = Model Year; 2.5x means a multiple of 2.5 times the applicable emissions standard or family emissions limit (FEL); +0.3 means the standard or FEL plus 0.3; 0.05/+0.04 means an absolute level of 0.05 or an additive level of the standard or FEL plus 0.04, whichever level is higher; not all monitors have emissions thresholds but instead rely on functionality and rationality checks as described in section II.D.4.

There are exceptions to the emissions thresholds shown in Table II.B–1 whereby a manufacturer can demonstrate that emissions do not exceed the threshold even when the component or system is non-functional at which point a functional check would be allowed.

Note that, in general, the monitoring strategies designed to meet the requirements should not involve the alteration of the engine control system or the emissions control system such that tailpipe emissions would increase. We do not want emissions to increase, even for short durations, for the sole purpose of monitoring the systems intended to control emissions. The Administrator will consider such monitoring strategies on a case-by-case

[20] See § 86.010–18(a)(5) which is new in the final regulations. Also see § 86.010–18(m)(3) which is new in the final regulations.

[21] See final § 86.010–18(a)(6).

[22] See proposed § 86.010–18(g), Table 1, and compare to final § 86.010–18(g), Table 1.

basis taking into consideration the emissions impact and duration of the monitoring event. However, much effort has been expended in recent years to minimize engine operation that results in increased emissions and we encourage manufacturers to develop monitoring strategies that do not require alteration of the basic control system.

The remaining discussion in Section II.B focuses solely on changes made to the monitoring requirements for the final rule relative to the proposed rule. We have not restated the rationale for each monitor, the monitoring requirements, or the expected monitoring strategies, etc. For such discussion, we refer the reader to our proposal (72 FR 3200).

1. Fuel System Monitoring

We proposed that fuel system malfunctions related to injection pressure, injection timing, injection quantity, and feedback control be individually detected prior to emissions exceeding the thresholds for ''other monitors.'' Further, we proposed that pressure and feedback related malfunctions be monitored continuously and that quantity and timing related malfunctions be monitored once per trip. For the final rule, we are requiring fuel system monitoring for CI engines be consistent with our proposal with a few exceptions.

We have added a new combined monitor option for fuel injection systems. Under this option, the three discrete malfunction criteria for unit injector systems (pressure, quantity, and timing) may be combined into one malfunction. The two discrete malfunction criteria for common rail systems (quantity and timing) may be combined into one malfunction. If choosing the combined monitoring option on either type system, the manufacturer must demonstrate with data that the combined monitoring strategy can detect a component failure by some combination of the individual monitors, a rationality check between the discrete monitors or the downstream effect of the failed component. For threshold monitoring, the manufacturer is expected to demonstrate with data that the combined monitor correctly detects the operating conditions of the fuel injector and indicates the component malfunction prior to exceeding the threshold level required by the regulation. The intent of the combined monitor is to effectively detect and indicate fuel system injector malfunctions although the direct cause of the failure (quantity, timing and/or pressure) is unknown.

For unit injector fuel systems, the final rule allows the fuel system pressure control, injection quantity, and injection pressure to be monitored using functional checks in lieu of monitoring for conditions that would cause emissions to exceed the OBD thresholds for model years 2010 through 2012. Threshold monitoring on unit injector fuel system injection pressure, quantity and timing will be required for model year 2013 and beyond. For common rail systems, the regulation remains unchanged with threshold detection required for fuel system pressure control, injection quantity, and injection pressure for model years 2010 and beyond.

Regarding monitoring conditions, the final rule remains unchanged on common rail systems from the proposal of once per drive cycle for injection pressure and quantity for model years 2010 to 2012 in addition to constant fuel pressure monitoring. On 2013 and later common rail fuel systems, we are requiring continuous monitoring of pressure control and, in a change from our proposal, injector quantity and injector timing monitoring must be done when conditions are met (rather than once per trip). On unit injector systems for model years 2010 to 2012, the monitors for fuel system pressure control, injection quantity, and injection timing are required once per drive cycle. For model years 2013 and beyond, unit injector systems are required to monitor pressure, injector quantity and injector timing when conditions are met.

We are making these fuel injection system monitoring changes because of the system monitoring capability differences between unit injector and common rail systems, while maintaining the intent of malfunction monitoring to indicate a failed component. We believe that the monitoring strategies manufacturers are expected to use in the interim time frame and future system design will result in robust monitoring of the fuel system without sacrificing malfunction detection. The fuel system strategies based on hardware diverge in model years 2010 to 2012 to account for the monitoring capabilities but again converge in model years 2013 for as much commonality as possible. We discuss our rationale in more detail in our Summary and Analysis document contained in the docket for this rule.

2. Engine Misfire Monitoring

We proposed that, for 2010–2012, a continuous engine misfire be detected during engine idle. For 2013 and later, we proposed that engines equipped with combustion sensors monitor continuously for misfire during the full operating range and detect a malfunction prior to emissions exceeding the thresholds for ''other monitors.''

For the final rule, we have made only one change to the misfire monitoring requirements for CI engines. In the proposal, we stated that, if more than one cylinder is misfiring continuously, a separate DTC must be stored indicating that multiple cylinders are misfiring. In the final rule, we state that, if more than one cylinder is misfiring continuously or if more than one but less than half of the cylinders is misfiring continuously, a separate DTC must be stored indicating that multiple cylinders are misfiring.[23] To make use of this additional provision, the manufacturer must receive Administrator approval. We are making this change because we believe that, for some systems, a perfectly acceptable monitor can be developed without sacrificing malfunction detection.

3. Exhaust Gas Recirculation (EGR) System Monitoring

We proposed that malfunctions of the EGR system related to low flow, high flow, slow response, feedback control, and cooler performance be detected prior to emissions exceeding the thresholds for ''other monitors.'' Further, we proposed that flow and feedback related malfunctions be monitored continuously, response related malfunctions be monitored whenever conditions were met, and that cooler malfunctions be monitored once per trip.

For the final rule, we have not made any changes to the EGR requirements except to provide more clarity to the provisions allowing for temporary disablement of continuous monitoring.[24] This new provision allows the OBD system, with approval, to disable temporarily the EGR system monitor(s) under specific ambient conditions (e.g., when freezing may affect performance of the system) or during specific operating conditions (e.g., transients, extreme low or high flow conditions). Even then, the system must still maintain comprehensive component monitoring as required by the comprehensive component monitoring requirements.[25]

[23] See § 86.010–18(g)(2)(ii)(A) for diesel-fueled engines.

[24] See § 86.010–18(g)(3)(iii)(D) for diesel-fueled engines.

[25] See § 86.010–18(i)(3).

4. Turbo Boost Control System Monitoring

We proposed that malfunctions of the boost control system related to underboost, overboost, variable geometry slow response, feedback control, and undercooling be detected prior to emissions exceeding the thresholds for ''other monitors.'' Further, we proposed that underboost, overboost, and feedback related malfunctions be monitored continuously, that slow response related malfunctions be monitored whenever conditions were met, and that undercooling related malfunctions be monitored once per trip.

One change we have made to the turbo boost control system monitoring requirements for the final rule is to add the phrase, ''on engines so equipped'' or equivalent.[26] We have added this phrase to clarify that, for engines that do not control the turbo boost control system as suggested by the proposed requirements the provision would not apply or would apply differently. For example, our proposal required that the OBD system detect when the turbo boost control system was unable to achieve the commanded boost. However, some manufacturers use a system that does not in fact command a particular boost pressure (i.e., it is not a closed loop feedback system). For such systems, the final rule makes clear that the system must detect when the turbo boost control system is unable to achieve the commanded boost, or the expected boost for systems that do not control boost pressure. The change does not impact the intent behind the proposed requirements and only serves to provide clarity to manufacturers. We discuss our rationale in more detail in our Summary and Analysis document contained in the docket for this rule.

We have also made a minor change to the turbo boost monitoring conditions. We have added a provision that provides clarity to the requirement to monitor continuously certain parameters. This provision does not change the intent of the proposed requirement, but only serves to provide clarity to the requirement.[27]

5. Non-Methane Hydrocarbon (NMHC) Converting Catalyst Monitoring

We proposed that malfunctions related to NMHC conversion efficiency be detected prior to emissions exceeding the thresholds for ''NMHC catalyst.'' We also proposed that, should the NMHC converting catalyst be used to assist other aftertreatment devices, that malfunctions be detected if that assistance is no longer occurring. Further, we proposed that conversion efficiency and aftertreatment assistance be monitoring once per trip.

For the final rule, we have eliminated the OBD thresholds associated with monitoring of NMHC converting catalysts (e.g., the diesel oxidation catalyst, or DOC). We have also eliminated the need to monitor the NMHC converting catalyst's ability to generate the proper feedgas for other aftertreatment devices. We have maintained, as was proposed, the requirements to monitor for some level of NMHC conversion and for the ability to generate and sustain the necessary exotherm for catalysts used as part of the regeneration strategy of other aftertreatment devices.[28] As part of this latter requirement, we have added a provision requiring the OBD system to detect when the NMHC converting catalyst is unable to generate a 100 degree Celsius temperature rise, or to achieve the necessary regeneration temperature, within 60 seconds of initiating a forced regeneration event. Further, the OBD system must detect the inability to sustain the necessary regeneration temperature for the duration of the regeneration event. We have also added a provision that the regeneration system be shut down (i.e., the forced regeneration must be aborted) in the event that the regeneration temperature cannot be attained or sustained. The manufacturer would be allowed to define the monitoring conditions for this monitor to ensure that a robust monitoring event would be possible. This requirement is meant to ensure that NMHC emissions will not be excessive during a prolonged and unsuccessful attempt at generating an exotherm for regeneration. As an alternative, the manufacturer may submit, for Administrator approval, their NMHC catalyst exotherm monitor strategy and, if equivalent in effectiveness, could use that strategy instead of the criteria described here. Lastly, we have added a provision whereby a manufacturer can ''test out'' of monitoring a NMHC catalyst located downstream of a DPF provided its failure will not cause NMHC emissions to exceed the applicable NMHC standard.

We have made these changes for the final rule because we have been convinced by manufacturers that there exists no robust method of detecting loss of NMHC conversion at the levels required for threshold monitoring. We believe that the primary function of the NMHC catalyst will be exotherm generation which is a monitoring requirement we have maintained and broadened. Further, we believe that the exotherm monitor will also serve to provide the detection of lost NMHC conversion and will do so in a more timely fashion than a direct monitoring of NMHC conversion via exhaust gas sensors since those sensors appear unlikely to be able to detect NMHC conversion loss until it is completely lost. Similar arguments exist for eliminating the feedgas monitoring requirement—we know of no robust method to detect this loss given today's sensor technology. We discuss our rationale in more detail in our Summary and Analysis document contained in the docket for this rule.

6. Selective Catalytic Reduction (SCR) and Lean NO_X Catalyst Monitoring

We proposed that malfunctions related to conversion efficiency, active/intrusive reductant delivery, active/intrusive reductant quantity, active/intrusive reductant quality, and feedback control be detected prior to emissions exceeding the thresholds for ''NO_X catalyst system.'' Further, we proposed that conversion efficiency and reductant quality be monitored once per trip and that reductant delivery, quantity, and feedback control be monitored continuously.

We have made no changes to the SCR and/or lean NO_X catalyst monitoring requirements relative to our proposal except that we have increased the NO_X threshold at which malfunctions must be detected. We proposed a threshold of the NO_X FEL+0.3 g/bhp-hr and are finalizing a threshold of the NO_X FEL+0.6 g/bhp-hr. This revised threshold applies only to model years 2010 through 2012. As proposed, the threshold for model years 2013 and later remains the NO_X FEL+0.3 g/bhp-hr. We have made this change because the state of NO_X sensor technology expected for the 2010 model year is not sufficient for the proposed threshold. We expect that to improve for model years 2013 and later.[29] We discuss our rationale in more detail in our Summary and Analysis document contained in the docket for this rule.

[26] See § 86.010–18(g)(4)(ii) for diesel-fueled engines.

[27] See § 86.010–18(g)(4)(iii)(D) for diesel-fueled engines.

[28] See § 86.010–18(g)(5) for the final NMHC catalyst requirements for diesel-fueled engines.

[29] Please refer to our Final Technical Support Document contained in the docket for this rule (EPA420–R–08–019, Document ID No. EPA–HQ–OAR–2005–0047–0056) which contains our latest understanding of NO_X sensor technology.

7. NO_X Adsorber System Monitoring

We proposed that malfunctions related to adsorber system capability, active/intrusive reductant delivery, and feedback control be detected prior to emissions exceeding the thresholds for ''NO_X catalyst system.'' Further, we proposed that adsorber capability be monitored once per trip and that reductant delivery and feedback control be monitored continuously.

For the final rule, we have changed nothing with respect to the NO_X adsorber monitoring requirements with the exception of revising the NO_X threshold for model years 2010 through 2012 to the NO_X FEL+0.6 from the NO_X FEL+0.3. We have made this change for the same reasons noted above for SCR monitoring. We discuss our rationale in more detail in our Summary and Analysis document contained in the docket for this rule.

8. Diesel Particulate Filter (DPF) System Monitoring

We proposed that malfunctions related to the DPF filtering performance, regeneration frequency, regeneration completion, NMHC conversion, active/intrusive reductant injection, and feedback control be detected prior to emissions exceeding the thresholds for ''DPF system.'' We also proposed that a missing DPF substrate be detected. Further, we proposed that all of these functions be monitored whenever conditions were met.

For the final rule, we have made two changes to the requirements for monitoring the DPF system. The first change is that we have added to the DPF filtering performance monitoring requirement an optional requirement whereby the OBD system can conduct, in effect, a functional check of the DPF. A system using this approach would be required to detect a change in the pressure drop across the DPF relative to the nominal pressure drop across a clean filter and a properly working device.[30] In effect, if the DPF substrate has been compromised, the failure must be detected if it results in a decrease in the expected pressure drop equal to or greater than a defined level, or detectable change in pressure drop, relative to a clean filter.[31]

We believe that such a requirement is, in effect, the same as a threshold requirement for most DPF systems to be certified in the 2010 through 2012 timeframe. Those systems are expected to use a delta pressure approach to DPF monitoring and we expect that manufacturers will design that monitor to detect the smallest hole feasible which, we believe, will result in a decrease in the expected pressure drop somewhere around the level we are requiring. Manufacturers would then determine the emissions impact associated with that hole and hope that it meets our threshold requirement. If it did not, we would probably certify the system with a deficiency presuming the manufacturer had made a good faith effort at compliance and the monitor met our deficiency requirements.[32] We would not want to refuse to certify it since it would be doing the maximum that the delta pressure approach could feasibly do. We would prefer to certify such a system to the decrease in pressure drop requirement without the deficiency than to certify it to a threshold with a deficiency. In the end, the same monitor is being approved.

Another change we have made is to eliminate the NMHC conversion monitoring over DPFs that have some NMHC conversion capacity.[33] We have eliminated this requirement for the same reasons as noted above for NMHC converting catalyst monitors. Note that we have retained an NMHC threshold for the DPF, but it is referenced in conjunction with the DPF regeneration frequency monitor consistent with our proposal.

Lastly, we have included some new monitoring requirements for those systems certified to our optional backpressure loss provision.[34] An important element of these new monitoring conditions is the distinction between conditions used for malfunction determinations versus subsequent passing determinations. The new provisions allow for a malfunction determination during any successful monitoring event. However, subsequent monitoring events are limited to operation following a successful DPF regeneration. This is to ensure that a confirmed leak will not ''fill up'' with PM and begin to look like an acceptable DPF. If monitoring events were allowed to occur as the leak filled up, the OBD system may inadvertently determine that the DPF substrate was not compromised. Limiting subsequent monitoring events (i.e., those following a malfunction determination) to operation following a complete regeneration of the DPF will ensure that no PM has filled up the crack or hole.

We discuss all of these changes in more detail in our Summary and Analysis of Comments document contained in the docket for this rule.

9. Exhaust Gas Sensor Monitoring

We proposed that malfunctions related to sensor performance be detected prior to emissions exceeding the applicable thresholds. We also proposed that malfunctions related to circuit integrity, feedback functions, monitoring functions, and heater performance and circuit integrity be detected prior to those functions being lost. Further, we proposed that sensor and heater performance be monitored once per trip, that monitoring functionality be monitored whenever conditions were met, and that circuit integrity and feedback functionality be monitored continuously.

For the final rule, we have changed nothing with respect to the exhaust gas sensor monitoring requirements with the exception of revising the NO_X sensor monitor NO_X threshold for model years 2010 through 2012 to the NO_X FEL+0.6 from the NO_X FEL+0.3. We have made this change for the same reasons noted above for the NO_X aftertreatment monitoring requirements. We discuss our rationale in more detail in our Summary and Analysis document contained in the docket for this rule.

C. Monitoring Requirements and Timelines for Gasoline/Spark-Ignition Engines

Table II.C–1 summarizes the gasoline fueled spark ignition emissions thresholds at which point a component or system has failed to the point of requiring an illuminated MIL and a stored DTC.

[30] See § 86.010–18(g)(8)(ii)(A) for diesel-fueled engines.

[31] The detectable change in pressure drop is defined as 0.5 times the observed pressure drop on a nominal, clean filter when operating the engine at the 50% speed, 50% load operating point (as specified in test cycle and procedures for the supplemental emissions test (SET) in § 86.1360–2007.)

[32] See § 86.010–18(n).

[33] See proposed § 86.010–18(g)(8)(ii)(D).

[34] See § 86.010–18(g)(8)(iii) for diesel-fueled engines.

TABLE II.C–1—EMISSIONS THRESHOLDS FOR GASOLINE FUELED SI ENGINES OVER 14,000 POUNDS

Component/monitor	MY	NMHC	CO	NO_X
Catalytic converter system	2010+	1.75x		1.75x
"Other monitors" with emissions thresholds (see section II.C)	2010+	1.5x	1.5x	1.5x
Evaporative emissions control system	2010+	0.150 inch leak.		

Notes: MY=Model Year; 1.75x means a multiple of 1.75 times the applicable emissions standard; not all monitors have emissions thresholds but instead rely on functionality and rationality checks as described in section II.D.4. The evaporative emissions control system threshold is not, technically, an emissions threshold but rather a leak size that must be detected; nonetheless, for ease we refer to this as the threshold.

Everything shown in Table II.C–1 is unchanged from our proposal. In fact, we have made only one change in our requirements specific to gasoline engines relative to our proposal.[35] That change is being made in response to requests from industry that would allow for Administrator approval of misfire monitoring disablement under certain conditions on engines with more than eight cylinders and/or in situations where the manufacturer can demonstrate that the best available monitoring strategy is not able to detect the misfire condition. The change we are making for our final rule is meant to align our disablement allowance, with approval, with similar allowances made in the California regulation.[36]

As proposed, there remain exceptions to the emissions thresholds shown in Table II.C–1 whereby a manufacturer can demonstrate that emissions do not exceed the threshold even when the component or system is non-functional at which point a functional check would be allowed.

Additionally, consistent with our proposal, the final gasoline monitoring requirements for engines over 14,000 pounds mirror those that are already in place for gasoline engines used in vehicles under 14,000 pounds. The HD gasoline industry—General Motors and Ford, as of today[37]—have told us that their preference is to use essentially the same OBD system on their engines used in both under and over 14,000 pound vehicles.[38] In general, we agree with the HD gasoline industry on this issue for three reasons:

- The engines used in vehicles above and below 14,000 pounds are the same which makes it easy for industry to use the same OBD monitors;
- The existing OBD requirements for engines used in vehicles below 14,000 pounds have proven effective; and
- The industry members have more than 10 years experience complying with the OBD requirements for engines used in vehicles below 14,000 pounds.

As a result, our final requirements should allow for OBD system consistency in vehicles under and over 14,000 pounds rather than mirroring the HD diesel requirements discussed in section II.B. Nonetheless, the final requirements are for engine-based OBD monitors only rather than monitors for the entire powertrain (which would include the transmission). We are doing this for the same reasons as done for the diesel OBD requirements in that certification of gasoline applications over 14,000 pounds, like their diesel counterparts, is done on an engine basis and not a vehicle basis.

D. Monitoring Requirements and Timelines for Other Diesel and Gasoline Systems

1. Variable Valve Timing and/or Control (VVT) System Monitoring

We proposed that VVT system malfunctions related to achieving the commanded valve timing and/or control within a crank angle and/or lift tolerance and slow system response be detected prior to emissions exceeding the thresholds for "other monitors." Further, we proposed that these malfunctions be monitored whenever conditions were met rather than once per trip.

The final requirements for VVT system monitoring are identical to the proposed requirements.[39]

2. Engine Cooling System Monitoring

We proposed that cooling system malfunctions related to proper thermostat function and engine coolant temperature (ECT) sensor readings be detected. Further, we proposed that malfunctions tied to the thermostat be monitored once per trip and that most ECT malfunctions be monitored once per trip except that circuit malfunctions must be monitored continuously.

For the final rule, we have changed the requirement surrounding the need to detect when the coolant temperature does not warm up to within 20 degrees F of the nominal thermostat regulating temperature. This change allows the OBD system to use a lower temperature (lower than 20 degrees below the nominal regulating temperature) provided the ambient temperature is between 20 degrees F and 50 degrees F. To do so, the manufacturer must present data justifying the new temperature to be reached at the lower ambient temperatures.[40]

3. Crankcase Ventilation System Monitoring

We proposed that the OBD system monitor the CV system on engines so equipped for system integrity. For diesel engines, we proposed that the manufacturer submit a plan for Administrator approval prior to OBD certification that describes the monitoring strategy, malfunction criteria, and monitoring conditions for CV system monitoring. Further, we proposed that the manufacturer may forego monitoring for a disconnection between the crankcase and the CV valve provided the CV system is designed such that it uses tubing connections between the CV valve and the crankcase that are resistant to failure. We also proposed that the manufacturer may forego monitoring for a disconnection between the CV valve and the intake manifold provided the CV system is designed such that any disconnection either causes the engine to stall immediately during idle operation, or is unlikely to occur due to a CV system design that is integral to the induction system (e.g., machined passages rather than tubing or hoses).

The final requirements for crankcase ventilation system monitoring are

[35] There are some changes discussed in section II.D that pertain to both gasoline and diesel applications.

[36] See CCR 1971.1(f)(2.3.4)(D) and CCR 1971.1(f)(2.3.5) and compare to § 86.010–18(h)(2)(iii)(D) and § 86.010(h)(2)(iii)(E), respectively.

[37] This is true according to our certification database for the 2004, 2005, and 2006 model years. Other manufacturers certify engines that use the Otto cycle, but those engines do not burn gasoline and instead burn various alternative fuels.

[38] "EMA Comments on Proposed HDOBD Requirements for HDGE," bullet items 3 and 4; April 28, 2005, Docket ID# EPA–HQ–OAR–2005–0047–0003.

[39] See § 86.010–18(g)(10) for diesel-fueled engines and § 86.010–18(h)(9) for gasoline-fueled engines.

[40] See § 86.010–18(i)(1) for the final cooling system monitoring requirements.

identical to the proposed requirements.[41]

4. Comprehensive Component Monitors

We proposed that, in general, the OBD system must detect a malfunction of any electronic engine component or system that either provides input to or receives commands from the onboard computer(s). Further, we proposed that malfunctions related to circuit continuity and/or out-of-range values be monitored continuously and that malfunctions related to input data rationality and/or output component functional response be monitored whenever conditions were met.

For the final rule, we have made several changes to the proposed requirements for comprehensive component monitoring. The first of those changes is to revise the provisions concerning the emission effect that determines what must be monitored as a comprehensive component. In the proposed rule, we provided a general set of parameters that fit within the comprehensive component concept. For example, components that provide input to or received commands from the engine computer along with specific examples of such components.[42] We then stated that any such component that could effect emissions over any reasonable driving condition must be monitored. For the final rule, we have changed these emission impacts slightly by stating that any such component that could cause emissions to exceed emissions standards must be monitored.[43] We have made this change because we believe it to be consistent with the Clean Air Act which states that OBD systems should monitor components that could cause or result in failure of the vehicles to comply with emission standards established for such vehicles (see Section I.C.3 above).

The second change we have made to the comprehensive component monitoring requirements is the change to the MIL circuit check and the wait-to-start lamp circuit check. These changes were discussed in Section II.A.2 above.

We have also changed the requirements for monitoring of glow plugs in the 2010 through 2012 model years. During those model years, glow plugs must be monitored for circuit checks only. For model years 2013 and later, we have not made any changes to our proposal (functional checks must be done).[44] We are making this change for the 2010 through 2012 model years because we do not believe that the time available for 2010 implementation is sufficient for all manufacturers to make the changes necessary to conduct functional checks, but we believe that such checks are important and should be done for 2013 and later.

5. Other Emissions Control System Monitoring

We proposed monitoring of other emission control systems that are not otherwise specifically addressed and that the manufacturer submit a plan for Administrator approval of the monitoring strategy, malfunction criteria, and monitoring conditions prior to introduction on a production engine.

The final requirements for other emission control system monitoring are identical to the proposed requirements.

6. Exceptions to Monitoring Requirements

We proposed that certain monitors could be disabled under specific conditions related generally to ambient conditions. Further, we proposed that most such disablements be approved by the Administrator.

The final requirements for exceptions to monitoring are identical to the proposed requirements.

E. A Standardized Method To Measure Real World Monitoring Performance

As was noted in section II.A.3, manufacturers determine the most appropriate times to run the non-continuous OBD monitors. This way, they are able to make their OBD evaluation either at the operating condition when an emissions control system is active and its operational status can best be evaluated, and/or at the operating condition when the most accurate evaluation can be made (e.g., highly transient conditions or extreme conditions can make evaluation difficult). Importantly, manufacturers are prohibited from using a monitoring strategy that is so restrictive such that it rarely or never runs. To help protect against monitors that rarely run, we proposed an ''in-use monitor performance ratio'' requirement. The final rule contains the same requirement without changes.[45]

The set of operating conditions that must be met so that an OBD monitor can run are called the ''enable criteria'' for that given monitor. These enable criteria are often different for different monitors and may well be different for different types of engines. A large diesel engine intended for use in a Class 8 truck would be expected to see long periods of relatively steady-state operation while a smaller engine intended for use in an urban delivery truck would be expected to see a lot of transient operation. Manufacturers will need to balance between a rather loose set of enable criteria for their engines and vehicles given the very broad range of operation HD highway engines see and a tight set of enable criteria given the desire for greater monitor accuracy. Manufacturers would be required to design these enable criteria so that the monitor:

- Is robust (i.e., accurate at making pass/fail decisions);
- Runs frequently in the real world; and
- In general, also runs during the FTP heavy-duty transient cycle.

If designed incorrectly, these enable criteria may be either too broad and result in inaccurate monitors, or overly restrictive thereby preventing the monitor from executing frequently in the real world.

Since the primary purpose of an OBD system is to monitor for and detect emission-related malfunctions while the engine is operating in the real world, a standardized methodology for quantifying real world performance would be beneficial to both EPA and manufacturers. Generally, in determining whether a manufacturer's monitoring conditions are sufficient, a manufacturer would discuss the proposed monitoring conditions with EPA staff. The finalized conditions would be included in the certification applications and submitted to EPA staff who would review the conditions and make determinations on a case-by-case basis based on the engineering judgment of the staff. In cases where we are concerned that the documented conditions may not be met during reasonable in-use driving conditions, we would most likely ask the manufacturer for data or other engineering analyses used by the manufacturer to determine that the conditions would occur in-use. In requiring a standardized methodology for quantifying real world performance, we believe this review process can be done more efficiently than would occur otherwise. Furthermore, it would serve to ensure that all manufacturers are held to the same standard for real world performance. Lastly, we want review procedures that will ensure that monitors operate properly and frequently in the field.

[41] See § 86.010–18(i)(2) for the final CV system monitoring requirements.

[42] See proposed and/or final § 86.010–18(i)(3)(i).

[43] See final § 86.010–18(i)(3)(i)(A) and compare to proposed § 86.010–18(i)(3)(i)(A).

[44] See § 86.010–18(i)(3)(iii)(D).

[45] This requirement can be found in § 86.010–18(d).

Therefore, manufacturers will be required to use a standardized method for determining real world monitoring performance and will be liable if monitoring occurs less frequently than a minimum acceptable level, expressed as minimum acceptable in-use performance ratio.[46] We are also requiring that manufacturers implement software in the onboard computer to track how often several of the major monitors (e.g., catalyst, EGR, CDPF, other diesel aftertreatment devices) execute during real world driving. The onboard computer must keep track of how many times each of these monitors has executed and how much the engine has been operated. By measuring both of these values, the ratio of monitor operation relative to engine operation can be calculated to determine monitoring frequency.

The minimum acceptable frequency requirement will apply to many but not all of the OBD monitors. We are requiring that monitors operate either continuously, once per drive cycle, or, in a few cases, multiple times per drive cycle (i.e., whenever the proper monitoring conditions are present). For components or systems that are more likely to experience intermittent failures or failures that can routinely happen in distinct portions of an engine's operating range (e.g., only at high engine speed and load, only when the engine is cold or hot), monitors are required to operate continuously. Examples of continuous monitors include most electrical/circuit continuity monitors. For components or systems that are less likely to experience intermittent failures or failures that only occur in specific vehicle operating regions or for components or systems where accurate monitoring can only be performed under limited operating conditions, monitors would be required to run once per drive cycle. Examples of once per drive cycle monitors typically include gasoline catalyst monitors, evaporative system leak detection monitors, and output comprehensive component functional monitors. For components or systems that are routinely used to perform functions that are crucial to maintaining low emissions but may still require monitoring under fairly limited conditions, monitors are required to run each and every time the manufacturer-defined enable conditions are present. Examples of multiple times per drive cycle monitors typically include input comprehensive component rationality monitors and some exhaust aftertreatment monitors.

Monitors required to run continuously, by definition, would always be running thereby making a minimum frequency requirement moot. The new frequency requirement essentially applies only to those monitors that are designated as once per drive cycle or multiple times per drive cycle monitors. For all of these monitors, manufacturers are required to define monitoring conditions that ensure adequate frequency in-use. Specifically, the monitors need to run often enough so that the measured monitor frequency on in-use engines will exceed the minimum acceptable frequency. However, even though the minimum frequency requirement applies to nearly all once per drive cycle and multiple times per drive cycle monitors, manufacturers are only required to implement software to track and report the in-use frequency for a few of the major monitors. These few monitors generally represent the major emissions control components and the ones with the most limited enable criteria.

We believe that OBD monitors should run frequently to ensure early detection of emissions-related malfunctions and, consequently, to maintain low emissions. Allowing malfunctions to continue undetected and unrepaired for long periods of time allows emissions to increase unnecessarily. Frequent monitoring can also help to ensure detection of intermittent emissions-related malfunctions (i.e., those that are not continuously present but occur sporadically for days and even weeks at a time). The nature of mechanical and electrical systems is that intermittent malfunctions can and do occur. The less frequent the monitoring, the less likely these malfunctions will be detected and repaired. Additionally, for both intermittent and continuous malfunctions, earlier detection is equivalent to preventative maintenance in that the original malfunction can be detected and repaired prior to it causing subsequent damage to other components. This can help vehicle operators avoid more costly repairs that could have resulted had the first malfunction gone undetected.

Infrequent monitoring can also have an impact on the service and repair industry. Specifically, monitors that have unreasonable or overly restrictive enable conditions could hinder vehicle repair services. In general, upon completing an OBD-related repair to an engine, a technician will attempt to verify that the repair has indeed fixed the problem. Ideally, a technician will operate the vehicle in a manner that will exercise the appropriate OBD monitor and allow the OBD system to confirm that the malfunction is no longer present. This affords a technician the highest level of assurance that the repair was indeed successful. However, OBD monitors that operate infrequently are difficult to exercise and, therefore, technicians may not be able (or may not be likely) to perform such post-repair evaluations. Despite the service information availability requirements we are promulgating—requirements that manufacturers make all of their service and repair information available to all technicians, including the information necessary to exercise OBD monitors—technicians would still find it difficult to exercise monitors that require infrequently encountered engine operating conditions (e.g., abnormally steady constant speed operation for an extended period of time). Additionally, to execute OBD monitors in an expeditious manner or to execute monitors that would require unusual or infrequently encountered conditions, technicians may be required to operate the vehicle in an unsafe manner (e.g., at freeway speeds on residential streets or during heavy traffic). If unsuccessful in executing these monitors, technicians may even take shortcuts in attempting to validate the repair while maintaining a reasonable cost for customers. These shortcuts would likely not be as thorough in verifying repairs and could increase the chance that improperly repaired engines would be returned to the vehicle owner or additional repairs would be performed just to ensure the problem is fixed. In the end, monitors that operate less frequently can result in unnecessary costs and inconvenience to both vehicle owners and technicians.

1. Description of Software Counters To Track Real World Performance

As stated above, manufacturers are required to track monitor performance by comparing the number of monitoring events (i.e., how often each monitor has run) to the number of driving events (i.e., how often has the vehicle been operated). Our final rule contains this requirement as did our proposal. In general, we have not changed the requirements associated with determination of this minimum performance ratio. However, we have made some minor changes.

The first of these is the way in which the denominator of the ratio is determined for diesel engines. The ratio

[46] This minimum acceptable ratio applies in model years 2013 and later, as was proposed.

of these two numbers would give an indication of how often the monitor is operating relative to vehicle operation. In equation form, this can be stated as:

$$In\text{-}Use\ Performance\,(Ratio) = \frac{Number\ of\ Monitoring\ Events\,(Numerator)}{Number\ of\ Driving\ Events\,(Denominator)}$$

Specifically, we have changed the denominator provisions which stated that the denominator would be incremented if, on a single key start, the following criteria were satisfied while ambient temperature remained above 20 degrees Fahrenheit and altitude remained below 8,000 feet:

- Minimum engine run time of 10 minutes;
- Minimum of 5 minutes, cumulatively, of operation at vehicle speeds greater than 25 miles-per-hour for gasoline engines or calculated load greater than 15 percent for diesel engines; and
- At least one continuous idle for a minimum of 30 seconds encountered.

For the final rule, the second bullet has been changed to read:

- Minimum of 5 minutes, cumulatively, of operation at vehicle speeds greater than 25 miles-per-hour for gasoline engines or engine speeds greater than 1,150 rotations per minute (RPM) for diesel engines. We are also allowing diesel engines to employ the gasoline criteria for the years 2010 through 2012 but not thereafter.[47]

We have made this change because we believe that the 1,150 RPM criterion is a better measure of work than the 15% load criterion. The purpose of the time at load (i.e., 5 minutes of engine load above 15%) was to have criteria that would represent that an engine had been doing work for at least 5 minutes (300 seconds). After consideration, we have decided that engine speed above 1,150 RPM for 5 minutes is a better measure of engine work.

2. Performance Tracking Requirements

a. In-Use Monitoring Performance Ratio Definition

For monitors required to meet the in-use performance tracking requirements,[48] we are requiring that the incrementing of numerators and denominators and the calculation of the in-use performance ratio be done in accordance with the following specifications. These specifications have not changed from the proposal.

The numerator(s) are defined as a measure of the number of times a vehicle has been operated such that all monitoring conditions necessary for a specific monitor to detect a malfunction have been encountered. Except for systems using alternative statistical MIL illumination protocols, the numerator is to be incremented by an integer of one. The numerator(s) may not be incremented more than once per drive cycle. The numerator(s) for a specific monitor would be incremented within 10 seconds if and only if the following criteria are satisfied on a single drive cycle:

- Every monitoring condition necessary for the monitor of the specific component to detect a malfunction and store a pending DTC has been satisfied, including enable criteria, presence or absence of related DTCs, sufficient length of monitoring time, and diagnostic executive priority assignments (e.g., diagnostic ''A'' must execute prior to diagnostic ''B''). For the purpose of incrementing the numerator, satisfying all the monitoring conditions necessary for a monitor to determine that the component is passing may not, by itself, be sufficient to meet this criteria.
- For monitors that require multiple stages or events in a single drive cycle to detect a malfunction, every monitoring condition necessary for all events to have completed must be satisfied.
- For monitors that require intrusive operation of components to detect a malfunction, a manufacturer would be required to request Administrator approval of the strategy used to determine that, had a malfunction been present, the monitor would have detected the malfunction. Administrator approval of the request would be based on the equivalence of the strategy to actual intrusive operation and the ability of the strategy to determine accurately if every monitoring condition was satisfied as necessary for the intrusive event to occur.
- For the secondary air system monitor, the three criteria above are satisfied during normal operation of the secondary air system. Monitoring during intrusive operation of the secondary air system later in the same drive cycle solely for the purpose of monitoring may not, by itself, be sufficient to meet these criteria.

The third bullet item above requires explanation. There may be monitors designed to use what could be termed a two stage or two step process. The first step is usually a passive and/or short evaluation that can be used to ''pass'' a properly working component where ''pass'' refers to evaluating the component and determining that it is not malfunctioning. The second step is usually an intrusive and/or longer evaluation that is necessary to ''fail'' a malfunctioning component or ''pass'' a component nearing the point of failure. An example of such an approach might be an evaporative leak detection monitor that uses an intrusive vacuum pull-down/bleed-up evaluation during highway cruise conditions. If the evaporative system is sealed tight, the monitor ''passes'' and is done with testing for the given drive cycle. If the monitor senses a leak close to the required detection limit, the monitor does not ''pass'' and an internal flag is stored that will trigger the second stage of the test during the next cold start when a more accurate evaluation can be conducted. On the next cold start, provided the internal flag is set, an intrusive vacuum pull-down/bleed up monitor might be conducted during engine idle a very short time after the cold start. This second evaluation stage, being at idle and cold, gives a more accurate indication of the evaporative system's integrity and provides for a more accurate decision regarding the presence and size of a leak.

In this example, the second stage of this monitor would run less frequently in real use than the first stage since it is activated only on those occasions where the first stage suggests that a leak may be present (which most cars will not have). The rate-based tracking requirements are meant to give a measure of how often a monitor could detect a malfunction. To know the right answer, we need to know how often the first stage is running and could ''fail'', thus triggering the second stage, and then how often the second stage is completing. If we track only the first stage, we would get a false indication of

[47] See § 86.010–18(d)(4).

[48] These monitors, as presented in section II.A.3 (also see 86.010–18(e)(1)), are, for diesel engines: The NMHC catalyst, the CDPF system, the NO_X adsorber system, the NO_X converting catalyst system, and the boost system; and, for gasoline engines: The catalyst, the evaporative system, and the secondary air system; and, for all engines, the exhaust gas sensors, the EGR system, and the VVT system.

how often the monitor could really detect a leak. But, if we track only the second stage, most cars would never increment the counter since most cars do not have leaks and would not trigger stage two.

In considering this, we see two possible solutions: (1) Always activate the second stage evaluation in which case there would be an intrusive monitor being performed that does not really need to be performed; or, (2) implement a ''ghost'' monitor that pretends that the first stage evaluation triggers the second stage evaluation and then also looks for when the second stage evaluation could have completed had it been necessary. The third bullet item in the list above requires that, if a manufacturer intends to implement a two stage monitor and intends to implement such a ''ghost'' monitor as described here for rate based tracking, great care must be taken to ensure that it is being done correctly and properly.

For monitors that can generate results in a ''gray zone'' or ''non-detection zone'' (i.e., results that indicate neither a passing system nor a malfunctioning system) or in a ''non-decision zone'' (e.g., monitors that increment and decrement counters until a pass or fail threshold is reached), the manufacturer is responsible for incrementing the numerator appropriately. In general, the numerator should not be incremented when the monitor indicates a result in the ''non-detection zone'' or prior to the monitor reaching a decision. When necessary, the manufacturer will be expected to have data and/or engineering analyses demonstrating the expected frequency of results in the ''non-detection zone'' and the ability of the monitor to determine accurately, had an actual malfunction been present, whether or not the monitor would have detected a malfunction instead of a result in the ''non-detection zone.'' [49]

For monitors that run or complete their evaluation with the engine off, the numerator must be incremented either within 10 seconds of the monitor completing its evaluation in the engine off state, or during the first 10 seconds of engine start on the subsequent drive cycle.

Manufacturers using alternative statistical MIL illumination protocols for any of the monitors that require a numerator would be required to increment the numerator(s) appropriately. The manufacturer may be required to provide supporting data and/or engineering analyses demonstrating both the equivalence of their incrementing approach to the incrementing specified above for monitors using the standard MIL illumination protocol, and the overall equivalence of their incrementing approach in determining that the minimum acceptable in-use performance ratio has been satisfied.

Regarding the denominator(s), defined as a measure of the number of times a vehicle has been operated, we are requiring that it also be incremented by an integer of one.[50] The denominator(s) may not be incremented more than once per drive cycle. The general denominator and the denominators for each monitor would be incremented within 10 seconds if and only if the following criteria are satisfied on a single drive cycle during which ambient temperature remained at or above 20 degrees Fahrenheit and altitude remained below 8,000 feet:

- Cumulative time since the start of the drive cycle is greater than or equal to 600 seconds (10 minutes);
- Cumulative gasoline engine operation at or above 25 miles per hour or diesel engine operation at or above 1,150 RPM, either of which occurs for greater than or equal to 300 seconds (5 minutes); and
- Continuous engine operation at idle (e.g., accelerator pedal released by the driver, engine speed less than or equal to 200 rpm above normal warmed-up idle or vehicle speed less than or equal to one mile per hour) for greater than or equal to 30 seconds.

In addition to the requirements above, the evaporative system monitor denominator(s) must be incremented if and only if:

- Cumulative time since the start of the drive cycle is greater than or equal to 600 seconds (10 minutes) while at an ambient temperature of greater than or equal to 40 degrees Fahrenheit but less than or equal to 95 degrees Fahrenheit; and
- Engine cold start occurs with engine coolant temperature at engine start greater than or equal to 40 degrees Fahrenheit but less than or equal to 95 degrees Fahrenheit and less than or equal to 12 degrees Fahrenheit higher than ambient temperature at engine start.

In addition to the requirements above, the denominator(s) for the following monitors must be incremented if and only if the component or strategy is commanded ''on'' for a time greater than or equal to 10 seconds:

- Gasoline secondary air system;
- Cold start emission reduction strategy;
- Components or systems that operate only at engine start-up (e.g., glow plugs, intake air heaters) and are subject to monitoring under ''other emission control systems'' or comprehensive component output components.

For purposes of determining this commanded ''on'' time, the OBD system may not include time during intrusive operation of any of the components or strategies later in the same drive cycle solely for the purposes of monitoring.

In addition to the requirements above, the denominator(s) for the monitors of the following output components (except those operated only at engine start-up as outlined above) must be incremented if and only if the component is commanded to function (e.g., commanded ''on'', ''open'', ''closed'', ''locked'') two or more times during the drive cycle or for a time greater than or equal to 10 seconds, whichever occurs first:

- Variable valve timing and/or control system
- ''Other emission control systems''
- Comprehensive component (output component only, e.g., turbocharger waste-gates, variable length manifold runners)

For monitors of the following components, the manufacturer may use alternative or additional criteria to that set forth above for incrementing the denominator. To do so, the manufacturer would need to be able to demonstrate that the criteria would be equivalent to the criteria outlined above at measuring the frequency of monitor operation relative to the amount of engine operation:

- Engine cooling system input components
- ''Other emission control systems''
- Comprehensive component input components that require extended monitoring evaluation (e.g., stuck fuel level sensor rationality), and temperature sensor rationality monitors
- DPF regeneration frequency

For monitors of the following components or other emission controls that experience infrequent regeneration events, the manufacturer may use alternative or additional criteria to that set forth above for incrementing the denominator. To do so, the manufacturer would need to ensure that the criteria would be equivalent to the criteria outlined above at measuring the frequency of monitor operation relative to the amount of engine operation:

- NMHC converting catalysts
- Diesel particulate filters

For hybrid engine systems, engines that employ alternative engine start hardware or strategies (e.g., integrated starter and generators), or alternative

[49] See 86.010–18(d)(3)(iii).

[50] See 86.010–18(d)(4) for details on the denominator.

fueled engines (e.g., dedicated, bi-fuel, or dual-fuel applications), the manufacturer may request Administrator approval to use alternative criteria to that set forth above for incrementing the denominator. In general, approval would not be given for alternative criteria that only employ engine shut off at or near idle/vehicle stationary conditions. Approval of the alternative criteria would be based on the equivalence of the alternative criteria at determining the amount of engine operation relative to the measure of conventional engine operation in accordance with the criteria above.

The numerators and denominators may need to be disabled at some times.[51] To do this, within 10 seconds of a malfunction being detected (i.e., a pending, MIL-on, or active DTC being stored) that disables a monitor required to meet the performance tracking requirements,[52] the OBD system must disable further incrementing of the corresponding numerator and denominator for each monitor that is disabled. When the malfunction is no longer detected (e.g., the pending DTC is erased through self-clearing or through a scan tool command), incrementing of all corresponding numerators and denominators should resume within 10 seconds. Also, within 10 seconds of the start of a power takeoff unit (PTO) that disables a monitor required to meet the performance tracking requirements, the OBD system should disable further incrementing of the corresponding numerator and denominator for each monitor that is disabled. When the PTO operation ends, incrementing of all corresponding numerators and denominators should resume within 10 seconds. The OBD system must disable further incrementing of all numerators and denominators within 10 seconds if a malfunction has been detected in any component used to determine if: Vehicle speed/calculated load; ambient temperature; elevation; idle operation; engine cold start; or, time of operation has been satisfied, and the corresponding pending DTC has been stored. Incrementing of all numerators and denominators should resume within 10 seconds when the malfunction is no longer present (e.g., pending DTC erased through self-clearing or by a scan tool command).

The in-use performance monitoring ratio itself is defined as the numerator for the given monitor divided by the denominator for that monitor.

b. Standardized Tracking and Reporting of Monitor Performance

Consistent with our proposal, we are requiring that the OBD system separately report an in-use monitor performance numerator and denominator for each of the following components:[53]

- For diesel engines: NMHC catalyst bank 1, NMHC catalyst bank 2, NO_X catalyst bank 1, NO_X catalyst bank 2, exhaust gas sensor bank 1, exhaust gas sensor bank 2, EGR/VVT system, DPF system, turbo boost control system, and the NO_X adsorber. The OBD system must also report a general denominator and an ignition cycle counter in the standardized format discussed below and in section II.F.5.
- For gasoline engines: catalyst bank 1, catalyst bank 2, oxygen sensor bank 1, oxygen sensor bank 2, evaporative leak detection system, EGR/VVT system, and secondary air system. The OBD system must also report a general denominator and an ignition cycle counter in the standardized format specified below and in section II.F.5.

The OBD system will be required to report a separate numerator for each of the components listed in the above bullet lists. For specific components or systems that have multiple monitors that are required to be reported—e.g., exhaust gas sensor bank 1 may have multiple monitors for sensor response or other sensor characteristics—the OBD system should separately track numerators and denominators for each of the specific monitors and report only the corresponding numerator and denominator for the specific monitor that has the lowest numerical ratio. If two or more specific monitors have identical ratios, the corresponding numerator and denominator for the specific monitor that has the highest denominator should be reported for the specific component. The numerator(s) must be reported as discussed in section II.F.5.[54]

The OBD system will also be required to report a separate denominator for each of the components listed in the above bullet lists. The denominator(s) must be reported as discussed in section II.F.5.[55]

Similarly, for the in-use performance ratio, determining which corresponding numerator and denominator to report as required for specific components or systems that have multiple monitors that are required to be reported—e.g., exhaust gas sensor bank 1 may have multiple monitors for sensor response or other sensor characteristics—the ratio should be calculated as discussed in section II.F.5.[56]

The ignition cycle counter is defined as a counter that indicates the number of ignition cycles a vehicle has experienced. The ignition cycle counter must also be reported as discussed in section II.F.5.[57] The ignition cycle counter, when incremented, should be incremented by an integer of one. The ignition cycle counter may not be incremented more than once per ignition cycle. The ignition cycle counter should be incremented within 10 seconds if and only if the engine exceeds an engine speed of 50 to 150 rpm below the normal, warmed-up idle speed (as determined in the drive position for vehicles equipped with an automatic transmission) for at least two seconds plus or minus one second. The OBD system should disable further incrementing of the ignition cycle counter within 10 seconds if a malfunction has been detected in any component used to determine if engine speed or time of operation has been satisfied and the corresponding pending DTC has been stored. The ignition cycle counter may not be disabled from incrementing for any other condition. Incrementing of the ignition cycle counter should resume within 10 seconds after the malfunction is no longer present (e.g., pending DTC erased through self-clearing or by a scan tool command).

F. Standardization Requirements

Consistent with our proposal, the final regulation includes requirements for manufacturers to standardize certain features of the OBD system.[58] Effective standardization assists all repair technicians in diagnosing and repairing malfunctions by providing equal access to essential repair information, and requires structuring the information in a common format from manufacturer to manufacturer. Additionally, the standardization will help to facilitate the potential use of OBD checks in heavy-duty inspection and maintenance programs.

The features that will be standardized include:

[51] See 86.010–18(d)(5).

[52] These monitors, as presented in section II.A.3, are, for diesel engines: the NMHC catalyst, the CDPF system, the NO_X adsorber system, the NO_X converting catalyst system, and the boost system; and, for gasoline engines: the catalyst, the evaporative system, and the secondary air system; and, for all engines, the exhaust gas sensors, the EGR system, and the VVT system.

[53] See § 86.010–18(e)(1).

[54] See § 86.010–18(e)(2).

[55] See § 86.010–18(e)(3).

[56] See § 86.010–18(e)(4).

[57] See § 86.010–18(e)(5).

[58] See § 86.010–18(k).

• The diagnostic connector, the computer communication protocol (beginning in model year 2013 as we proposed);
• The hardware and software specifications for tools used by service technicians;
• The information communicated by the onboard computer and the methods for accessing that information;
• The numeric designation of the DTCs stored when a malfunction is detected; and
• The terminology used by manufacturers in their service manuals.

Also consistent with our proposal, only a certain minimum set of emissions-related information must be made available through the standardized format, protocol, and connector. We are not limiting engine manufacturers as to what protocol they use for engine control, communication between onboard computers, or communication to manufacturer-specific scan tools or test equipment. Further, we are not prohibiting engine manufacturers from equipping the vehicle with additional diagnostic connectors or protocols as required by other suppliers or purchasers. For example, fleets that use data logging or other equipment that requires the use of SAE J1587 communication and connectors could still be installed and supported by the engine and vehicle manufacturers. The OBD rules only require that engine manufacturers also equip their vehicles with a specific connector and communication protocol that meet the standardized requirements to communicate a minimum set of emissions-related diagnostic, service and, potentially, inspection information.

1. Reference Documents

We are requiring that OBD systems comply with the provisions laid out in certain Society of Automotive Engineers (SAE) and/or International Organization of Standards (ISO) documents that are incorporated by reference (IBR) into federal regulation. Details regarding these SAE and ISO documents can be found in § 86.1(b) and in § 86.010–18(k).

Notably, we are requiring that OBD systems on engines placed in over 14,000 pound vehicles use either the SAE J1939 or the ISO 15765–4:2005(E) communication protocols. Note that some manufacturers have expressed interest in the ISO 27145 standard. As of this writing, that standard is not available. Should it become available in time for model year 2013 and later implementation, we will consider allowing that standard and may issue a technical amendment, direct final rule, or proposed rule to address it.

2. Diagnostic Connector Requirements

We have made no substantive changes relative to our proposal with respect to the diagnostic data link connector. The one change we have made is simply to allow the Administrator to approve alternative locations for the connector. We have made this change to accommodate certain applications such as buses in which the required location would not work well. Note that the requirements for model years 2013 and later now appear in § 86.010–18 rather than § 86.013–18 as in our proposal.[59]

3. Communications to a Scan Tool

In light-duty OBD, manufacturers are allowed to use one of four protocols for communication between a generic scan tool and the vehicle's onboard computer. A generic scan tool automatically cycles through each of the allowable protocols until it hits upon the proper one with which to establish communication with the particular onboard computer. While this has generally worked successfully in the field, some communication problems have arisen.

In an effort to address these problems, CARB has made recent changes to their light-duty OBDII regulation that require all light-duty vehicle manufacturers to use only one communication protocol by the 2008 model year. In making these changes, CARB staff argued that their experience with standardization under the OBD II regulation showed that having a single set of standards used by all vehicles would be desirable. CARB staff argued that a single protocol offers a tremendous benefit to both scan tool designers and service technicians. Scan tool designers could focus on added feature content and could expend much less time and money validating basic functionality of their product on all the various permutations of protocol interpretations that are implemented. In turn, technicians would likely get a scan tool that works properly on all vehicles without the need for repeated software updates that incorporate ''work-arounds'' or other patches to fix bugs or adapt the tool to accommodate slight variances in how the multiple protocols interact with each other or are implemented by various manufacturers. Further, a single protocol should also be beneficial to fleet operators that use add-on equipment such as data loggers, and for vehicle manufacturers that integrate parts from various engine and component suppliers all of which must work together.

Based on our similar experiences at the federal level with communication protocols giving rise to service and inspection/maintenance program issues, we initially wanted to propose a single communication protocol for engines used in over 14,000 pound vehicles. However, the affected industry has been divided over which single protocol should be required and has strongly argued for more than one protocol to be allowed. Therefore, for vehicles with diesel engines, we proposed and are allowing manufacturers use either the standards set forth in SAE J1939, or those set forth in the 500 kbps baud rate version of ISO 15765. For vehicles with gasoline engines, we are requiring that manufacturers use the 500 kbps baud rate version of ISO 15765.[60] Manufacturers would be required to use only one standard to meet all the standardization requirements on a single vehicle; that is, a vehicle must use only one protocol for all OBD modules on the vehicle.

As noted above, some manufacturers have expressed interest in the ISO 27145 standard. That standard is being developed as part of the Worldwide Harmonized Heavy-duty OBD global technical regulation (WWH–OBD).[61] As of this writing, that ISO standard is not available. Should it become available in time for model year 2013 and later implementation, we will consider allowing that standard and may issue a technical amendment, direct final rule, or proposed rule to address it.

4. Required Emissions Related Functions

We have made only a few changes in the final rule relative to our proposal. We believe that all of these changes are minor and serve to ease the burden on manufacturers without sacrificing our OBD program. The first change is that made to the permanent DTC erasure provisions.[62] The final provisions provide more clarity and flexibility to manufacturers in cases where stored DTC information has been erased via scan tool or battery disconnect. These changes are consistent with changes made to CARB's OBDII regulation in 2007 and changes we believe CARB will make when revising their HDOBD regulation (expected in 2009).

[59] See proposed §§ 86.010–18(k)(2) and 86.013–18(k)(2) and compare to final § 86.010–18(k)(2).

[60] See § 86.010–18(k)(3).

[61] Global Technical Regulation Number 5: Technical Requirements for On-board Diagnostic Systems for Road Vehicles; ECE/TRANS/180/Add.5; 23 January 2007, see *http://www.unece.org/trans/main/wp29/wp29wgs/wp29gen/wp29glob_registry.html.*

[62] See proposed § 86.010–18(b)(3)(iii) and compare to the final § 86.010–18(b)(3)(iii).

We have also made a slight change to the definition of idle where we require that the OBD system track engine run-time and track the amount of time operating in idle mode. The provision removes the phrase ''vehicle speed less than 1 mph'' and replaces it with ''engine speed less than or equal to 200 rpm above normal warmed-up idle or vehicle speed less than 1 mph.'' We have made this change to be consistent with industry request, and because we believe it does not sacrifice our intent in any way.[63]

We have also made minor changes to the CAL ID and CVN requirements.[64] These changes allow for multiple CAL IDs per diagnostic or emission critical control unit. Our proposal allowed for only one. We would prefer that there be only one for the sake of minimizing confusion. Manufacturers would be required to get Administrator approval to use multiple CAL IDs and would also be required to communicate these to the scan tool in order of priority which should minimize if not eliminate possible confusion. We have made a corresponding change to the CVN requirements for systems using the multiple CAL ID provision.

5. In-Use Performance Ratio Tracking Requirements

To separately report an in-use performance ratio for each applicable monitor as discussed in sections II.B through II.D, we proposed that manufacturers be required to implement software algorithms to report a numerator and denominator in a standardized format. We have made no changes to those requirements in the final rule, with the exception of the minor change to the definition of idle from ''vehicle speed less than one mile per hour'' to ''engine speed less than or equal to 200 rpm above normal warmed-up idle and vehicle speed less than or equal to one mile per hour.''[65]

6. Exceptions to Standardization Requirements

For alternative-fueled engines derived from a diesel-cycle engine, we are allowing the standardized requirements discussed in this section that are applicable to diesel engines rather than meeting the requirements applicable to gasoline engines.

G. Implementation Schedule, In-Use Liability, and In-Use Enforcement

1. Implementation Schedule and In-Use Liability Provisions

Table II.G–1 summarizes the implementation schedule for the OBD monitoring requirements, the certification requirements, and the in-use liabilities. This implementation schedule is identical to the proposed schedule. More detail regarding the implementation schedule and liabilities can be found in the sections that follow.

TABLE II.G–1—OBD CERTIFICATION REQUIREMENTS AND IN-USE LIABILITY FOR DIESEL FUELED AND GASOLINE FUELED ENGINES OVER 14,000 POUNDS

Model year	Applicability	Certification requirement	In-use liability
2010–2012	Parent rating within 1 compliant engine family.[a]	Full liability to thresholds according to certification demonstration procedures.[b]	Full liability to 2x thresholds.[c]
	Child ratings within the compliant engine family.	Certification documentation only (i.e., no certification demonstration); no liability to thresholds.	Liability to monitor and detect as noted in certification documentation.
	All other engine families and ratings	None	None.
2013–2015	Parent rating from 2010–2012 and parent rating within 1–2 additional engine families.	Full liability to thresholds according to certification demonstration procedures.	Full liability to 2x thresholds.
	Child ratings from 2010–2012 and parent ratings from any remaining engine families or OBD groups.[d]	Full liability to thresholds but certification documentation only.	Full liability to 2x thresholds.
	Additional engine ratings	Certification documentation only; no liability to thresholds.	Liability to monitor and detect as noted in certification documentation.
2016–2018	One rating from 1–3 engine families and/or OBD groups.	Full liability to thresholds according to certification demonstration procedures.	Full liability to thresholds.
	Remaining ratings	Full liability to thresholds but certification documentation only.	Full liability to 2x thresholds.
2019+	One rating from 1–3 engine families and/or OBD groups.	Full liability to thresholds according to certification demonstration procedures.	Full liability to thresholds.
	Remaining ratings	Full liability to thresholds but certification documentation only.	Full liability to thresholds.

Notes: (a) Parent and child ratings are defined in section II.G; which rating(s) serves as the parent rating and which engine families must comply is not left to the manufacturer, as discussed in section II.G. (b) The certification demonstration procedures and the certification documentation requirements are discussed in section VII. (c) Where in-use liability to thresholds and 2x thresholds is noted, manufacturer liability to monitor and detect as noted in their certification documentation is implied. (d) OBD groups are groupings of engine families that use similar OBD strategies and/or similar emissions control systems, as described in the text.

As we proposed, for the 2010 through 2012 model years, manufacturers are required to implement OBD on one engine family. All other 2010 through 2012 engine families are not subject to any OBD requirements unless otherwise required to do so (e.g., to demonstrate that SCR equipped vehicles will not be operated without urea). For 2013, manufacturers are required to implement OBD on all engine families.

We are setting this implementation schedule for several reasons. First, industry has made credible arguments that their resources are stretched to the limit developing and testing strategies for compliance with the 2007/2010 heavy-duty highway emissions standards. We do not want to jeopardize their success toward that goal by being too aggressive with our OBD program.

[63] See proposed § 86.010–18(k)(6)(i)(B) and compare to final § 86.010–18(k)(6)(i)(B).

[64] See proposed § 86.010–18(k)(4)(vi) and (k)(4)(vii)(A) and compare to final § 86.010–18(k)(4)(vi) and (k)(4)(vii)(A).

[65] See final §§ 86.010–18(k)(5) and 86.010–18(k)(6).

Second, OBD is a complex and difficult regulation with which to comply. We believe that our implementation schedule would give industry the opportunity to introduce OBD systems on a limited number of engines giving them and us very valuable learning experience. Should mistakes or errors in regulatory interpretation occur, the ramifications would be limited to only a subset of the new vehicle fleet rather than the entire new vehicle fleet. Lastly, the OBD requirements and the production vehicle evaluation provisions (discussed in Section VII), reflect 10 to 20 years of learning by EPA, CARB, and industry (primarily the light-duty gasoline industry) as to what works and what does not work. This is, perhaps, especially true for those OBD elements that involve the interface between the OBD system and service and I/M inspection personnel. Gasoline manufacturers have had the ability to evolve their OBD systems along with this learning process. However, diesel engine manufacturers have not really been involved in this learning process and, as a result, 100 percent implementation in 2010 would be analogous to implementing 10 to 20 years of OBD learning in one implementation step. We believe that implementing slowly rather than one big step will benefit everyone involved.

Table II.G–1 makes reference to ''parent'' and ''child'' ratings. In general, engine manufacturers certify an engine family that consists of several ratings having slightly different horsepower and/or torque characteristics but no differences large enough to require a different engine family designation. For emissions certification, the parent rating—i.e., the rating for which emissions data are submitted to EPA for the purpose of demonstrating emissions compliance—is defined as the ''worst case'' rating. This worst case rating is the rating considered as having the worst emissions performance and, therefore, its compliance demonstrates that all other ratings within the family must comply. For OBD purposes, we want to limit the burden on industry—hence the requirement for only one compliant engine family in 2010—yet maximize the impact of the OBD system. Therefore, for model years 2010 through 2012, we are defining the OBD parent rating as the rating having the highest weighted projected sales within the engine family having the highest weighted projected sales, with sales being weighted by the useful life of the engine rating. We have added a new provision that allows the Administrator to approve an alternative rating as the parent rating than that described by this text and this represents a slight departure from the proposal.[66] Table II.G–2 presents a hypothetical example for how this would work absent Administrator approval to do otherwise. Using this approach, the OBD compliant engine family in 2010 would be the engine family projected to produce the most in-use emissions (based on sales weighted by expected miles driven). Likewise, the fully liable parent OBD rating would be the rating within that family projected to produce the most in-use emissions.

TABLE II.G–2—HYPOTHETICAL EXAMPLE OF HOW THE OBD PARENT AND CHILD RATINGS WOULD BE DETERMINED

OBD group	Engine family	Rating	Projected sales	Certified useful life	OBD weighting—engine rating [a] (billions)	OBD weighting—engine family [b] (billions)
I	A	1	10,000	285,000	2.85	14.25
		2	40,000	285,000	11.4	.....
	B	1	10,000	435,000	4.35	21.60
		2	20,000	435,000	8.70	.....
		3	30,000	285,000	8.55	.....
II	C	1	20,000	110,000	2.20	7.70
		2	50,000	110,000	5.50	.....

Notes: (a) For engine family A, rating 1, 10,000 × 285,000/1 billion = 2.85. (b) For engine family A, 2.85 + 11.4 = 14.25.

In the example shown in Table II.G–2, the compliant engine family in 2010 would be engine family B and the parent OBD rating within that family would be rating 2. The other OBD compliant ratings within engine family B would be dubbed the ''child'' ratings. For model years 2013 through 2015, the parent ratings would be those ratings having the highest weighted projected sales within each of the one to three engine families having the highest weighted projected sales, with sales being weighted by the useful life of the engine rating. In the example shown in Table II.G–2, the parent ratings would be rating 2 of engine family A, rating 2 of engine family B, and rating 2 of engine family C (Note that this is only for illustration purposes since the regulations would not require that a manufacturer with only three engine families have three parent ratings and instead would require only one).

The manufacturer does not need to submit test data demonstrating compliance with the emissions thresholds for the child ratings. We would fully expect these child ratings to use OBD calibrations—i.e., malfunction trigger points—that are identical or nearly so to those used on the parent rating. However, we would allow manufacturers to revise the calibrations on their child ratings where necessary so as to avoid unnecessary or inappropriate MIL illumination. Such revisions to OBD calibrations have been termed ''extrapolated'' OBD calibrations and/or systems. The revisions to the calibrations on child ratings and the rationale for them will need to be very clearly described in the certification documentation.

For the 2013 and later model years, we are requiring that manufacturers certify one to three parent ratings. The actual number of parent ratings would depend upon the manufacturer's fleet and would be based on both the emissions control system architectures present in their fleet and the similarities/differences of the engine families in their fleet. For example, a manufacturer that uses a DPF with NO_X adsorber on each of the engines would have only one system architecture. Another manufacturer that uses a DPF with NO_X adsorber on some engines and a DPF with SCR on others would have

[66] See § 86.010–18(o)(1)(i) and (o)(2)(ii)(B) to see this new provision.

at least two architectures. We expect that manufacturers will group similar architectures and similar engine families into so called ''OBD groups.'' These OBD groups would consist of a combination of engines, engine families, or engine ratings that use the same OBD strategies and similar calibrations. The manufacturer will be required to submit details regarding their OBD groups as part of their certification documentation that shows the engine families and engine ratings within each OBD group for the coming model year. While a manufacturer may end up with more than three OBD groups, we do not intend to require a parent rating for more than three OBD groups. Therefore, in the example shown in Table II.G–2, rather than submitting test data for the three parent ratings as suggested above, the OBD grouping would result in the parent ratings being rating 2 of engine family B and rating 2 of engine family C. These parents would represent OBD groups I and II, and the manufacturer's product line. For 2013 through 2015, we will allow the 2010 parent to again act as a parent rating and, provided no significant changes had been made to the engine or its emissions control system, complete carryover would be possible. However, for model years 2016 and beyond, we would work closely with CARB staff and the manufacturer to determine the parent ratings so that the same ratings are not acting as the parents every year. In other words, our definitions for the OBD parent ratings as discussed here apply only during the years 2010 through 2012 and again for the years 2013 through 2015.

Also consistent with our proposal are the relaxations for in-use liability during the 2010 through 2018 model years. The first such relaxation is higher interim in-use compliance standards for those OBD monitors calibrated to specific emissions thresholds. For the 2010 through 2015 model years, an OBD monitor on an in-use engine will not be considered non-compliant (i.e., subject to enforcement action) unless emissions exceed twice the OBD threshold without detection of a malfunction. For example, for an EGR monitor on an engine with a NO_X FEL of 0.2 g/bhp–hr and an OBD threshold of 0.5 g/bhp–hr (i.e., the NO_X FEL+0.3), a manufacturer would not be subject to enforcement action unless emissions exceed 1.0 g/bhp–hr NO_X without a malfunction being detected. For the model years 2016 through 2018, parent ratings will be liable to the certification emissions thresholds, but child ratings and other ratings would be liable to twice the certification thresholds. Beginning in the 2019 model year, all families and all ratings would be liable to the certification thresholds.

The second in-use relaxation is a limitation in the number of engines that will be liable for in-use compliance with the OBD emissions thresholds. Consistent with our proposal, for 2010 through 2012, we are requiring that manufacturers be fully liable in-use to twice the thresholds for only the OBD parent rating. The child ratings within the compliant engine family would have liability for monitoring in the manner described in the certification documentation, but would not have liability for detecting a malfunction at the specified emissions thresholds. For example, a child rating's DPF monitor designed to operate under conditions X, Y, and Z and calibrated to detect a backpressure within the range A to B would be expected to do exactly that during in-use operation. However, if the tailpipe emissions of the child engine were to exceed the applicable OBD in-use thresholds (i.e., 2x the certification thresholds during 2010–2015), despite having a backpressure within range A to B under conditions X, Y, and Z, there would be no in-use OBD failure nor cause for enforcement action. In fact, we would expect the OBD monitor to determine that the DPF was functioning properly since its backpressure was in the acceptable range. For model years 2013 through 2015, this same in-use relaxation will apply to those engine families that do not lie within an engine family for which a parent rating has been certified. For 2016 and later model years, all engines will have some in-use liability to thresholds, either the certification thresholds or twice those thresholds.

These in-use relaxations are meant to provide ample time for manufacturers to gain experience without an excessive level of risk for mistakes. They also allow manufacturers to fine-tune their calibration techniques over a six to ten year period.

We are also requiring a specific implementation schedule for the standardization requirements discussed in section II.F. We initially intended to require that any compliant OBD engine family would be required to implement all of the standardization requirements. However, we became concerned that, during model years 2010 through 2012, we could have a situation where OBD compliant engines from manufacturer A might be competing against non-OBD engines from manufacturer B for sales in the same truck. In such a case, the truck builder would be placed in a difficult position of needing to design their truck to accommodate OBD compliant engines—along with a standardized MIL, a specific diagnostic connector location specification, etc.—and non-OBD engines. After consideration of this almost certain outcome, we decided to limit the standardization requirements that must be met during the 2010 through 2012 model years. Beginning in 2013, all engines will be OBD compliant and this would become a moot issue. Table II.G–3 shows the implementation schedule for standardization requirements.

TABLE II.G–3—OBD STANDARDIZATION REQUIREMENTS FOR DIESEL FUELED AND GASOLINE FUELED ENGINES OVER 14,000 POUNDS

Model year	Applicability	Required standardization features	Waived standardization features
2010–2012	Parent and Child ratings within 1 compliant engine family [a].	Emissions related functions (II.F.4) except for the requirement to make the data available in a standardized format or in accordance with SAE J1979/1939 specifications. MIL activation and deactivation.[b] Performance tracking—calculation of numerators, denominators, ratios.	Standardized connector (II.F.2). Dedicated (i.e., regulated OBD-only) MIL. Communication protocols (II.F.3). Emissions related functions (II.F.4) with respect to the requirement to make the data available in a standardized format or in accordance with SAE J1979/1939 specifications.
	Other engine families	None	All.
2013+	All engine families and ratings	All	None.

Notes: [a] Parent and child ratings are defined in section II.G; which rating serves as the parent rating and which engine families must comply is not left to the manufacturer, as discussed in section II.G. [b] There would be no requirement for a dedicated MIL and no requirement to use a specific MIL symbol, only that a MIL be used and that it use the specified activation/deactivation logic.

2. In-Use Enforcement

When conducting our in-use enforcement investigations into OBD systems, we intend to use all tools we have available to analyze the effectiveness and compliance of the system. These tools may include on-vehicle emission testing systems such as the portable emissions measurement systems (PEMS). We may also use scan tools and data loggers to analyze the data stream information to compare real world operation to the documentation provided at certification.

Importantly, we do not intend to pursue enforcement action against a manufacturer for not detecting a failure mode that could not have been reasonably predicted or otherwise detected using monitoring methods known at the time of certification. For example, we are imposing a challenging set of requirements for monitoring of DPF systems. As of today, engine manufacturers are reasonably confident in their ability to detect certain DPF failure modes at or near the final thresholds—e.g., a leaking DPF resulting from a cracked substrate—but are not confident in their ability to detect some other DPF failure modes—e.g., a leaking DPF resulting from a partially melted substrate. If a partially melted substrate indeed cannot be detected and this is known during the certification process, we cannot expect such a failure to be detected on an in-use vehicle.[67] This provision is consistent with our proposal.

We also want to make it clear who would be the responsible party should we pursue any in-use enforcement action with respect to OBD. We are very familiar with the heavy-duty industry and its tendency toward separate engine and component suppliers. This contrasts with the light-duty industry which tends toward a more vertically integrated structure. The non-vertically integrated nature of the heavy-duty industry can present unique difficulties for OBD implementation and for OBD enforcement. With the complexity of OBD systems, especially those meeting today's requirements, we expect the interactions between the various parties involved—engine manufacturer, transmission manufacturer, vehicle manufacturer, etc.—to be further complicated. Nonetheless, in the end the vast majority of the OBD requirements apply directly to the engine and its associated emission controls, and the engine manufacturer will have complete responsibility to ensure that the OBD system performs properly in-use. Given the central role the engine and engine control unit plays in the OBD system, we are requiring that the party certifying the engine and OBD system (typically, the engine manufacturer) be the responsible party for in-use compliance and enforcement actions. In this role, the certifying party will be our sole point of contact for potential noncompliances identified during in-use or enforcement testing. We will leave it to the engine manufacturer to determine the ultimate party responsible for the potential noncompliance (e.g., the engine manufacturer, the vehicle manufacturer, or some other supplier). In cases where remedial action such as an engine recall would be required, the certifying party would take on the responsibility of arranging to bring the engines or OBD systems back into compliance. Given that heavy-duty engines are already subject to various emission requirements including engine emission standards, labels, and certification, engine manufacturers currently impose restrictions via signed agreements with engine purchasers to ensure that their engines do not deviate from their certified configuration when installed. We expect the OBD system's installation to be part of such agreements in the future.

H. Changes to the Existing 8,500 to 14,000 Pound Diesel OBD Requirements

We are also making final certain changes to our OBD requirements for diesel engines used in heavy-duty vehicles under 14,000 pounds (see 40 CFR 86.007–17 for engine-based requirements and 40 CFR 86.1806–05 for vehicle or chassis-based requirements). Table II.H–1 summarizes the changes to under 14,000 pound heavy-duty diesel vehicle emissions thresholds at which point a component or system has failed to the point of requiring an illuminated MIL and a stored DTC. Table II.H–2 summarizes the changes for diesel engines used in heavy-duty applications under 14,000 pounds. The changes are meant to maintain consistency with the diesel OBD requirements for over 14,000 pound applications.

TABLE II.H–1—NEW AND/OR CHANGES TO EXISTING, EMISSIONS THRESHOLDS FOR DIESEL FUELED CI HEAVY-DUTY VEHICLES UNDER 14,000 POUNDS (G/MI)

Component/monitor	MY	NMHC	CO	NO_X	PM
NMHC catalyst system	2010–2012	2.5x			
	2013+	2x			
NO_X catalyst system	2007–2009			4x	
	2010–2012			+0.6	
	2013+			+0.3	
DPF system	2010–2012				4x
	2013+				+0.04
Air-fuel ratio sensors upstream	2007–2009	2.5x	2.5x	3x	4x
	2010–2012	2.5x	2.5x	+0.3	+0.02
	2013+	2x	2x	+0.3	+0.02
Air-fuel ratio sensors downstream	2007–2009	2.5x		3x	4x
	2010–2012	2.5x		+0.3	4x
	2013+	2x		+0.3	+0.04
NO_X sensors	2007–2009			4x	5x
	2010–2012			+0.6	4x
	2013+			+0.3	+0.04
"Other monitors" with emissions thresholds	2007–2009	2.5x	2.5x	3x	4x
	2010–2012	2.5x	2.5x	+0.3	4x
	2013+	2x	2x	+0.3	+0.02

Notes: MY=Model Year; 2.5x means a multiple of 2.5 times the applicable emissions standard; +0.3 means the standard plus 0.3; not all monitors have emissions thresholds but instead rely on functionality and rationality checks as described in section II.D.4.

[67] See, for example, § 86.010–18(p)(1)(iv).

TABLE II.H–2—NEW AND/OR CHANGES TO EXISTING, EMISSIONS THRESHOLDS FOR DIESEL FUELED CI ENGINES USED IN HEAVY-DUTY VEHICLES UNDER 14,000 POUNDS (G/BHP-HR)

Component/monitor	MY	Std/FEL	NMHC	CO	NO_X	PM
NMHC catalyst system	2010–2012	All	2.5x	.....	.....	.....
	2013+	All	2x	.....	.....	.....
NO_X catalyst system	2007–2009	>0.5 NO_X	.....	.....	1.75x	.....
	2007–2009	<=0.5 NO_X	.....	.....	+0.6	.....
	2010–2012	All	.....	.....	+0.6	.....
	2013+	All	.....	.....	+0.3	.....
DPF system	2010–2012	All	.....	.....	.....	0.05/+0.04
	2013+	All	.....	.....	.....	0.05/+0.04
Air-fuel ratio sensors upstream	2007–2009	>0.5 NO_X	2.5x	2.5x	1.75x	0.05/+0.04
	2007–2009	<=0.5 NO_X	2.5x	2.5x	+0.5	0.05/+0.04
	2010–2012	All	2.5x	2.5x	+0.3	0.03/+0.02
	2013+	All	2x	2x	+0.3	0.03/+0.02
Air-fuel ratio sensors downstream	2007–2009	>0.5 NO_X	2.5x	.....	1.75x	0.05/+0.04
	2007–2009	<=0.5 NO_X	2.5x	.....	+0.5	0.05/+0.04
	2010–2012	All	2.5x	.....	+0.3	0.05/+0.04
	2013+	All	2x	.....	+0.3	0.05/+0.04
NO_X sensors	2007–2009	>0.5 NO_X	.....	.....	1.75x	0.05/+0.04
	2007–2009	<=0.5 NO_X	.....	.....	+0.6	0.05/+0.04
	2010–2012	All	.....	.....	+0.6	0.05/+0.04
	2013+	All	.....	.....	+0.3	0.05/+0.04
"Other monitors" with emissions thresholds	2007–2009	>0.5 NO_X	2.5x	2.5x	1.75x	0.05/+0.04
	2007–2009	<=0.5 NO_X	2.5x	2.5x	+0.5	0.05/+0.04
	2010–2012	All	2.5x	2.5x	+0.3	0.03/+0.02
	2013+	All	2x	2x	+0.3	0.03/+0.02

Notes: MY=Model Year; 2.5x means a multiple of 2.5 times the applicable emissions standard or family emissions limit (FEL); +0.3 means the standard or FEL plus 0.3; 0.05/+0.04 means an absolute level of 0.05 or an additive level of the standard or FEL plus 0.04, whichever level is higher; not all monitors have emissions thresholds but instead rely on functionality and rationality checks as described in section II.D.4.

1. NO_X Aftertreatment Monitoring

We are requiring that the 8,500 to 14,000 pound NO_X aftertreatment monitoring requirements mirror those for engines used in vehicles over 14,000 pounds. The current regulations require detection of a NO_X catalyst malfunction before emissions exceed 1.5x the emissions standards. We do not believe that such a tight threshold level is appropriate for diesel SCR and lean NO_X catalyst systems. The final thresholds are less stringent than proposed until the 2013 model year where they are consistent with our proposal. We have made the thresholds less stringent for the same reasons as discussed in section II.B. The required monitoring conditions with respect to performance tracking (discussed in section II.B.6.c) would not apply for under 14,000 pound heavy-duty applications since we do not have performance tracking requirements for under 14,000 pound applications. We are proposing this change for the 2007 model year.

2. Diesel Particulate Filter System Monitoring

We are requiring that the 8,500 to 14,000 pound DPF monitoring requirements mirror those discussed in section II.B.8. Our current regulations require detection of a catastrophic failure only. The proposed monitoring requirements contained emissions thresholds like those proposed for over 14,000 pound OBD. The final PM thresholds remain unchanged from the proposal. We have eliminated the proposed NMHC thresholds for the same reasons we have eliminated the requirement to monitor NMHC conversion of the DPF in the over 14,000 pound applications. The required monitoring conditions with respect to performance tracking (discussed in section II.B.8.c) would not apply for under 14,000 pound heavy-duty applications since we do not have performance tracking requirements for under 14,000 pound applications. We are requiring no new DPF monitoring requirements in the 2007 to 2009 model years because there is not sufficient lead time for manufacturers to develop a new monitor. The new, more stringent monitoring requirements would begin in the 2010 model year. Also, for 2010 through 2012, we are providing the option to monitor and detect a decrease in the expected pressure drop across the DPF, consistent with the provisions for over 14,000 pound applications. This option is being made available only to the engine certified systems since the requirement is based on the engine certification procedure.

3. NMHC Converting Catalyst Monitoring

The final requirements for NMHC converting catalyst monitoring are identical to those we proposed. However, we have added the option to monitor the ability of the NMHC catalyst to generate a 100 degree C temperature rise, or to reach the necessary regeneration temperature, within 60 seconds of initiating a regeneration event. We have added other criteria for this optional monitoring approach to ensure that the necessary regeneration temperature is being sustained and that the regeneration attempt be aborted should the regeneration temperature not be reached or sustained properly. This makes the 8,500 to 14,000 pound provisions consistent with the over 14,000 pound provisions.

4. Other Monitors

The final requirements for "other monitors" are identical to those we proposed, except that we have revised the NO_X sensor monitor NO_X threshold to +0.6 to be consistent with changes made for other monitors discussed above.

5. CARB OBDII Compliance Option and Deficiencies

We are also making final the proposed changes to our deficiency provisions for vehicles and engines meant for vehicles under 14,000 pounds. We have included specific mention of air-fuel ratio sensors and NO_X sensors where we had long referred only to oxygen sensors. We

have also updated the referenced CARB OBDII document that can be used to satisfy the federal OBD requirements.[68]

III. How Have the Service Information Availability Requirements Changed for This Final Rule?

A. What is the Important Background Information for the Provision Being Finalized for Service Information Availability?

Section 202(m)(5) of the CAA directs EPA to promulgate regulations requiring OEMs to provide to:

> Any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines, and the Administrator for use by any such persons, * * * any and all information needed to make use of the [vehicle's] emission control diagnostic system * * * and such other information including instructions for making emission-related diagnoses and repairs.

Such regulations are subject to the requirements of section 208(c) regarding protection of trade secrets; however, no such information may be withheld under section 208(c) if that information is provided (directly or indirectly) by the manufacturer to its franchised dealers or other persons engaged in the repair, diagnosing or servicing of motor vehicles.

On June 27, 2003 EPA published a final rulemaking (68 FR 38428) which set forth the Agency's service information regulations for light- and heavy-duty vehicles and engines below 14,000 pounds GVWR. These regulations, in part, required each covered Original Equipment Manufacturer (OEM) to do the following: (1) OEMs must make full text emissions-related service information available via the World Wide Web. (2) OEMs must provide equipment and tool companies with information that allows them to develop pass-through recalibration tools. (3) OEMs must make available enhanced diagnostic information to equipment and tool manufacturers and to make available OEM-specific diagnostic tools for sale. These requirements were finalized to ensure that aftermarket service and repair facilities have access to the same emission-related service information, in the same or similar manner, as that provided by OEMs to their franchised dealerships.

In the NPRM, we proposed several provisions related to the availability of service information. We proposed to require that each heavy-duty Original Equipment Manufacturer (OEM) do the following: (1) Make full text emissions-related service information available via the World Wide Web; (2) provide equipment and tool companies with information that allows them to develop pass-through reprogramming tools; (3) make available enhanced diagnostic information to equipment and tool manufacturers and to make available OEM-specific diagnostic tools for sale; (4) make available emissions-related training information. EPA has carefully considered the comments we have received on our proposed requirements. The service information provisions finalized in today's action provide maximum flexibility to engine manufacturers while still meeting the intent of the Clean Air Act to ensure fair and reasonable access by aftermarket service providers to service information and tools needed to service and repairs emissions-related problems on heavy-duty engines.

B. What Provisions are Being Finalized for Service Information Availability?

1. What Information is the OEM Required to Make Available?

Today's action requires OEMs to make available to any person engaged in the repairing or servicing of heavy-duty motor vehicles or motor vehicle engines above 14,000 pounds all information necessary to make use of the OBD systems and any information for making emission-related repairs, including any emissions-related information that is provided by the OEM to franchised dealers, beginning generally with MY2010, though for the provisions related to scan tool availability, we are allowing manufacturers until MY2013 to comply. This information includes, but is not limited to, the following:

(1) Manuals, technical service bulletins (TSBs), diagrams, and charts (the provisions for training materials, including videos and other media are discussed in Sections III.A.3 and III.A.4 below).

(2) A general description of the operation of each monitor, including a description of the parameter that is being monitored.

(3) A listing of all typical OBD diagnostic trouble codes associated with each monitor.

(4) A description of the typical enabling conditions for each monitor to execute during vehicle operation, including, but not limited to, minimum and maximum intake air and engine coolant temperature, vehicle speed range, and time after engine startup. A listing and description of all existing monitor-specific drive cycle information for those vehicles that perform misfire, fuel system, and comprehensive component monitoring.

(5) A listing of each monitor sequence, execution frequency and typical duration.

(6) A listing of typical malfunction thresholds for each monitor.

(7) For OBD parameters that deviate from the typical parameters, the OBD description shall indicate the deviation for the vehicles it applies to and provide a separate listing of the typical values for those vehicles.

(8) Identification and scaling information necessary to interpret and understand data available to a generic scan tool through Diagnostic Message 8 pursuant to SAE Recommended Practice J1939–73 (revised September 2006).

(9) Any information related to the service, repair, installation or replacement of parts or systems developed by third party (Tier 1) suppliers for OEMs, to the extent they are made available to franchise dealerships.

(10) Any information on other systems that can directly effect the emission system within a multiplexed system (including how information is sent between emission-related system modules and other modules on a multiplexed bus),

(11) Any information regarding any system, component, or part of a vehicle monitored by the OBD system that could in a failure mode cause the OBD system to illuminate the malfunction indicator light (MIL).

(12) Any other information relevant to the diagnosis and completion of an emissions-related repair. This information includes, but is not limited to, information needed to start the vehicle when the vehicle is equipped with an anti-theft or similar system that disables the engine described below in paragraph (13). This information also includes any OEM-specific emissions-related diagnostic trouble codes (DTCs) and any related service bulletins, trouble shooting guides, and/or repair procedures associated with these OEM-specific DTCs.

(13) Information regarding how to obtain the information needed to perform reinitialization of any computer or anti-theft system following an emissions-related repair. OEMs are not required to make this information available on the OEM's Web site unless they choose to do so. However, the OEM's Web site shall contain information on alternate means for obtaining the information and/or ability to perform reintialization. Beginning with the 2013 model year, we require that all OEM systems will be designed in such a way that no special tools or

[68] See 13 CCR 1968.2, approved November 9, 2007, Docket ID# EPA–HQ–OAR–2005–0047–0045.

processes will be necessary to perform reinitialization.

2. What are the Requirements for Web-based Delivery of the Required Information?

a. OEM Web Sites

Today's action finalizes a provision that requires OEMs to make available in full-text all of the information outlined above, on individual OEM Web sites. The only exceptions to the full-text requirements are training information, anti-theft information, and indirect information. Provisions for the availability of training information are discussed in Section III.B.4 of this document. Today's action requires that each OEM launch their individual Web sites with the required information by July 1, 2010 for all 2010 and later model year vehicles.

b. Timeliness and Maintenance of Information on OEM Web Sites

Today's action finalizes a provision that requires OEMs to make available the required information on their Web site within six months of model introduction. After this six month period, the required information for each model must be available and updated on the OEM Web site at the same time it is available by any means to their dealers.

EPA is also finalizing a provision that, beginning with the 2010 model year, OEMs maintain the required information in full text for at least 15 years after model introduction. After this fifteen-year period, OEMs can archive the required service information, but it must be made available upon request, in a format of the OEM's choice (e.g., CD–ROM).

c. Accessibility, Reporting and Performance Requirements for OEM Web Sites

Performance reports that adequately demonstrate that their individual Web sites meets the requirements outlined in § 86.010–38(j)(18) will be submitted to the Administrator annually or upon request by the Administrator. These reports shall also indicate the performance and effectiveness of the Web sites by using commonly used Internet statistics (e.g., successful requests, frequency of use, number of subscriptions purchased, etc.) EPA will issue additional direction in the form of official manufacturer guidance to further specify the process for submitting reports to the Administrator. In addition, EPA is finalizing a provision that requires OEMs to launch Web sites that meet the following performance criteria:

(1) OEM Web sites shall possess, sufficient server capacity to allow ready access by all users and have sufficient downloading capacity to assure that all users may obtain needed information without undue delay;

(2) Any reported broken Web links shall be corrected or deleted weekly.

(3) Web site navigation does not require a user to return to the OEM home page or a search engine in order to access a different portion of the site.

(4) Any manufacturer-specific acronym or abbreviation shall be defined in a glossary webpage which, at a minimum, is hyperlinked by each webpage that uses such acronyms and abbreviations. OEMs may request Administrator approval to use alternate methods to define such acronyms and abbreviations. The Administrator shall approve such methods if the motor vehicle manufacturer adequately demonstrates that the method provides equivalent or better ease-of-use to the website user.

(5) Indicates the minimum hardware and software specifications required for satisfactory access to the Web site(s).

d. Structure and Cost of OEM Web Sites

OEMs must implement Web sites that offer a range of time periods for on-line access and/or the amount of information purchased.

For any time ranges approved by the Administrator, OEMs must make their entire site accessible for the respective period of time and price. In other words, an OEM may not limit any or all ranges to just one make or one model.

Prior to the official launch of OEM Web sites, each OEM will also be required to present to the Administrator a specific outline of what will be charged for access to each of the tiers. OEMs must justify these charges, and submit to the Administrator information on the following parameters, which include but are not limited to, the following:

(1) The price the manufacturer currently charges their branded dealers for service information. At a minimum, this must include the direct price charged that is identified exclusively as being for service information, not including any payment that is incorporated in other fees paid by a dealer, such as franchise fees. In addition, we are requiring that the OEM must describe the information that is provided to dealers, including the nature of the information (e.g., the complete service manual), etc.; whether dealers have the option of purchasing less than all of the available information, or if purchase of all information is mandatory; the number of branded dealers who currently pay for this service information; and whether this information is made available to any persons at a reduced or no cost, and if so, identification of these persons and the reason they receive the information at a reduced cost.

(2) The price the manufacturer currently charges persons other than branded dealers for service information. The OEM must describe the information that is provided, including the nature of the information (e.g., the complete service manual, emissions control service manual), etc.; and the number of persons other than branded dealers to whom the information is supplied.

(3) The estimated number of persons to whom the manufacturer would be expected to provide the service information following implementation of today's requirements.

A complete list of the criteria for establishing reasonable cost can be found in the regulatory language for this final rule.[69] We are also finalizing a provision that, subsequent to the launch of the OEM Web sites, OEMs would be required to notify the Administrator upon the increase in price of any one or all of their approved time ranges of twenty percent or more accounting for inflation or that sets the charge for end-user access over the established price guidelines discussed above, including a justification based on the criteria for reasonable cost as established by this regulation.

e. Hyperlinking to and From OEM Web Sites

Today's action finalizes a provision that requires OEMs to allow direct simple hyperlinking to their Web sites from government Web sites and from all automotive-related Web sites, such as aftermarket service providers, educational institutions, and automotive associations.

f. Administrator Access to OEM Web Sites

Today's action finalizes a provision that requires that the Administrator shall have access to each OEM Web site at no charge to the Agency. The Administrator shall have access to the site, reports, records and other information as provided by sections 114 and 208 of the Clean Air Act and other provisions of law.

g. Other Media

We are finalizing a provision that require OEMs to make available for ordering the required information in some format approved by the

[69] See § 86.010–38(j)(8).

Administrator directly from their Web site after the full-text window of 15 years has expired. OEMs shall index their available information with a title that adequately describes the contents of the document to which it refers. In the alternate, OEMs may allow for the ordering of information directly from their Web site, or from a Web site hyperlinked to the OEM Web site. OEMs are required to list a phone number and address where aftermarket service providers can call or write to obtain the desired information. OEMs must also provide the price of each item listed, as well as the price of items ordered on a subscription basis. To the extent that any additional information is added or changed for these model years, OEMs shall update the index as appropriate. OEMs will be responsible for ensuring that their information distributors do so within three business day of receiving the order.

h. Small Volume Provisions for OEM Web Sites

Manufacturers with total annual sales of less than 5,000 engines shall have until July 1, 2011 to launch their individual Web sites as discussed in Section III.B.2. Manufacturers with total annual sales of less than 1,000 engines may, in lieu of meeting the requirement for web-based delivery of service information, request the Administrator to approve an alternative method by which the required emissions-related information can be obtained.

These small-volume flexibilities are limited to the distribution and availability of service information via the World Wide Web under § 86.010–38 (j)(4) of the regulations. All OEMs, regardless of volume, must comply with all other provisions as finalized in this rulemaking.

3. What are the Requirements for Service Information for Third Party Information Providers?

Today's action finalizes a provision that will require OEMs who currently have, or in the future engage in, licensing or business arrangements with third party information providers, as defined in the regulations, to provide information to those parties in an electronic format in English that utilizes non-proprietary software. Any OEM licensing or business arrangements with third party information providers are subject to fair and reasonable cost requirements. We expect that OEMs will develop pricing structures for access to this information that make it affordable to any third party information providers with which they do business. This provision takes effect January 1, 2011 and will apply for model year 2010 and later engines.

4. What are the Requirements for the Availability of Training Information?

Today's action finalizes two provisions for access to OEM training on OEM Web sites. First, OEMs will be required to make available for purchase on their Web sites the following items: Training manuals, training videos, and interactive, multimedia CD's or similar training tools available to franchised dealerships. Second, we are finalizing a provision requiring OEMs who transmit emissions-related training via satellite or the Internet to tape these transmissions and make them available for purchase on their Web sites within 30 days after the first transmission to franchised dealerships. Manufacturers shall not be required to duplicate transmitted emissions-related training courses if anyone engaged in the repairing or servicing of heavy-duty engines has the opportunity to receive the Internet or satellite transmission, even if there is a cost associated with the equipment required to receive the transmission. Further, all of the items included in this provision must be shipped within 3 business days of the order being placed and are to be made available at a reasonable price. These requirements apply for 2010 and later model year vehicles beginning July 1, 2010. For subsequent model years, the required information must be made available for purchase within three months of model introduction, and then be made available at the same time it is made available to franchised dealerships.

5. What are the Requirements for Recalibration of Vehicles?

Today's action finalizes two options for pass-thru recalibration. We are finalizing a provision that heavy-duty OEMs must comply with SAE J2534–1 (Revised December 2004) beginning with the 2013 model year. In the alternative, heavy-duty OEMs may comply with the Technology and Maintenance Council's Recommended Practice RP1210B, ''Windows™ Communication API,'' (Revised June 2007) beginning in the 2013 model year. We are also finalizing a provision that will require that recalibration information be made available within 3 months of vehicle introduction for new models.

6. What are the Requirements for the Availability of Enhanced Information for Scan Tools for Equipment and Tool Companies?

a. Description of Information That Must Be Provided

Today's action finalizes a provision that requires OEMs to make available to equipment and tool companies all generic and enhanced information, including bi-directional control and data stream information. In addition, OEMs must make available the following information.

(i) The physical hardware requirements for data communication (e.g., system voltage requirements, cable terminals/pins, connections such as RS232 or USB, wires, etc.).

(ii) ECU data communication (e.g., serial data protocols, transmission speed or baud rate, bit timing requirements, etc.).

(iii) Information on the application physical interface (API) or layers (i.e., processing algorithms or software design descriptions for procedures such as connection, initialization, and termination).

(iv) Vehicle application information or any other related service information such as special pins and voltages or additional vehicle connectors that require enablement and specifications for the enablement.

(v) Information that describes which interfaces, or combinations of interfaces, from each of the categories as described in § 86.010–38(j)(14)(ii)(A) through (D) of the regulatory language.

Manufacturers are not required to make available to equipment and tool companies any information related to reconfiguration capabilities or any other information that would make permanent changes to existing engine configurations.

The requirements to release the information to equipment and tool companies takes effect on July 1, 2013 [for model year 2013 engines], and within 3 months of model introduction for all new model years.

b. Distribution of Enhanced Diagnostic Information

Today's action finalizes a provision that will require the above information for generic and enhanced diagnostic information be provided to aftermarket tool and equipment companies with whom appropriate licensing, contractual, and confidentiality agreements have been arranged. This information shall be made available in electronic format using common document formats such as Microsoft Excel, Adobe Acrobat, Microsoft Word,

etc. Further, any OEM licensing or business arrangements with equipment and tool companies are subject to a fair and reasonable cost determination.

7. What are the Requirements for the Availability of OEM-Specific Diagnostic Scan Tools and Other Special Tools?

a. Availability of OEM-Specific Diagnostic Scan Tools

Today's action finalizes a provision that OEMs must make available for sale to interested parties the same OEM-specific scan tools that are available to franchised dealerships, except as discussed below. These tools shall be made available at a fair and reasonable price. These tools shall also be made available in a timely fashion either through the OEM Web site or through an OEM-designated intermediary.

Upon Administrator approval, manufacturers will not be required to make available manufacturer-specific tools with reconfiguration capabilities if they can demonstrate to the satisfaction of the Administrator that these tools are not essential to the completion of an emissions-related repair, such as recalibration. In addition, as a condition of purchase, manufacturers may request that the purchaser take all necessary training offered by the engine manufacturer, provided that those training requirements are outlined in § 86.010–38(j)(15) of the regulations.

8. Which Reference Materials are Being Incorporated by Reference?

We are requiring that service information requirements comply with the provisions laid out in certain Society of Automotive Engineers (SAE) and/or Truck Maintenance Council (TMC) documents that are incorporated by reference (IBR) into federal regulation. Details regarding these SAE and TMC documents can be found in § 86.1(b) and in § 86.010–38(j).

IV. What Are the Emissions Reductions Associated With the OBD Requirements?

In the 2007HD highway rule, we estimated the emissions reductions we expected to occur as a result of the emissions standards being made final in the rule. Since the OBD requirements contained in today's rule are considered by EPA to be an important element of the 2007HD highway program and its ultimate success, rather than a new element being included as an addition to that program, we are not estimating emissions reductions associated with OBD. Instead, we consider the new 2007/2010 tailpipe emissions standards and fuel standards to be the drivers of emissions reductions and HDOBD to be part of the assurance we all have that those emissions reductions are indeed realized. Therefore, this analysis presents the emissions reductions estimated for the 2007HD highway program. Inherent in those estimates is an understanding that, while emissions control systems sometimes malfunction, they presumably are repaired in a timely manner. Today's OBD requirements would provide substantial tools to assure that our presumption will be realized by helping to ensure that emission control systems continue to operate properly throughout their life. We believe that the OBD requirements will lead to more repairs of malfunctioning or deteriorating emission control systems, and may also lead to emission control systems that are more robust throughout the life of the engine and less likely to trigger illumination of MILs. The requirements would therefore provide greater assurance that the emission reductions expected from the Clean Diesel Trucks and Buses program will actually occur. Viewed from another perspective, while the OBD requirements will not increase the emission reductions that we estimated for the 2007HD highway rule, they would be expected to lead to actual emission reductions in-use compared with a program with no OBD system.

The costs associated with HDOBD were not fully estimated in the 2007HD highway rule. Those costs are more fully considered in section V of this preamble. These newly developed HDOBD costs are added to those costs estimated for the 2007/2010 standards and a new set of costs for those standards are presented in section VI. Section VI also calculates a new set of costs per ton associated with the 2007/2010 standards which include the previously estimated costs and emissions reductions for the 2007/2010 standards and the newly estimated costs associated with today's HDOBD rule.

Here we present the emission benefits we anticipate from heavy-duty vehicles as a result of our 2007/2010 NO_X, PM, and NMHC emission standards for heavy-duty engines. The graphs and tables that follow illustrate the Agency's projection of future emissions from heavy-duty vehicles for each pollutant. The baseline case represents future emissions from heavy-duty vehicles at present standards (including the MY2004 standards). The controlled case represents the future emissions from heavy-duty vehicles once the new 2007/2010 standards are implemented. A detailed analysis of the emissions reductions associated with the 2007/2010 HD highway standards is contained in the Regulatory Impact Analysis for that final rule.[70] The results of that analysis are presented in Table IV.A–1 and in Figures IV.A–1 through IV.A–3.

TABLE IV.A–1—ANNUAL EMISSIONS REDUCTIONS ASSOCIATED WITH THE 2007HD HIGHWAY PROGRAM

[Thousand short tons]

Year	NO_X	PM	NMHC
2007	58	11	2
2010	419	36	21
2015	1,260	61	54
2020	1,820	82	83
2030	2,570	109	115

[70] Regulatory Impact Analysis: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements; EPA420–R–00–026; December 2000.

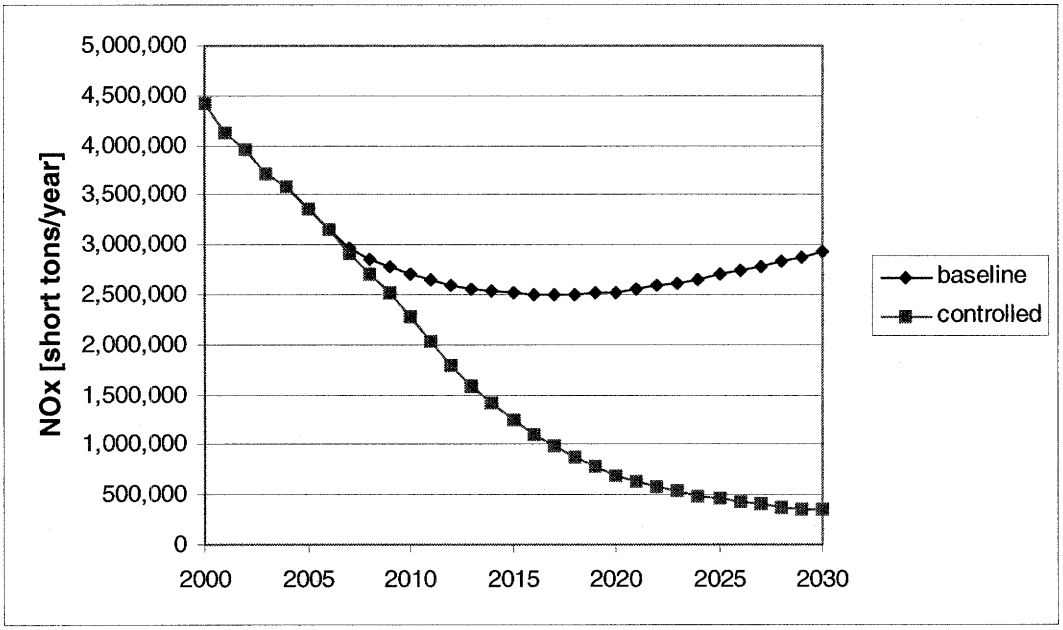

Figure IV.A-1: Projected Nationwide Heavy-Duty Vehicle NOx Emissions; Control Case Represents the 2007/2010 Emissions Standards

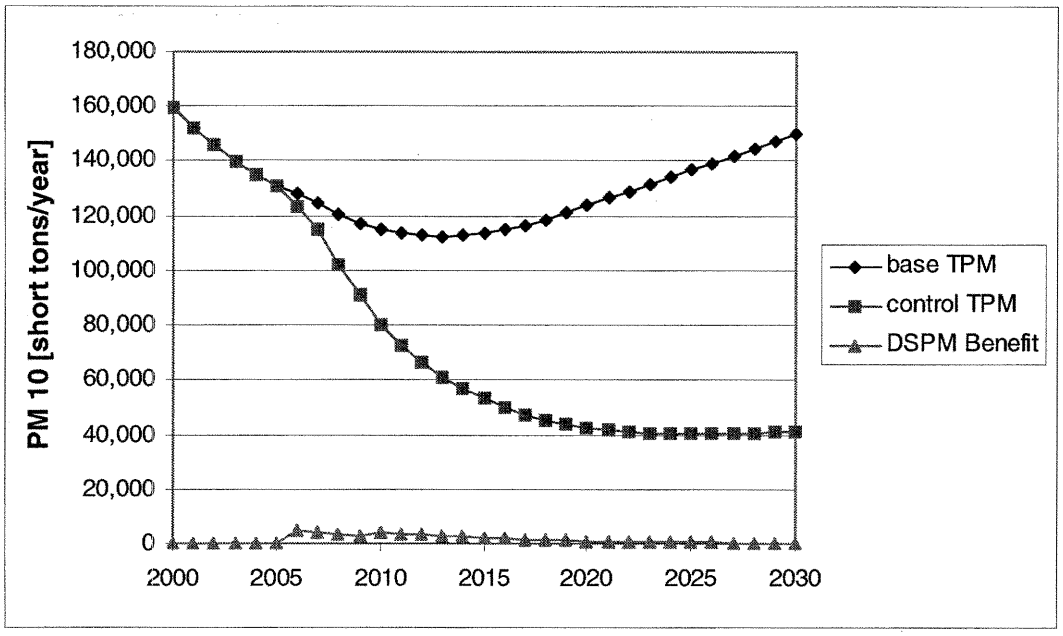

Figure IV.A-2: Projected Nationwide Heavy-Duty Vehicle PM Emissions and Direct Sulfate PM Emission Reductions; Control Case Represents the 2007/2010 Emissions Standards

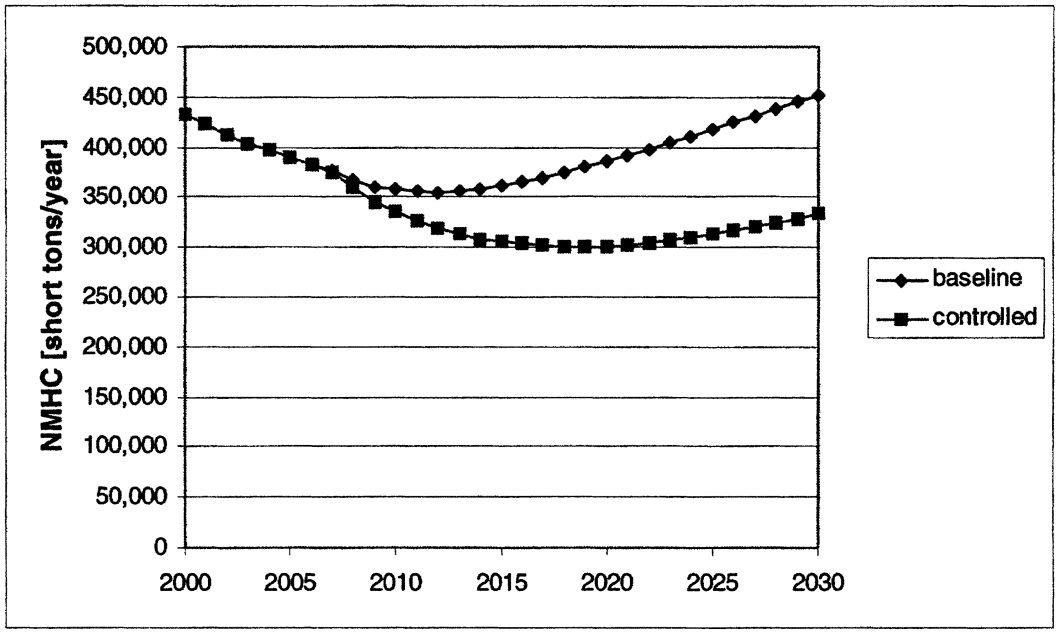

Figure IV.A-3: Projected Nationwide Heavy-Duty Vehicle NMHC Emissions; Control Case Represents the 2007/2010 Emissions Standards

There were additional estimated emissions reductions associated with the 2007HD highway rule—namely CO, SO_x, and air toxics. We have not presented those additional emissions reductions here since, while HDOBD will identify malfunctions and hasten their repair with the result of reducing all emissions constituents, these additional emissions are not those specifically targeted by OBD systems.

V. What Are the Costs Associated With the OBD Requirements?

The costs estimated for the final OBD requirements are identical to those estimated for the proposed OBD requirements with three notable exceptions. First, we have included costs for aging limit parts to their OBD thresholds. We inadvertently did not include those costs in the draft analysis. Discussion of this can be found in the Summary and Analysis of Comments document in Section VI.B. These newly added costs are also presented in detail in Section 3.1.2.b of the final technical support document.[71] Both of these documents can be found in the docket for this rule. Second, while in the proposal we estimated lower warranty costs beginning in 2013, we have delayed that until 2016 in the final rule. This is discussed in Section VI.A of the Summary and Analysis of Comments document and in Section 3.1.1 of the final technical support document. Third, we have adjusted all costs to 2007 dollars—the draft analysis used 2004 dollars—by using the Consumer Price Index. As a result, all costs presented here are slightly higher than in the draft analysis although we have not changed the analysis with the exception of this adjustment for inflation and, as mentioned previously, the addition of costs for aging of limit parts and delay of lower warranty costs.

Here we present the updated tables that appeared in our preamble to the proposed regulations.[72] Please refer to the final technical support document contained in the docket for the details of the analysis behind these cost estimates.

A. Variable Costs for Engines Used in Vehicles Over 14,000 Pounds

The variable costs we have estimated represent those costs associated with various sensors that we believe will be added to the engine to provide the required OBD monitoring capability. For the 2010 model year, we believe that upgraded computers and the new sensors needed for OBD would result in costs to the buyer of $43 and $53 for diesel and gasoline engines, respectively. For the 2013 model year, we have included costs associated with the dedicated MIL and its wiring resulting in a hardware cost to the buyer of $60 and $70 for both diesel and gasoline engines, respectively. In 2016, these costs become $57 and $66 for diesel and gasoline, respectively, due to a reduction in warranty costs. By multiplying these costs per engine by the projected annual sales we get annual costs of around $45–55 million for diesel engines and $3–4 million for gasoline engines, depending on sales. The 30-year net present value of the annual variable costs would be $737 million and $391 million at a three percent and a seven percent discount rate, respectively. These costs are summarized in Table V.A–1.

[71] Final Technical Support Document, HDOBD final rule, EPA420–R–08–019, Docket ID# EPA–HQ–OAR–2005–0047–0056.

[72] See 72 FR 3273, Section VI.

TABLE V.A–1—OBD VARIABLE COSTS FOR ENGINES USED IN VEHICLES OVER 14,000 POUNDS

[All costs in $millions except per engine costs; 2007 dollars]

	Diesel	Gasoline	Total
Cost per engine (2010–2012)	$43	$53	n/a
Cost per engine (2013–2015)	60	70	n/a
Cost per engine (2016+)	57	66	n/a
Annual Variable Costs in 2010 [a]	15	1	$16
Annual Variable Costs in 2013 [a]	44	3	47
Annual Variable Costs in 2016 [a]	43	3	47
Annual Variable Costs in 2030 [a]	53	4	57
30 year NPV at a 3% discount rate	686	51	737
30 year NPV at a 7% discount rate	364	27	391

[a] Annual variable costs increase as projected sales increase.

B. Fixed Costs for Engines Used in Vehicles Over 14,000 Pounds

We have estimated fixed costs for research and development (R&D), certification, and production evaluation testing. The R&D costs include the costs to develop the computer algorithms required to diagnose engine and emission control systems, and the costs for applying the developed algorithms to each engine family and to each variant within each engine family. R&D costs also include the testing time and effort needed to develop and apply the OBD algorithms. The certification costs include the costs associated with testing of durability engines (i.e., the OBD parent engines), the costs associated with generating the ''limit'' parts that are required to demonstrate OBD detection at or near the applicable emissions thresholds, and the costs associated with generating the necessary certification documentation. Production evaluation testing costs included the costs associated with the three types of production testing: Standardization features, monitor function, and performance ratios.

Table V.B–1 summarizes the R&D, certification, and production evaluation testing costs that we have estimated. The R&D costs we have estimated were totaled and then spread over the four year period prior to implementation of the requirements for which the R&D is conducted. By 2013, all of the R&D work would be completed in advance of 100 percent compliance in 2013; hence, R&D costs are zero by 2013. Certification costs are higher in 2013 than in 2010 because 2010 requires one engine family to comply while 2013 requires all engine families to comply. The 30 year net present value of the annual fixed costs would be $475 million and $352 million at a three percent and a seven percent discount rate, respectively.

TABLE VI.B–1—OBD FIXED COSTS FOR ENGINES USED IN VEHICLES OVER 14,000 POUNDS

[All costs in $millions; 2007 dollars]

	Diesel			Gasoline			Total
	R&D	Certification & PE testing	Subtotal	R&D	Certification & PE testing	Subtotal	
Annual OBD Fixed Costs in given years							
2010 ..	$56	$0.2	$56	$1.0	<$0.1	$1.0	$57
2013 ..	0	0.4	0.4	0	<0.1	<0.1	0.4
2030 ..	0	35	35	0	<0.1	<0.1	35
30 year NPV at the given discount rate							
3%	287	176	463	11.1	0.4	11.4	475
7%	243	99.6	342	9.7	0.2	9.9	352

C. Total Costs for Engines Used in Vehicles Over 14,000 Pounds

The total OBD costs for engines used in vehicles over 14,000 pounds are summarized in Table V.C–1. As shown in the table, the 30 year net present value cost is estimated at $1.2 billion and $743 million at a three percent and a seven percent discount rate, respectively. These costs are much lower than the 30 year net present value costs estimated for gasoline and diesel engines meeting the 2007HD highway emissions standards which were $30 billion and $18 billion at a three percent and a seven percent discount rate, respectively (in 2007 dollars). Including the cost for the diesel fuel changes resulted in 30 year net present value costs for that rule of $88 billion and $53 billion at a three percent and a seven percent discount rate, respectively (in 2007 dollars). See section VI for more details regarding the cost estimates from the 2007HD highway final rule.

TABLE V.C–1—OBD TOTAL COSTS FOR ENGINES USED IN VEHICLES OVER 14,000 POUNDS

[All costs in $millions; 2007 dollars]

	Diesel	Gasoline	Total
Annual OBD Total Costs in given years			
2010	$71	$2	$67
2013	44	3	47
2030	89	4	93
30 year NPV at the given discount rate			
3%	1,150	63	1,212
7%	706	37	743

D. Costs for Diesel Heavy-Duty Vehicles and Engines Used in Heavy-Duty Vehicles Under 14,000 Pounds

The total OBD costs for 8,500 to 14,000 pound diesel applications are summarized in Table V.D–1. As shown in the table, the 30 year net present value cost is estimated at $16 million and $12 million at a three percent and a seven percent discount rate, respectively. These costs represent the incremental costs of the additional OBD requirements, as compared to our current OBD requirements, for 8,500 to 14,000 pound diesel applications and do not represent the total costs for 8,500 to 14,000 pound diesel OBD. We are making no changes to the 8,500 to 14,000 pound gasoline requirements so, therefore, have estimated no costs for gasoline vehicles. Details behind these estimated costs can be found in the final technical support document contained in the docket for this rule.[73]

TABLE V.D–1—TOTAL OBD COSTS FOR 8,500 TO 14,000 POUND DIESEL APPLICATIONS

[All costs in $millions; 2007 dollars]

	Diesel	Gasoline	Total
Annual OBD Total Costs in given years			
2010	$0.1	$0	$0.1
2013	0	0	0
2030	2	0	2
30 year NPV at the given discount rate			
3%	16	0	16
7%	12	0	12

VI. What are the Updated Annual Costs and Costs per Ton Associated With the 2007/2010 Heavy-Duty Highway Program?

In the 2007HD highway rule, we estimated the costs we expected to occur as a result of the emissions standards being made final in that rule. As noted in section IV, we consider the OBD requirements contained in today's rule to be an important element of the 2007HD highway program and its ultimate success and not a new element being included as an addition to that program. In fact, without the OBD requirements we would not expect the emissions reductions associated with the 2007/2010 standards to be fully realized because emissions control systems cannot be expected to operate without some need for repair which, absent OBD, may well never be done. However, as noted in section V, because we did not include an OBD program in the 2007HD highway program, we did not estimate OBD related costs at that time. We have now done so and those costs are presented in section V.

Here we present the OBD costs as part of the greater 2007HD highway program. To do this, we present both the costs developed for that program and the additional OBD costs presented in section V. We also calculate a new set of costs per ton associated with the 2007/2010 standards which include the previously estimated costs and emissions reductions for the 2007/2010 standards and the newly estimated costs associated with today's HDOBD rule.

Note that the costs estimates associated with the 2007HD highway program were done using 1999 dollars. We have adjusted those costs to 2007 dollars using the Consumer Price Index.[74]

A. Updated 2007 Heavy-Duty Highway Rule Costs Including OBD

Table VI.A–1 shows the 2007HD highway program costs along with the estimated OBD related costs.

[73] Final Technical Support Document, HDOBD final rule, EPA420–R–08–019, Docket ID# EPA–HQ–OAR–2005–0047–0056.

[74] *http://www.bls.gov/cpi*; U.S. city average, all items, not seasonally adjusted.

TABLE VI.A–1—UPDATED 2007HD HIGHWAY PROGRAM COSTS INCLUDING NEW OBD-RELATED COSTS NET PRESENT VALUE OF ANNUAL COSTS FOR THE YEARS 2006–2035

[All costs in $millions; 2007 dollars]

Discount rate	2007 HD highway final rule				Final HD OBD	Updated total program costs
	Diesel engine costs	Gasoline engine & vehicle costs	Diesel fuel costs	Original total costs		
3%	$29,500	$1,880	$56,240	$87,600	$1,230	$88,900
7%	17,900	1,090	33,560	52,500	755	53,300

B. Updated 2007 Heavy-Duty Highway Rule Costs per Ton Including OBD

Table VI.B–1 shows the 2007HD highway program costs per ton of pollutant reduced. These numbers are from the 2007HD highway final rule—updated to 2007 dollars—which contains the details regarding the split between NO_X+NMHC and PM related costs.

TABLE VI.B–1—ORIGINAL 2007HD HIGHWAY PROGRAM COSTS, EMISSIONS REDUCTIONS, AND $/TON REDUCED NET PRESENT VALUES ARE FOR ANNUAL COSTS FOR THE YEARS 2006–2035

[Monetary values in 2007 dollars]

Discount rate	Pollutant	30 year NPV cost ($billions)	30 year NPV reduction (million tons)	$/ton
3%	NO_X+NMHC	68.0	30.6	$2,220
	PM	19.9	1.4	14,750
7%	NO_X+NMHC	43.4	16.2	2,680
	PM	12.8	0.8	17,090

Table VI.B–2 shows the updated 2007HD highway program costs per ton of pollutant reduced once the new OBD costs have been included. For the split between NO_X+NMHC and PM related OBD costs, we have used a 50/50 allocation. As shown in Table VI.B–2, the OBD costs associated with the final OBD requirements have little impact on the overall costs and costs per ton of emissions reduced within the context of the 2007HD highway program.

TABLE VI.B–2—UPDATED 2007HD HIGHWAY PROGRAM COSTS, EMISSIONS REDUCTIONS, AND $/TON REDUCED INCLUDING OBD RELATED COSTS NET PRESENT VALUES ARE FOR ANNUAL COSTS FOR THE YEARS 2006–2035

[Monetary values in 2007 dollars]

Discount rate	Pollutant	30 year NPV cost ($billions)	30 year NPV reduction (million tons)	$/ton
3%	NO_X+NMHC	68.6	30.6	$2,240
	PM	20.5	1.4	15,210
7%	NO_X+NMHC	43.8	16.2	2,700
	PM	13.2	0.8	17,600

VII. How Have the Proposed Requirements for Engine Manufacturers Changed for This Final Rule?

A. Documentation Requirements

The OBD system certification requirements require manufacturers to submit OBD system documentation that represents each engine family. The certification documentation must contain all of the information needed to determine if the OBD system meets the OBD requirements. The regulation lists the information that is required as part of the certification package. If any of the information in the certification package is the same for all of a manufacturer's engine families (e.g., the OBD system general description), the manufacturer is required to submit one set of documents each model year for such items that cover all of its engine families.

While the majority of the OBD requirements apply to the engine and are incorporated by design into the engine control module by the engine manufacturer, a portion of the OBD requirements would apply to the vehicle and not be self-contained within the engine. Examples include the requirements to have a MIL in the instrument cluster and a diagnostic connector in the cab compartment. As is currently done by the engine manufacturers, a build specification is provided to vehicle manufacturers detailing mechanical and electrical specifications that must be adhered to for proper installation and use of the engine (and to maintain compliance with emissions standards). We expect engine manufacturers will continue to follow this practice so that the vehicle manufacturer would be able to maintain compliance with the OBD regulations. Installation specifications would be expected to include instructions regarding the location, color, and display icon of the MIL (as well as electrical connections to ensure proper illumination), location and type of

diagnostic connector, and electronic VIN access. During the certification process, in addition to submitting the details of all of the diagnostic strategies and other information required, engine manufacturers are required to submit a copy of the OBD-relevant installation specifications provided to vehicle manufacturers and a description of the method used by the engine manufacturer to ensure vehicle manufacturers adhere to the provided installation specifications (e.g., required audit procedures or signed agreements to adhere to the requirements). We are requiring that this information be submitted to us to provide a reasonable level of verification that the OBD requirements will indeed be satisfied. In summary, engine manufacturers are responsible for submitting a certification package that includes:

- A detailed description of all OBD monitors, including monitors on signals or messages coming from other modules upon which the engine control unit relies to perform other OBD monitors; and,
- A copy of the OBD-relevant installation specifications provided to vehicle manufacturers/chassis builders and the method used to reasonably ensure compliance with those specifications.

As was discussed in the context of our implementation schedule (see section II.G.1), the regulations would allow engine manufacturers to establish OBD groups consisting of more than one engine family with each having similar OBD systems. The manufacturer could then submit only one set of representative OBD information from each OBD group. We anticipate that the representative information would normally consist of an application from a single representative engine rating within each OBD group. In selecting the engine ratings to represent each OBD group, consideration should be given to the exhaust emission control components for all engine families and ratings within an OBD group. For example, if one engine family within an OBD group has additional emission control devices relative to another family in the group (e.g., the first family has a DPF+SCR while the second has only a DPF), the representative rating should probably come from the first engine family. Manufacturers seeking to consolidate several engine families into one OBD group would be required to get approval of the grouping prior to submitting the information for certification.

Two of the most important parts of the certification package would be the OBD system description and summary table. The OBD system description would include a complete written description for each monitoring strategy outlining every step in the decision-making process of the monitor, including a general explanation of the monitoring conditions and malfunction criteria. This description should include graphs, diagrams, and/or other data that would help our compliance staff understand how each monitor works and interacts. The OBD summary table would include specific parameter values. This table would provide a summary of the OBD system specifications, including: the component/system, the DTC identifying each related malfunction, the monitoring strategy, the parameter used to detect a malfunction and the malfunction criteria limits against which the parameter is evaluated, any secondary parameter values and the operating conditions needed to run the monitor, the time required to execute and complete a monitoring event for both a pass decision and a fail decision, and the criteria or procedure for illuminating the MIL. In these tables, manufacturers are required to use a common set of engineering units to simplify and expedite the review process.

We are also requiring that the manufacturer submit a logic flowchart for each monitor that would illustrate the step-by-step decision process for determining malfunctions. Additionally, we would need any data that supports the criteria used to determine malfunctions that cause emissions to exceed the specified malfunction thresholds (see Tables II.B–1 and II.C–1). The manufacturer would have to include data that demonstrates the probability of misfire detection by the misfire monitor over the full engine speed and load operating range (for gasoline engines only) or the capability of the misfire monitor to correctly identify a ''one cylinder out'' misfire for each cylinder (for diesel engines only), a description of all the parameters and conditions necessary to begin closed-loop fuel control operation (for gasoline engines only), closed-loop EGR control (for diesel engines only), closed-loop fuel pressure control (for diesel engines only), and closed-loop boost control (for diesel engines only). We also need a listing of all electronic powertrain input and output signals (including those not monitored by the OBD system) that identifies which signals are monitored by the OBD system, and the emission data from the OBD demonstration testing (as described below). Lastly, the manufacturer will be expected to provide any other OBD-related information necessary to determine the OBD compliance status of the manufacturer's product line.

The only change to the final documentation requirements relative to the proposed requirements is a new provision applicable to those OBD systems designed to the CARB HDOBD requirements. Any such system must have detailed documentation describing how the system meets the full intent behind the requirements of § 86.010–18.[75] It will not be sufficient for a manufacturer to submit OBD documentation and a statement that it is a California HDOBD system or even a California approved OBD system. The certification documentation must include details about how the system compares to the requirements of § 86.010–18 to ensure that we can be comfortable approving that system for certification.

B. Catalyst Aging Procedures

For purposes of determining the catalyst malfunction criteria for diesel NMHC converting catalysts, SCR catalysts, and lean NO_X catalysts, and for gasoline catalysts (i.e., for generating OBD threshold parts, or limit parts), where those catalysts are monitored individually, the manufacturer must use a catalyst deteriorated to the malfunction criteria using methods established by the manufacturer to represent real world catalyst deterioration under normal and malfunctioning engine operating conditions. For purposes of determining the catalyst malfunction criteria for diesel NMHC converting catalysts, SCR catalysts, and lean NO_X catalysts, and for gasoline catalysts, where those catalysts are monitored in combination with other catalysts, the manufacturer must submit their catalyst system aging and monitoring plan to the Administrator as part of their certification documentation package. The plan must include the description, emission control purpose, and location of each component, the monitoring strategy for each component and/or combination of components, and the method for determining the applicable malfunction criteria including the deterioration/aging process.

C. Demonstration Testing

While the certification documentation requirements discussed above require manufacturers to submit technical details of each monitor (e.g., how each

[75] See section 86.010–18(m)(3) which is new in the final regulations. Also see § 86.010–18(a)(5) which is new in the final regulations. Also see section II.A.5, above.

monitor worked, when the monitor would run), we still need some assurance that the manufacturer's OBD monitors are indeed calibrated correctly and are able to detect a malfunction before an emissions threshold is exceeded. Thus, we are requiring that manufacturers conduct certification demonstration testing of the major monitors to verify the malfunction threshold values. This testing will be required on one to three demonstration engines per year. Before receiving a certificate of compliance, the manufacturer must submit documentation and emissions data demonstrating that the major OBD monitors are able to detect a malfunction when emissions exceed the emissions thresholds. On each demonstration engine, this testing would consist of the following two elements:

- Testing the OBD system with ''threshold'' components (i.e., components that are deteriorated or malfunctioning right at the threshold required for MIL illumination); and,
- Testing the OBD system with ''worst case'' components. This element of the demonstration test must be done for the DPF and any NO_X aftertreatment system only.

By testing with both threshold components (i.e., the best performing malfunctioning components) and with worst case components (i.e., the worst performing malfunctioning components), we will be better able to verify that the OBD system should perform as expected regardless of the level of deterioration of the component. This could become increasingly important with new technology aftertreatment devices that could be subject to complete failure (such as DPFs) or even to tampering by vehicle operators looking to improve fuel economy or vehicle performance. We believe that, given the likely combinations of emissions control hardware, a diesel engine manufacturer would likely need to conduct 8 to 10 emissions tests per demonstration engine to satisfy these requirements and a gasoline engine manufacturer would likely need to conduct five to seven emissions tests per demonstration engine.[76]

1. Selection of Test Engines

To minimize the test burden on manufacturers, we are requiring that this testing be done on only one to three demonstration engines per year per manufacturer rather than requiring that all engines be tested. Such an approach should still allow us to be reasonably sure that manufacturers have calibrated their OBD systems correctly on all of their engines. This also spreads the test burden over several years and allows manufacturers to better utilize their test cell resources. This approach is consistent with our approach to demonstration testing to existing emissions standards where a parent engine is chosen to represent each engine family and emissions test data for only that parent engine are submitted to EPA.[77]

The number of demonstration engines manufacturers must test will be aligned with the phase-in of OBD in the 2010 and 2013 model years and based on the year and the total number of engine families the manufacturer will be certifying for that model year. Specifically, for the 2010 model year when a manufacturer is only required to implement OBD on a single engine family, demonstration testing will be required on only one engine (a single engine rating within the one engine family). This will be the OBD parent rating as discussed in section II.G. For the 2013 model year, manufacturers will be required to conduct demonstration testing on one to three engines per year (i.e., one to three OBD parent ratings). The number of parent ratings would be chosen depending on the total number of engine families certified by the manufacturer. A manufacturer certifying one to five engine families in the given year would be required to test one demonstration engine. A manufacturer certifying six to ten engine families in the given year would be required to test two demonstration engines, and a manufacturer certifying more than ten engine families in the given year will be required to test three demonstration engines. For the 2016 and subsequent model years, we intend to work closely with CARB staff and the manufacturer to determine the parent ratings so that the same ratings are not acting as the parents every year. In other words, our definitions for the OBD parent ratings as discussed here apply only during the years 2010 through 2012 and again for the years 2013 through 2015.

Given the difficulty and expense in removing an in-use engine from a vehicle for engine dynamometer testing, this demonstration testing will likely represent nearly all of the OBD emission testing that would ever be done on these engines. Requiring a manufacturer who is fully equipped to do such testing, and already has the engines on engine dynamometers for emission testing, to test one to three engines per year would be a minimal testing burden that provides invaluable and, in a practical sense, otherwise unobtainable proof of compliance with the OBD emissions thresholds.

Regarding the selection of which engine ratings will have to be demonstrated, manufacturers are required to submit descriptions of all engine families and ratings planned for the upcoming model year. We will review the information and make the selection(s) in consultation with CARB staff and the manufacturer. For each engine family and rating, the information submitted by the manufacturer will need to identify engine model(s), power ratings, applicable emissions standards or family emissions limits, emissions controls on the engine, and projected engine sales volume. Factors that would be used in selecting the one to three engine ratings for demonstration testing include, but are not limited to, new versus old/carryover engines, emissions control system design, possible transition point to more stringent emissions standards and/or OBD emissions thresholds, and projected sales volume.

2. Required Testing

Regarding the actual testing, the manufacturer will be required to perform ''single fault'' testing using the applicable test procedure and with the appropriate components/systems set at the manufacturer defined malfunction criteria limits for the following monitors:

- For diesel engines: Fuel system; misfire; EGR; turbo boost control; NMHC catalyst; SCR catalyst/NO_X catalyst/adsorber; DPF; exhaust gas sensors; VVT; and any other monitor that would fall within the discussion of section II.D.5.
- For gasoline engines: Fuel system; misfire; EGR; cold start strategy; secondary air; catalyst; exhaust gas sensors; VVT; and any other monitor that would fall within the discussion of section II.D.5.

Such ''single fault'' testing requires that, when performing a test for a

[76] For diesel engines these would include: The fuel system; misfire (HCCI engines); EGR, turbo boost control, DPF, NO_X adsorber or SCR system, NMHC catalyst, exhaust gas sensors, VVT, and possible other emissions controls (see section II.D.5). For gasoline engines these would include: The fuel system, misfire, EGR, cold start strategy, secondary air system, catalyst, exhaust gas sensors, VVT, and possible other emissions controls (see section II.D.5). Some of these may require more than one emissions test while others may not require any due to the use of a functional monitor rather than an emissions threshold monitor.

[77] For over 14,000 pound OBD, we have a different definition of a ''parent'' engine than is used for emissions certification. This is discussed at length in section II.G.

specific parameter, that parameter must be operating at the malfunction criteria limit while all other parameters would be operating within normal characteristics (unless the malfunction prohibits some other parameter from operating within its normal characteristics). Also, the manufacturer will be allowed to use computer modifications to cause the specific parameter to operate at the malfunction limit provided the manufacturer can demonstrate that the computer modifications produce test results equivalent to an induced hardware malfunction. Lastly, for each of these testing requirements, wherever the manufacturer has established that only a functional check is required because no failure or deterioration of the specific tested component/system can result in an engine's emissions exceeding the applicable emissions thresholds, the manufacturer will not be required to perform a demonstration test. In such cases, the manufacturer can simply provide the data and/or engineering analysis used to determine that only a functional test of the component/system is required.

Manufacturers that are required to submit data from more than one engine rating will be granted some flexibility by allowing the data to be collected under less rigorous testing requirements than the official FTP or SET certification test. That is, for the possible second and third engine ratings required for demonstration testing, manufacturers will be allowed to submit data using internal sign-off test procedures that are representative of the official FTP or SET in lieu of running the official test. Commonly used procedures include the use of engine emissions test cells with less rigorous quality control procedures than those required for the FTP or SET or the use of forced cool-downs to minimize time between tests. Manufacturers will still be liable for meeting the OBD emissions thresholds on FTPs and/or SETs conducted in full accordance with the Code of Federal Regulations. Nonetheless, this latitude will allow them to use some short-cut methods that they have developed to assure themselves that the system is calibrated to the correct level without incurring the additional testing cost and burden of running the official FTP or SET on every demonstration engine.

For the demonstration engine(s), a manufacturer will be required to use an engine(s) aged for a minimum of 125 hours plus exhaust aftertreatment devices aged in a manner representative of full useful life. We are allowing for rapid aging using a process approved by the Administrator. Manufacturers would be expected to use, subject to approval, an aging process that ensures that deterioration of the exhaust aftertreatment devices is stabilized sufficiently such that it properly represents the performance of the devices at the applicable point in their useful life. Note that, should the 2010 model year engine be carried over for 2013 model year certification (which we fully expect most manufacturers to do), we would not require any new demonstration aging or testing.

3. Testing Protocol

We have made no changes in the final rule relative to the proposal as regards testing protocol. We are allowing the manufacturer to use any applicable test cycle for preconditioning test engines prior to conducting each of the emissions tests discussed above. Additional preconditioning can be done if the manufacturer can provide data and/or engineering analyses that demonstrate that additional preconditioning is necessary.

The manufacturer will then set the system or component of interest at the criteria limit(s) prior to conducting the applicable preconditioning cycle(s). If more than one preconditioning cycle is being used, the manufacturer may adjust the system or component of interest prior to conducting the subsequent preconditioning cycle. However, the manufacturer may not replace, modify, or adjust the system or component of interest following the last preconditioning cycle.

After preconditioning, the test engine will be operated over the applicable test cycle to allow for the initial detection of the tested system or component malfunction. This test cycle may be omitted from the testing protocol if it is unnecessary. If required by the designated monitoring strategy, a cold soak may be performed prior to conducting this test cycle. The test engine will then be operated over the applicable exhaust emission test.

A manufacturer required to test more than one test engine may use internal calibration sign-off test procedures (e.g., forced cool downs, less frequently calibrated emission analyzers) instead of official test procedures to obtain this emissions test data for all but one of the required test engines. However, the manufacturer should use sound engineering judgment to ensure that the data generated using such alternative test/sign-off procedures are good data because manufacturers would still be responsible for meeting the malfunction criteria when emissions tests are performed in accordance with official test procedures.

Manufacturers will be allowed to use alternative testing protocols, even chassis testing, for demonstration of MIL illumination if the engine dynamometer emissions test cycle does not allow all of a monitor's enable conditions to be satisfied. A manufacturer wanting to do so will be required to demonstrate the technical necessity for using their alternative test cycle and that using it demonstrates that the MIL will illuminate during in-use operation with the malfunctioning component.

4. Evaluation Protocol

We have made no changes in the final rule relative to the proposal as regards evaluation protocol. For all demonstration tests on parent engines, we will expect the MIL to activate upon detecting the malfunctioning system or component, and that it will occur before the end of the first engine start portion of the emissions test. If the MIL activates prior to emissions exceeding the applicable malfunction criteria, no further demonstration will be required. With respect to the misfire monitor demonstration test, if the manufacturer has elected to use the minimum misfire malfunction criterion of one percent (as is allowed), then no further demonstration would be required provided the MIL illuminates during a test with an implanted misfire of one percent.

If the MIL does not activate when the system or component being tested is set at its malfunction criteria limits, then the criteria limits or the OBD system would not be considered acceptable. Retesting would be required with more tightly controlled criteria limits (i.e., recalibrated limits) and/or another suitable system or component that would result in MIL activation. If the criteria limits are recalibrated, the manufacturer would be required to confirm that the systems and components that were tested prior to recalibration would still function properly and as required.

5. Confirmatory Testing

We have made no changes in the final rule relative to the proposal as regards confirmatory testing. We may choose to confirmatory test a demonstration engine to verify the emissions test data submitted by the manufacturer. Any such confirmatory testing would be limited to the engine rating represented by the demonstration engine(s) (i.e., the parent engine(s)). To do so, we, or our designee, would install appropriately deteriorated or malfunctioning components (or simulate a deteriorated or malfunctioning component) in an

otherwise properly functioning engine of the same engine family and rating as the demonstration engine. Such confirmatory testing would be done on those OBD monitors for which demonstration testing had been conducted as described in this section. The manufacturer would be required to make available, upon Administrator request, a test engine and all test equipment—e.g., malfunction simulators, deteriorated components—necessary to duplicate the manufacturer's testing. As with our emission certification program, any failure to pass confirmatory testing means that no certificate would be issued until the cause of the noncompliance is fixed.

D. Deficiencies

Our under 14,000 pound OBD requirements have contained a deficiency provision for years. The OBD deficiency provision was first introduced on March 23, 1995 (60 FR 15242), and was revised on December 22, 1998 (63 FR 70681). Consistent with that provision, we proposed and are finalizing a deficiency provision for over 14,000 pound OBD. We believe that, like has occurred and even still occurs with under 14,000 pound OBD, some manufacturers will encounter unforeseen and generally last minute problems with some of their OBD monitoring strategies despite having made a good faith effort to comply with the requirements. Therefore, we are providing a provision that would permit certification of an over 14,000 pound OBD system with ''deficiencies'' in cases where a good faith effort to fully comply has been demonstrated. In making deficiency determinations, we will consider the extent to which the OBD requirements have been satisfied overall based on our review of the certification application, the relative performance of the given OBD system compared to systems that truly are fully compliant with the OBD requirements, and a demonstrated good-faith effort on the part of the manufacturer to both meet the requirements in full and come into full compliance as expeditiously as possible.

We believe that having the deficiency provision is important because it facilitates OBD implementation by allowing for certification of an engine despite having a relatively minor shortfall. Note that we do not expect to certify engines with OBD systems that have more than one deficiency, or to allow carryover of any deficiency to the following model year unless it can be demonstrated that correction of the deficiency requires hardware and/or software modifications that cannot be accomplished in the time available, as determined by the Administrator.[78] Nonetheless, we recognize that there may be situations where more than one deficiency is necessary and appropriate, or where carry-over of a deficiency or deficiencies for more than one year is necessary and appropriate. In such situations, more than one deficiency, or carry-over for more than one year, may be approved, provided the manufacturer has demonstrated an acceptable level of effort toward full OBD compliance. Most importantly, the deficiency provisions cannot be used as a means to avoid compliance or delay implementation of any OBD monitors or as a means to compromise the overall effectiveness of the OBD program.

There has often been some confusion by manufacturers regarding what CARB has termed ''retroactive'' deficiencies. The CARB rule states that, ''During the first 6 months after commencement of normal production, manufacturers may request that the Executive Officer grant a deficiency and amend an engine's certification to conform to the granting of the deficiencies for each aspect of the monitoring system: (a) Identified by the manufacturer (during testing required by section (l)(2) or any other testing) to be functioning different than the certified system or otherwise not meeting the requirements of any aspect of section 1971.1; and (b) reported to the Executive Officer.'' [79] We have never had and did not propose any such retroactive deficiency provision. We have regulations in place that govern situations, whether they be detected by EPA or by the manufacturer, where in-use vehicles or engines are determined to be functioning differently than the certified system.[80] We refer to these regulations as our defect reporting requirements and manufacturers are required to comply with these regulations, even for situations deemed by CARB to be ''retroactive'' deficiencies, unless the defect is corrected prior to the sale of engines to an ultimate purchaser. In other words, a retroactive deficiency granted by the Executive Officer does not preclude a manufacturer from complying with our defect reporting requirements.

E. Production Evaluation Testing

We have made no changes in the final rule relative to the proposal as regards production evaluation testing. The OBD system is a complex software and hardware system, so there are many opportunities for unintended interactions that can result in certain elements of the system not working as intended. We have seen many such mistakes in the under 14,000 pound arena ranging from OBD systems that are unable to communicate any information to a scan tool to monitors that are unable to store a DTC and illuminate the MIL. While over 14,000 pound heavy-duty vehicles are very different from light-duty vehicles in terms of emission controls and OBD monitoring strategies, among other things, these types of problems do not depend on these differences and, as such, are as likely to occur with over 14,000 pound OBD as they are with under 14,000 pound OBD. Additionally, we believe that there is great value in having manufacturers self-test actual production end products that operate on the road, as opposed to pre-production products, where errors can be found in individual subsystems that may work fine by themselves but not when integrated into a complete product (e.g., due to mistakes like improper wiring).

Therefore, we are requiring that manufacturers self-test a small fraction of their product line to verify compliance with the OBD requirements. The test requirements are divided into three distinct sections with each section representing a test for a different portion of the OBD requirements. These three sections being: compliance with the applicable SAE and/or ISO standardization requirements; compliance with the monitoring requirements for proper DTC storage and MIL illumination; and, compliance with the in-use monitoring performance ratios.

1. Verification of Standardization Requirements

An essential part of the OBD system is the requirement for standardization. The standardization requirements include items as simple as the location and shape of the diagnostic connector (where technicians can ''plug in'' a scan tool to the onboard computer) to more complex subjects concerning the manner and format in which DTC information is accessed by technicians via a ''generic'' scan tool. Manufacturers must meet these standardization requirements to facilitate the success of the OBD program because they ensure consistent access by all repair

[78] The CARB HDOBD rulemaking has a provision to charge fees associated with OBD deficiencies 13 CCR 1971.1(k)(3), Docket ID# EPA–HQ–OAR–2005–0047–0006. We have never had and will continue not to have any such fee provision.

[79] See 13 CCR 1971.1(k)(6), Docket ID# EPA–HQ–OAR–2005–0047–0006.

[80] See 40 CFR 85.1903.

technicians to the stored information in the onboard computer. The need for consistency is even greater when considering the potential use of OBD system checks in inspection and maintenance (I/M) programs for heavy-duty. Such OBD based I/M checks would benefit from having access to the diagnostic information in the onboard computer via a single ''generic'' scan tool instead of individual tools for every make and model of truck that might be inspected. For OBD based inspections to work effectively and efficiently, all engines/vehicles must be designed and built to meet all of the applicable standardization requirements.

While we anticipate that the vast majority of vehicles would comply with all of the standardization requirements, some problems involving the communication between vehicles and ''generic'' scan tools are likely to occur in the field. The cause of such problems could range from differing interpretations of the existing standardization requirements to possible oversights by design engineers or hardware inconsistencies or even last-minute production changes on the assembly line.

To minimize the chance for such problems on future over 14,000 pound trucks, we are requiring that engine manufacturers test a sample of production vehicles from the assembly line to verify that the vehicles have indeed been designed and built to the required specifications for communication with a ''generic'' scan tool. We are requiring that manufacturers test complete vehicles to ensure that they comply with some of the basic ''generic'' scan tool standardization requirements, including those that are essential for proper inspection in an I/M setting. Ideally, manufacturers would test one vehicle for each truck and engine model combination that is introduced into commerce. However, for a large engine manufacturer, this can be in the neighborhood of 5,000 to 10,000 unique combinations making it unreasonable to require testing of every combination. Therefore, we are requiring that manufacturers test 10 such combinations per engine family. Given that a typical engine family has roughly five different engine ratings, this works out to testing only around two vehicles per engine rating.

More specifically, manufacturers must test one vehicle per software ''version'' released by the manufacturer. With proper demonstration, manufacturers will be allowed to group different calibrations together to be demonstrated by a common vehicle. Prior to acquiring these data, the engine manufacturer must submit for approval a test plan verifying that the vehicles scheduled for testing will be representative of all vehicle configurations (e.g., each engine control module variant coupled with and without the other available vehicle components that could affect scan tool communication such as automatic transmission or hybrid powertrain control modules). The plan must include details on all the different applications and configurations that will be tested.

As noted, manufacturers will be required to conduct this testing on actual production vehicles, not stand-alone engines. This is important since controllers that work properly in a stand alone setting (e.g., the engine before it is installed in a vehicle) may have interaction problems when installed and attempting to communicate with other vehicle controllers (e.g., the transmission controller). In such a case, separate testing of the controllers would be blind to the problem. Since heavy-duty engine manufacturers are expected to sell the same engine (with the same calibration) to various vehicle manufacturers who would put them in different final products (e.g., with different transmission control modules), the same communication problem would be expected in each final product.

This testing should occur soon enough in the production cycle to provide manufacturers with early feedback regarding the existence of any problems and time to resolve the problem prior to the entire model year's products being introduced into the field. We are requiring that the testing be done and the data submitted to us within either three months of the start of normal engine production or one month of the start of vehicle production, whichever is later.

To be sure that all manufacturers are testing vehicles to the same level of stringency, we are requiring that engine manufacturers submit documentation outlining the testing equipment and methods they intend to use to perform this testing. We anticipate that engine manufacturers and scan tool manufacturers will probably develop a common piece of hardware and software that could be used by all engine manufacturers at the end of the vehicle assembly line to meet this requirement. Two different projects (SAE J1699 and LOC3T) have developed such equipment in response to California OBD II requirements.[81] The equipment is currently being used to test 2005 and 2006 model year vehicles under 14,000 pounds. We believe that similar equipment could be developed for vehicles over 14,000 pounds in time for the 2013 model year. Ideally, the equipment and the test procedure would verify each and every requirement of the communication specifications including the various physical layers, message structure, response times, and message content. Presumably, any such verification equipment would not replace the function of existing ''generic'' scan tools used by repair technicians or I/M inspectors. The equipment would likely be custom-designed and be used for the express purpose of this assembly line testing (i.e., it would not include all of the necessary diagnostic features needed by repair technicians).

2. Verification of Monitoring Requirements

As noted above, the OBD system is a complex software and hardware system, so there are many opportunities for unintended interactions that can result in certain elements of the system not working as intended. The causes of possible problems vary from simple typing errors in the software code to component supplier hardware changes late in development or just prior to start of production. Given the complexity of OBD monitors and their associated algorithms, there can be thousands of lines of software code required to meet the diagnostic requirements. Implementing that code without interfering with the software code required for normal operation is and will be a very difficult task with many opportunities for human error. We expect that manufacturers will conduct some validation testing on end products to ensure that there are no problems that would be noticed by the vehicle operator. We believe that manufacturers should include in such verification testing an evaluation of the OBD system (e.g., does the MIL illuminate as intended in response to a malfunction?).

Therefore, we are requiring that engine manufacturers perform a thorough level of validation testing on at least one production vehicle and up to two more production engines per model year. The production vehicles/engines required for testing would have to be equipped with/be from the same engine families and ratings as used for the certification demonstration testing described in section VII.C. If a manufacturer demonstrated one, two, or three engines for certification, then at least one production vehicle and perhaps an additional one to two

[81] 13 CCR 1968.2, August 11, 2006, Docket ID# EPA–HQ–OAR–2005–0047–0005.

engines would have to be tested, respectively. We will work with the manufacturer and CARB staff to determine the actual vehicles and engines to test.

The testing itself will consist of implanting or simulating malfunctions to verify that virtually every single engine-related OBD monitor on the vehicle correctly identifies the malfunction, stores an appropriate DTC, and illuminates the MIL. Manufacturers will not be required to conduct any emissions testing. Instead, for those malfunctions designed against an emissions threshold, the manufacturer would simply implant or simulate a malfunction and verify detection, DTC storage, and MIL illumination. Actual ''threshold'' parts will not be needed for such testing. Implanted malfunctions could use severely deteriorated parts if desired by the manufacturer since the point of the testing is to verify detection, DTC storage, and MIL illumination. Upon submitting the data to the Administrator, the manufacturer will be required to also provide a description of the testing and the methods used to implant or simulate each malfunction. Note that testing of specific monitors will not be required if the manufacturer can show that no possible test exists that could be done on that monitor without causing physical damage to the production vehicle. We are requiring that the testing be completed and reported to us within six months after the manufacturer begins normal engine production. This should provide early feedback on the performance of every monitor on the vehicle prior to too many entering production. Upon good cause, we may extend the time period for testing.

Note that, in their HDOBD rule,[82] CARB allows, as an incentive to perform a thorough validation test, a manufacturer to request that any problem discovered during this self-test be treated as a ''retroactive'' deficiency. As discussed in section VII.D, we do not have a provision for retroactive deficiencies. Importantly, a retroactive deficiency granted by the Executive Officer does not preclude a manufacturer from complying with our defect reporting requirements. This issue was discussed in more detail in section VII.D.

3. Verification of In-Use Monitoring Performance Ratios

We are requiring that manufacturers track the performance of several of the most important monitors on the engine to determine how often they are monitoring during in-use operation. These requirements are discussed in more detail in section II.E. To summarize that discussion, monitors are expected to execute in the real world and meet a minimum acceptable performance level determined as the ratio of the number of good monitoring events to the number of actual trips. The ratio required is 10 percent, meaning that monitors should execute during at least 10 percent of the trips taken by the engine/vehicle. Monitors that perform below the minimum ratio will be subject to remedial action and possibly recall. However, the minimum ratio is not effective until the 2013 and later model years. For the 2010 through 2012 model year engines certified to today's OBD requirements, we are requiring that the data be collected even though the minimum ratio is not yet effective. The data gathered on these engines will help to determine whether the 10 percent ratio is appropriate for all applications and, if not, we intend to propose a change to the requirement to reflect that learning.

We are requiring that the engine manufacturer gather these data on production vehicles rather than engines. Since not every vehicle can be evaluated, we are requiring that manufacturers generate groups of engine/vehicle combinations to ensure adequate representation of the fleet. Specifically, manufacturers will be required to separate production vehicles into monitoring performance groups based on the following criteria and submit performance ratio data representative of each group:

- Emission control system architecture type—All engines that use the same or similar emissions control system architecture and associated monitoring system would be in the same emission architecture category. By architecture we mean engines with EGR + DPF + SCR, or EGR + DPF + NO_X Adsorber, or EGR + DPF-only, etc.
- Application type—Within an emission architecture category, engines would be separated by vehicle application. The separate application categories would be based on three classifications: engines intended primarily for line-haul chassis applications, engines intended primarily for urban delivery chassis applications, and all other engines.

We are requiring that these data be submitted to us within 12 months of the production vehicles entering the market. Upon submitting the collected data to us, the manufacturer must also provide a detailed description of how the data were gathered, how vehicles were grouped to represent sales of their engines, and the number of engines tested per monitoring performance group. Manufacturers will be required to submit performance ratio data from a sample of at least 15 vehicles per monitoring performance group. For example, a manufacturer with two emission control system architectures sold into each of the line-haul, urban delivery, and ''other'' groupings, will be required to submit data on up to 90 vehicles (i.e., $2 \times 3 \times 15$). We are requiring that these data be collected every year. Some manufacturers may find it easiest to collect data from vehicles that come in to its authorized repair facilities for routine maintenance or warranty work during the time period required, while others may find it more advantageous to hire a contractor to collect the data. Upon good cause, we may extend the time period for testing.

As stated before, the data collected under this program are intended primarily to provide an early indication that the systems are working as intended in the field, to provide information to ''fine-tune'' the requirement to track the performance of monitors, and to provide data to be used to develop a more appropriate minimum ratio for future regulatory revisions. The data are not intended to substitute for testing that we would perform for enforcement reasons to determine if a manufacturer is complying with the minimum acceptable performance ratios. In fact, the data collected would not likely meet all the required elements for testing to make an official determination that the system is noncompliant. As such, we believe the testing will be of most value to manufacturers since monitor performance problems can be corrected prior to EPA conducting a full enforcement action that could result in a recall.

VIII. What Are the Issues Concerning Inspection and Maintenance Programs?

In the preamble to our proposal, we included a discussion of issues surrounding potential future HDOBD-based I/M programs. However, while we sought comment on these issues, we did not make any formal proposals regarding HDOBD-based I/M. We received a fair amount of comment and have summarized those comments in the Summary and Analysis document contained in the docket for this rule.[83] We are taking no final action regarding HDOBD-based I/M at this time. We refer

[82] 13 CCR 1971.1, Docket ID# EPA–HQ–OAR–2005–0047–0006.

[83] Summary and Analysis of Comments document, HDOBD final rule, EPA420–R–08–018, Docket ID# EPA–HQ–OAR–2005–0047–0055.

the reader to the proposal for our discussion of the issues, and our Summary and Analysis document for a summary of the comments we received.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is, therefore, not subject to review under the EO.

EPA prepared an analysis of the potential costs associated with this action. This analysis is contained in the technical support document.[84] A copy of the analysis is available in the docket and was summarized in section V of this preamble.

B. Paperwork Reduction Act

The information collection requirements for this action have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 1684.13. Under Title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*; CAA), EPA is charged with issuing certificates of conformity for those engines that comply with applicable emission standards. Such a certificate must be issued before engines may be legally introduced into commerce. EPA uses certification information to verify that the proper engine prototypes have been selected and that the necessary testing has been performed to assure that each engine complies with emission standards. In addition, EPA also has the authority under Title II of the Clean Air to ensure compliance by require in-use testing of vehicles and engines. EPA is requiring additional information at the time of certification to ensure that the on-board diagnostic (OBD) requirements are being met. EPA is also requiring that manufacturers conduct and report the results of in-use testing of the OBD systems to demonstrate that they are performing properly. Therefore, EPA is requiring 207 hours of annual burden per each of the 12 respondents to conduct the OBD certification, compliance, and in-use testing requirements required by this action. EPA estimates that the total of the of the 2484 hours of annual cost burden will be $16,018 per respondent for a total annual industry cost burden for the 12 respondents of $1,236,481.

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; technology and systems for the purposes of collecting, validating, and verifying. This includes the time needed to review instructions; develop, acquire, install, and utilize information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this action on small entities, small entity is defined as: (1) A small businesses defined by the Small Business Administration's (SBA) regulations at 13 DFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this final action will not have a significant economic impact on a substantial number of small entities. This action will not impose any requirements on small entities. This action places new requirements on manufacturers of large engines meant for highway use. These are large manufacturers. This action also changes existing requirements on manufacturers of passenger car and smaller heavy-duty engines meant for highway use. These changes place no meaningful new requirements on those manufacturers.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more for any single year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA 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 EPA to adopt an alternative that is not the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why such an alternative was not adopted.

Before EPA establishes any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duties on any of these entities. Nothing in the rule would significantly or uniquely affect small governments. We have determined that this rule does not contain a federal

[84] Final Technical Support Document, HDOBD final rule, EPA420–R–08–019, Docket ID# EPA–HQ–OAR–2005–0047–0056.

mandate that may result in estimated expenditures of more than $100 million to the private sector in any single year. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. Further, this action is also not subject to the requirements of section 203 of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action places new requirements on manufacturers of large engines meant for highway use and changes existing requirements on manufacturers of passenger car and smaller heavy-duty engines meant for highway use. These changes do not affect States or the relationship between the national government and the States. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This action does not have tribal implications, as specified in Executive Order 13175. This action does not uniquely affect the communities of American Indian tribal governments since the motor vehicle requirements for private businesses in this action would have national applicability. Furthermore, this action does not impose any direct compliance costs on these communities and no circumstances specific to such communities exist that would cause an impact on these communities beyond those discussed in the other sections of this document. Thus, Executive Order 13175 does not apply to this action.

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

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866; and, (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This action is not subject to the Executive Order because it is not an economically significant regulatory action as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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 Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Section 12(d) of Public Law 104–113, 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) developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rule references technical standards. The technical standards are listed in § 86.1 of the regulatory text, and directions for how they may be obtained are provided in § 86.1.

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 final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This action applies to all newly produced engines nationwide once implemented without regard for where those engines are ultimately used. EPA believes that all segments of society will benefit equally as a result of today's action and that no one will suffer adverse human health or environmental effects.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective April 27, 2009.

X. Statutory Provisions and Legal Authority

Statutory authority for today's final rule is found in the Clean Air Act, 42 U.S.C. 7401 *et seq.*, in particular, sections 202 and 206 of the Act, 42 U.S.C. 7521, 7525. This rule is being promulgated under the administrative and procedural provisions of Clean Air Act section 307(d), 42 U.S.C. 7607(d).

List of Subjects

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Incorporation by reference, Motor vehicle pollution.

40 CFR Part 89

Environmental protection, Administrative practice and procedure, Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Vessels, Warranty.

40 CFR Part 90

Environmental protection, Administrative practice and procedure, Confidential business information, Imports, Labeling, Reporting and recordkeeping requirements, Research, Warranty.

40 CFR Part 1027

Environmental protection, Administrative practice and procedure, Air pollution control, Imports, Reporting and recordkeeping requirements.

40 CFR Part 1033

Environmental protection, Administrative practice and procedure, Confidential business information, Incorporation by reference, Labeling, Penalties, Railroads, Reporting and recordkeeping requirements.

40 CFR Part 1042

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Incorporation by reference, Labeling, Penalties, Vessels, Reporting and recordkeeping requirements, Warranties.

40 CFR Parts 1048, 1054, and 1060

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Incorporation by reference, Labeling, Penalties, Reporting and recordkeeping requirements, Warranties.

40 CFR Part 1065

Environmental protection, Administrative practice and procedure, Incorporation by reference, Reporting and recordkeeping requirements, Research.

40 CFR Part 1068

Environmental protection, Administrative practice and procedure, Confidential business information, Imports, Incorporation by reference, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements, Warranties.

Dated: December 4, 2008.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, title 40 chapter I of the Code of Federal Regulations is amended as follows:

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

■ 1. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

■ 2. Section 86.1 is revised to read as follows:

§ 86.1 Reference materials.

(a) The documents in paragraph (b) of this section have been incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, a notice of change must be published in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. Also, the material is available for inspection at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Air Docket is 202–566–1742. Copies are also available from the sources listed below.

(b) The following paragraphs set forth the material that has been incorporated by reference in this part.

(1) *ASTM material*. Copies of these materials may be obtained from American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959, or by calling 610–832–9585, or at *http://www.astm.org*.

(i) ASTM D 975–04c, Standard Specification for Diesel Fuel Oils, IBR approved for §§ 86.1910, 86.213–11.

(ii) ASTM D1945–91, Standard Test Method for Analysis of Natural Gas by Gas Chromatography, IBR approved for §§ 86.113–94, 86.513–94, 86.1213–94, 86.1313–94.

(iii) ASTM D2163–91, Standard Test Method for Analysis of Liquefied Petroleum (LP) Gases and Propane Concentrates by Gas Chromatography, IBR approved for §§ 86.113–94, 86.1213–94, 86.1313–94.

(iv) ASTM D2986–95a, Reapproved 1999, Standard Practice for Evaluation of Air Assay Media by the Monodisperse DOP (Dioctyl Phthalate) Smoke Test, IBR approved for §§ 86.1310–2007.

(v) ASTM D5186–91, Standard Test Method for Determination of Aromatic Content of Diesel Fuels by Supercritical Fluid Chromatography, IBR approved for §§ 86.113–07, 86.1313–91, 86.1313–94, 86.1313–98, 1313–2007.

(vi) ASTM E29–67, Reapproved 1980, Standard Recommended Practice for Indicating Which Places of Figures Are To Be Considered Significant in Specified Limiting Values, IBR approved for § 86.1105–87.

(vii) ASTM E29–90, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications, IBR approved for §§ 86.609–84, 86.609–96, 86.609–97, 86.609–98, 86.1009–84, 86.1009–96, 86.1442, 86.1708–99, 86.1709–99, 86.1710–99, 86.1728–99.

(viii) ASTM E29–93a, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications, IBR approved for §§ 86.098–15, 86.004–15, 86.007–11, 86.007–15, 86.1803–01, 86.1823–01, 86.1824–01, 86.1825–01, 86.1837–01.

(ix) ASTM F1471–93, Standard Test Method for Air Cleaning Performance of a High-Efficiency Particulate Air-Filter System, IBR approved § 86.1310–2007.

(2) *SAE material*. Copies of these materials may be obtained from Society of Automotive Engineers International, 400 Commonwealth Dr., Warrendale, PA 15096–0001, or by calling 724–776–4841, or at *http://www.sae.org*.

(i) SAE J1151, December 1991, Methane Measurement Using Gas Chromatography, 1994 SAE Handbook—SAE International Cooperative Engineering Program, Volume 1: Materials, Fuels, Emissions, and Noise; Section 13 and page 170

(13.170), IBR approved for §§ 86.111–94; 86.1311–94.

(ii) SAE J1349, June 1990, Engine Power Test Code—Spark Ignition and Compression Ignition, IBR approved for §§ 86.094–8, 86.096–8.

(iii) SAE J1850, July 1995, Class B Data Communication Network Interface, IBR approved for §§ 86.099–17, 86.1806–01.

(iv) SAE J1850, Revised May 2001, Class B Data Communication Network Interface, IBR approved for §§ 86.005–17, 86.007–17, 86.1806–04, 86.1806–05.

(v) SAE J1877, July 1994, Recommended Practice for Bar-Coded Vehicle Identification Number Label, IBR approved for §§ 86.095–35, 86.1806–01.

(vi) SAE J1892, October 1993, Recommended Practice for Bar-Coded Vehicle Emission Configuration Label, IBR approved for §§ 86.095–35, 86.1806–01.

(vii) SAE J1930, Revised May 1998, Electrical/Electronic Systems Diagnostic Terms, Definitions, Abbreviations, and Acronyms, IBR approved for §§ 86.096–38, 86.004–38, 86.007–38, 86.010–38, 86.1808–01, 86.1808–07.

(viii) SAE J1930, Revised April 2002, Electrical/Electronic Systems Diagnostic Terms, Definitions, Abbreviations, and Acronyms—Equivalent to ISO/TR 15031–2: April 30, 2002, IBR approved for §§ 86.005–17, 86.007–17, 86.010–18, 86.1806–04, 86.1806–05.

(ix) SAE J1937, November 1989, Engine Testing with Low Temperature Charge Air Cooler Systems in a Dynamometer Test Cell, IBR approved for §§ 86.1330–84, 86.1330–90.

(x) SAE J1939, Revised October 2007, Recommended Practice for a Serial Control and Communications Vehicle Network, IBR approved for §§ 86.010–18.

(xi) SAE J1939–11, December 1994, Physical Layer—250K bits/s, Shielded Twisted Pair, IBR approved for §§ 86.005–17, 86.1806–05.

(xii) SAE J1939–11, Revised October 1999, Physical Layer—250K bits/s, Shielded Twisted Pair, IBR approved for §§ 86.005–17, 86.007–17, 86.1806–04, 86.1806–05.

(xiii) SAE J1939–13, July 1999, Off-Board Diagnostic Connector, IBR approved for §§ 86.005–17, 86.007–17, 86.1806–04, 86.1806–05.

(xiv) SAE J1939–13, Revised March 2004, Off-Board Diagnostic Connector, IBR approved for § 86.010–18.

(xv) SAE J1939–21, July 1994, Data Link Layer, IBR approved for §§ 86.005–17, 86.1806–05.

(xvi) SAE J1939–21, Revised April 2001, Data Link Layer, IBR approved for §§ 86.005–17, 86.007–17, 86.1806–04, 86.1806–05.

(xvii) SAE J1939–31, Revised December 1997, Network Layer, IBR approved for §§ 86.005–17, 86.007–17, 86.1806–04, 86.1806–05.

(xviii) SAE J1939–71, May 1996, Vehicle Application Layer, IBR approved for §§ 86.005–17, 86.1806–05.

(xix) SAE J1939–71, Revised August 2002, Vehicle Application Layer—J1939–71 (through 1999), IBR approved for §§ 86.005–17, 86.007–17, 86.1806–04, 86.1806–05.

(xx) SAE J1939–71, Revised January 2008, Vehicle Application Layer (Through February 2007), IBR approved for § 86.010–38.

(xxi) SAE J1939–73, February 1996, Application Layer—Diagnostics, IBR approved for §§ 86.005–17, 86.1806–05.

(xxii) SAE J1939–73, Revised June 2001, Application Layer—Diagnostics, IBR approved for §§ 86.005–17, 86.007–17, 86.1806–04, 86.1806–05.

(xxiii) SAE J1939–73, Revised September 2006, Application Layer—Diagnostics, IBR approved for §§ 86.010–18, 86.010–38.

(xxiv) SAE J1939–81, July 1997, Recommended Practice for Serial Control and Communications Vehicle Network Part 81—Network Management, IBR approved for §§ 86.005–17, 86.007–17, 86.1806–04, 86.1806–05.

(xxv) SAE J1939–81, Revised May 2003, Network Management, IBR approved for § 86.010–38.

(xxvi) SAE J1962, January 1995, Diagnostic Connector, IBR approved for §§ 86.099–17, 86.1806–01.

(xxvii) SAE J1962, Revised April 2002, Diagnostic Connector Equivalent to ISO/DIS 15031–3; December 14, 2001, IBR approved for §§ 86.005–17, 86.007–17, 86.010–18, 86.1806–04, 86.1806–05.

(xxviii) SAE J1978, Revised April 2002, OBD II Scan Tool—Equivalent to ISO/DIS 15031–4; December 14, 2001, IBR approved for §§ 86.005–17, 86.007–17, 86.010–18, 86.1806–04, 86.1806–05.

(xxix) SAE J1979, July 1996, E/E Diagnostic Test Modes, IBR approved for §§ 86.099–17, 86.1806–01.

(xxx) SAE J1979, Revised September 1997, E/E Diagnostic Test Modes, IBR approved for §§ 86.096–38, 86.004–38, 86.007–38, 86.010–38, 86.1808–01, 86.1808–07.

(xxxi) SAE J1979, Revised April 2002, E/E Diagnostic Test Modes—Equivalent to ISO/DIS 15031–5; April 30, 2002, IBR approved for §§ 86.099–17, 86.005–17, 86.007–17, 86.1806–01, 86.1806–04, 86.1806–05.

(xxxii) SAE J1979, Revised May 2007, (R) E/E Diagnostic Test Modes, IBR approved for § 86.010–18, 86.010–38.

(xxxiii) SAE J2012, July 1996, Recommended Practice for Diagnostic Trouble Code Definitions, IBR approved for §§ 86.099–17, 86.1806–01.

(xxxiv) SAE J2012, Revised April 2002, (R) Diagnostic Trouble Code Definitions Equivalent to ISO/DIS 15031–6: April 30, 2002, IBR approved for §§ 86.005–17, 86.007–17, 86.010–18, 86.1806–04, 86.1806–05.

(xxxv) SAE J2284–3, May 2001, High Speed CAN (HSC) for Vehicle Applications at 500 KBPS, IBR approved for §§ 86.096–38, 86.004–38, 86.007–38, 86.010–38, 86.1808–01, 86.1808–07.

(xxxvi) SAE J2403, Revised August 2007, Medium/Heavy-Duty E/E Systems Diagnosis Nomenclature—Truck and Bus, IBR approved for §§ 86.007–17, 86.010–18, 86.010–38, 86.1806–05.

(xxxvii) SAE J2534, February 2002, Recommended Practice for Pass-Thru Vehicle Programming, IBR approved for §§ 86.096–38, 86.004–38, 86.007–38, 86.010–38, 86.1808–01, 86.1808–07.

(xxxviii) SAE J2534–1, Revised December 2004, (R) Recommended Practice for Pass-Thru Vehicle Programming, IBR approved for § 86.010–38.

(3) *ANSI material.* Copies of these materials may be obtained from the American National Standards Institute, 25 W 43rd Street, 4th Floor, New York, NY 10036, or by calling 212–642–4900, or at *http://www.ansi.org*.

(i) ANSI/AGA NGV1–1994, Standard for Compressed Natural Gas Vehicle (NGV) Fueling Connection Devices, IBR approved for §§ 86.001–9, 86.004–9, 86.098–8, 86.099–8, 86.099–9, 86.1810–01.

(ii) [Reserved]

(4) *California regulatory requirements.* Copies of these materials may be obtained from U.S. EPA, see paragraph (a) of this section, or from the California Air Resources Board by calling 916–322–2884, or at *http://www.arb.ca.gov*.

(i) California Regulatory Requirements Applicable to the ''LEV II'' Program, including:

(A) California Exhaust Emission Standards and Test Procedures for 2003 and Subsequent Model Zero-Emission Vehicles and 2001 and Subsequent Model Hybrid Electric Vehicles, in the Passenger Car, Light-duty Truck and Medium-duty Vehicle Classes, August 5, 1999, IBR approved for §§ 86.1806–01, 86.1811–04, 86.1844–01.

(B) California Non-Methane Organic Gas Test Procedures, August 5, 1999, IBR approved for §§ 86.1803–01, 86.1810–01, 86.1811–04.

(ii) California Regulatory Requirements Applicable to the National Low Emission Vehicle

Program, October 1996, IBR approved for §§ 86.113–04, 86.612–97, 86.1012–97, 86.1702–99, 86.1708–99, 86.1709–99, 86.1717–99, 86.1735–99, 86.1771–99, 86.1775–99, 86.1776–99, 86.1777–99, Appendix XVI, Appendix XVII.

(iii) California Regulatory Requirements known as On-board Diagnostics II (OBD–II), Approved on April 21, 2003, Title 13, California Code Regulations, Section 1968.2, Malfunction and Diagnostic System Requirements for 2004 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines (OBD–II), IBR approved for § 86.1806–05.

(iv) California Regulatory Requirements known as On-board Diagnostics II (OBD–II), Approved on November 9, 2007, Title 13, California Code Regulations, Section 1968.2, Malfunction and Diagnostic System Requirements for 2004 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines (OBD–II), IBR approved for §§ 86.007–17, 86.1806–05.

(5) *ISO material*. Copies of these materials may be obtained from the International Organization for Standardization, Case Postale 56, CH–1211 Geneva 20, Switzerland, or by calling 41–22–749–01–11, or at *http://www.iso.org*.

(i) ISO 9141–2, February 1, 1994, Road vehicles—Diagnostic systems—Part 2: CARB requirements for interchange of digital information, IBR approved for §§ 86.099–17, 86.005–17, 86.007–17, 86.1806–01, 86.1806–04, 86.1806–05.

(ii) ISO 14230–4:2000(E), June 1, 2000, Road vehicles—Diagnostic systems—KWP 2000 requirements for Emission-related systems, IBR approved for §§ 86.099–17, 86.005–17, 86.007–17, 86.1806–01, 86.1806–04, 86.1806–05.

(iii) ISO 15765–4.3:2001, December 14, 2001, Road Vehicles—Diagnostics on Controller Area Networks (CAN)—Part 4: Requirements for emissions-related systems, IBR approved for §§ 86.005–17, 86.007–17, 86.1806–04, 86.1806–05.

(iv) ISO 15765–4:2005(E), January 15, 2005, Road Vehicles—Diagnostics on Controller Area Networks (CAN)—Part 4: Requirements for emissions-related systems, IBR approved for §§ 86.007–17, 86.010–18, 86.1806–05.

(6) *NIST material*. NIST publications are sold by the Government Printing Office (GPO) and by the National Technical Information Service (NTIS). To purchase a NIST publication you must have the order number. Order numbers are available from the NIST Public Inquiries Unit at (301) 975–NIST. Mailing address: NIST Public Inquiries, NIST, 100 Bureau Drive, Stop 3460, Gaithersburg, Md., 20899–3460. If you have a GPO stock number, you can purchase printed copies of NIST publications from GPO. Orders should be sent to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325. For more information, or to place an order, call (202) 512–1800, fax: (202) 512–2250. More information can also be found at *http://www.nist.gov*.

(i) NIST Special Publication 811, 1995 Edition, Guide for the Use of the International System of Units (SI), IBR approved for § 86.1901.

(ii) [Reserved]

(7) *Truck and Maintenance Council material*. Copies of these materials may be obtained from the Truck and Maintenance Council, 950 North Glebe Road, Suite 210, Arlington, VA 22203–4181, or by calling 703–838–1754.

(i) TMC RP 1210B, Revised June 2007, WINDOWS™ COMMUNICATION API, IBR approved for § 86.010–38.

(ii) [Reserved]

■ 3. Section 86.007–17 is added to Subpart A to read as follows:

§ 86.007–17 On-board Diagnostics for engines used in applications less than or equal to 14,000 pounds GVWR.

(a) *General*.

(1) All heavy-duty engines intended for use in a heavy-duty vehicle weighing 14,000 pounds GVWR or less must be equipped with an on-board diagnostic (OBD) system capable of monitoring all emission-related engine systems or components during the applicable useful life. Heavy-duty engines intended for use in a heavy-duty vehicle weighing 14,000 pounds GVWR or less must meet the OBD requirements of this section according to the phase-in schedule in paragraph (k) of this section. All monitored systems and components must be evaluated periodically, but no less frequently than once per applicable certification test cycle as defined in Appendix I, paragraph (f), of this part, or similar trip as approved by the Administrator.

(2) An OBD system demonstrated to fully meet the requirements in § 86.1806–05 may be used to meet the requirements of this section, provided that the Administrator finds that a manufacturer's decision to use the flexibility in this paragraph (a)(2) is based on good engineering judgment.

(b) *Malfunction descriptions*. The OBD system must detect and identify malfunctions in all monitored emission-related engine systems or components according to the following malfunction definitions as measured and calculated in accordance with test procedures set forth in subpart N of this part (engine-based test procedures) excluding the test procedure referred to as the ''Supplemental emission test; test cycle and procedures'' contained in § 86.1360, and excluding the test procedure referred to as the ''Not-To-Exceed Test Procedure'' contained in § 86.1370, and excluding the test procedure referred to as the ''Load Response Test'' contained in § 86.1380.

(1) *Catalysts and particulate filters*.

(i) *Otto-cycle*. Catalyst deterioration or malfunction before it results in an increase in NMHC (or NO_X+NMHC, as applicable) emissions 1.5 times the NMHC (or NO_X+NMHC, as applicable) standard or family emission limit (FEL), as compared to the NMHC (or NO_X+NMHC, as applicable) emission level measured using a representative 4000 mile catalyst system.

(ii) *Diesel*.

(A) If equipped, reduction catalyst deterioration or malfunction before it results in exhaust NO_X emissions exceeding, for model years 2007 through 2012, either 1.75 times the applicable NO_X standard for engines certified to a NO_X family emission limit (FEL) greater than 0.50 g/bhp-hr, or the applicable NO_X FEL+0.6 g/bhp-hr for engines certified to a NO_X FEL less than or equal to 0.50 g/bhp-hr and, for model years 2013 and later, the applicable NO_X FEL+0.3 g/bhp-hr. If equipped, diesel oxidation catalyst (DOC) deterioration or malfunction before it results in exhaust NMHC emissions exceeding, for model years 2010 through 2012, 2.5 times the applicable NMHC standard and, for model years 2013 and later, 2 times the applicable NMHC standard. These catalyst monitoring requirements need not be done if the manufacturer can demonstrate that deterioration or malfunction of the system will not result in exceedance of the threshold. As an alternative, oxidation catalyst deterioration or malfunction before it results in an inability to achieve a temperature rise of 100 degrees C, or to reach the necessary diesel particulate filter (DPF) regeneration temperature, within 60 seconds of initiating an active DPF regeneration. Further, oxidation catalyst deterioration or malfunction when the DOC is unable to sustain the necessary regeneration temperature for the duration of the regeneration event. The OBD or control system must abort the regeneration if the regeneration temperature has not been reached within five minutes of initiating an active regeneration event, and if the regeneration temperature cannot be sustained for the duration of the regeneration event.

(B) If equipped with a DPF for model years 2007 through 2009, catastrophic failure of the device must be detected. Any DFP whose complete failure results in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC (or NO_X+NMHC, as applicable) or PM must be monitored for such catastrophic failure. This monitoring need not be done if the manufacturer can demonstrate that a catastrophic failure of the system will not result in exceedance of the threshold. If equipped with a DPF for model years 2010 and later, DPF deterioration or malfunction before it results in exhaust emissions exceeding the applicable PM FEL+0.04 g/bhp-hr or 0.05 g/bhp-hr PM, whichever is higher. As an alternative to this requirement for 2010 through 2012, the OBD system can be designed to detect a malfunction based on a detectable decrease in the expected pressure drop across the DPF for a period of 5 seconds or more, whenever the engine is speed is greater than or equal to 50% (as defined in § 1065.610, Eq. 1065.610–3) and engine load, or torque, is greater than or equal to 50% of the maximum available at that speed under standard emission test conditions. For purposes of this paragraph, the detectable change in pressure drop is defined by operating the engine at its 50% speed and 50% load point under standard emission test conditions, observing the pressure drop on a clean DPF, and multiplying the observed pressure drop by 0.5. The detectable change in pressure drop shall be reported in units of kilopascals (kPa). At time of certification, manufacturers shall provide the detectable change in pressure drop value along with OBD engine data parameters recorded at the following nine engine speed/load operating points with a clean DPF: 50% speed, 50% load; 50% speed, 75% load, 50% speed, 100% load; 75% speed, 50% load; 75% speed, 75% load; 75% speed, 100% load; 100% speed, 50% load; 100% speed, 75% load; and 100% speed, 100% load. The OBD engine data pararmeters to be reported are described in § 86.010–18(k)(4)(ii) and shall include the following: engine speed; calculated load; air flow rate from mass air flow sensor (if so equipped); fuel rate; and DPF delta pressure. On all engines so equipped, catastrophic failure of the particulate trap must also be detected. In addition, the absence of the particulate trap or the trapping substrate must be detected.

(2) *Engine misfire.*

(i) *Otto-cycle.* Engine misfire resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC, NO_X (or NO_X+NMHC, as applicable) or CO; and any misfire capable of damaging the catalytic converter.

(ii) *Diesel.* Lack of cylinder combustion must be detected.

(3) *Exhaust gas sensors.*

(i) *Oxygen sensors and air-fuel ratio sensors downstream of aftertreatment devices.*

(A) *Otto-cycle.* If equipped, sensor deterioration or malfunction resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC, NO_X or CO.

(B) *Diesel.* If equipped, sensor deterioration or malfunction resulting in exhaust emissions exceeding any of the following levels: The applicable PM FEL+0.04 g/bhp-hr or 0.05 g/bhp-hr PM, whichever is higher; or, for model years 2007 through 2012, 1.75 times the applicable NO_X standard for engines certified to a NO_X FEL greater than 0.50 g/bhp-hr, or, the applicable NO_X FEL+0.6 g/bhp-hr for engines certified to a NO_X FEL less than or equal to 0.50 g/bhp-hr and, for model years 2013 and later, the applicable NO_X FEL+0.3 g/bhp-hr; or, for model years 2010 through 2012, 2.5 times the applicable NMHC standard and, for model years 2013 and later, 2 times the applicable NMHC standard.

(ii) *Oxygen sensors and air-fuel ratio sensors upstream of aftertreatment devices.*

(A) *Otto-cycle.* If equipped, sensor deterioration or malfunction resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC, NO_X or CO.

(B) *Diesel.* If equipped, sensor deterioration or malfunction resulting in exhaust emissions exceeding any of the following levels: for model years 2007 through 2009, the applicable PM FEL+0.04 g/bhp-hr or 0.05 g/bhp-hr PM, whichever is higher and, for model years 2010 and later, the applicable PM FEL+0.02 g/bhp-hr or 0.03 g/bhp-hr PM, whichever is higher; or, for model years 2007 through 2012, 1.75 times the applicable NO_X standard for engines certified to a NO_X FEL greater than 0.50 g/bhp-hr, or the applicable NO_X FEL+0.6 g/bhp-hr for engines certified to a NO_X FEL less than or equal to 0.50 g/bhp-hr and, for model years 2013 and later, the applicable NO_X FEL+0.3 g/bhp-hr ; or, for model years 2007 through 2012, 2.5 times the applicable NMHC standard and, for model years 2013 and later, 2 times the applicable NMHC standard; or, for 2007 through 2012, 2.5 times the applicable CO standard and, for model years 2013 and later, 2 times the applicable CO standard.

(iii) *NO_X sensors.*

(A) *Otto-cycle.* If equipped, sensor deterioration or malfunction resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC, NO_X or CO.

(B) *Diesel.* If equipped, sensor deterioration or malfunction resulting in exhaust emissions exceeding any of the following levels: the applicable PM FEL+0.04 g/bhp-hr or 0.05 g/bhp-hr PM, whichever is higher; or, for model years 2007 through 2012, 1.75 times the applicable NO_X standard for engines certified to a NO_X FEL greater than 0.50 g/bhp-hr; or, the applicable NO_X FEL+0.6 g/bhp-hr for engines certified to a NO_X FEL less than or equal to 0.50 g/bhp-hr and, for model years 2013 and later, the applicable NO_X FEL+0.3 g/bhp-hr.

(4) *Evaporative leaks.* If equipped, any vapor leak in the evaporative and/or refueling system (excluding the tubing and connections between the purge valve and the intake manifold) greater than or equal in magnitude to a leak caused by a 0.040 inch diameter orifice; an absence of evaporative purge air flow from the complete evaporative emission control system. Where fuel tank capacity is greater than 25 gallons, the Administrator may, following a request from the manufacturer, revise the size of the orifice to the smallest orifice feasible, based on test data, if the most reliable monitoring method available cannot reliably detect a system leak equal to a 0.040 inch diameter orifice.

(5) *Other emission control systems and components.*

(i) *Otto-cycle.* Any deterioration or malfunction occurring in an engine system or component directly intended to control emissions, including but not necessarily limited to, the exhaust gas recirculation (EGR) system, if equipped, the secondary air system, if equipped, and the fuel control system, singularly resulting in exhaust emissions exceeding 1.5 times the applicable emission standard or FEL for NMHC, NO_X or CO. For engines equipped with a secondary air system, a functional check, as described in paragraph (b)(6) of this section, may satisfy the requirements of this paragraph (b)(5) provided the manufacturer can demonstrate that deterioration of the flow distribution system is unlikely. This demonstration is subject to Administrator approval and, if the demonstration and associated functional check are approved, the diagnostic system must indicate a malfunction when some degree of secondary airflow is not detectable in the exhaust system during the check. For engines equipped with positive crankcase ventilation (PCV), monitoring of the PCV system is

not necessary provided the manufacturer can demonstrate to the Administrator's satisfaction that the PCV system is unlikely to fail.

(ii) *Diesel.* Any deterioration or malfunction occurring in an engine system or component directly intended to control emissions, including but not necessarily limited to, the exhaust gas recirculation (EGR) system, if equipped, and the fuel control system, singularly resulting in exhaust emissions exceeding any of the following levels: for model years 2007 through 2009, the applicable PM FEL+0.04 g/bhp-hr or 0.05 g/bhp-hr PM, whichever is higher and, for model years 2010 and later, the applicable PM FEL+0.02 g/bhp-hr or 0.03 g/bhp-hr PM, whichever is higher; or, for model years 2007 through 2012, 1.75 times the applicable NO_X standard for engines certified to a NO_X FEL greater than 0.50 g/bhp-hr or the applicable NO_X FEL+0.6 g/bhp-hr for engines certified to a NO_X FEL less than or equal to 0.50 g/bhp-hr and, for model years 2013 and later, the applicable NO_X FEL+0.3 g/bhp-hr; or, for model years 2007 through 2012, 2.5 times the applicable NMHC standard and, for model years 2013 and later, 2 times the applicable NMHC standard; or, for model years 2007 through 2012, 2.5 times the applicable CO standard and, for model years 2013 and later, 2 times the applicable CO standard. A functional check, as described in paragraph (b)(6) of this section, may satisfy the requirements of this paragraph (b)(5) provided the manufacturer can demonstrate that a malfunction would not cause emissions to exceed the applicable levels. This demonstration is subject to Administrator approval. For engines equipped with crankcase ventilation (CV), monitoring of the CV system is not necessary provided the manufacturer can demonstrate to the Administrator's satisfaction that the CV system is unlikely to fail.

(6) *Other emission-related engine components.* Any other deterioration or malfunction occurring in an electronic emission-related engine system or component not otherwise described above that either provides input to or receives commands from the on-board computer and has a measurable impact on emissions; monitoring of components required by this paragraph (b)(6) must be satisfied by employing electrical circuit continuity checks and rationality checks for computer input components (input values within manufacturer specified ranges based on other available operating parameters), and functionality checks for computer output components (proper functional response to computer commands) except that the Administrator may waive such a rationality or functionality check where the manufacturer has demonstrated infeasibility. Malfunctions are defined as a failure of the system or component to meet the electrical circuit continuity checks or the rationality or functionality checks.

(7) *Performance of OBD functions.* Any sensor or other component deterioration or malfunction which renders that sensor or component incapable of performing its function as part of the OBD system must be detected and identified on engines so equipped.

(c) *Malfunction indicator light (MIL).* The OBD system must incorporate a malfunction indicator light (MIL) readily visible to the vehicle operator. When illuminated, the MIL must display ''Check Engine,'' ''Service Engine Soon,'' a universally recognizable engine symbol, or a similar phrase or symbol approved by the Administrator. More than one general purpose malfunction indicator light for emission-related problems should not be used; separate specific purpose warning lights (e.g., brake system, fasten seat belt, oil pressure, etc.) are permitted. The use of red for the OBD-related malfunction indicator light is prohibited.

(d) *MIL illumination.*

(1) The MIL must illuminate and remain illuminated when any of the conditions specified in paragraph (b) of this section are detected and verified, or whenever the engine control enters a default or secondary mode of operation considered abnormal for the given engine operating conditions. The MIL must blink once per second under any period of operation during which engine misfire is occurring and catalyst damage is imminent. If such misfire is detected again during the following driving cycle (i.e., operation consisting of, at a minimum, engine start-up and engine shut-off) or the next driving cycle in which similar conditions are encountered, the MIL must maintain a steady illumination when the misfire is not occurring and then remain illuminated until the MIL extinguishing criteria of this section are satisfied. The MIL must also illuminate when the vehicle's ignition is in the ''key-on'' position before engine starting or cranking and extinguish after engine starting if no malfunction has previously been detected. If a fuel system or engine misfire malfunction has previously been detected, the MIL may be extinguished if the malfunction does not reoccur during three subsequent sequential trips during which similar conditions are encountered and no new malfunctions have been detected. Similar conditions are defined as engine speed within 375 rpm, engine load within 20 percent, and engine warm-up status equivalent to that under which the malfunction was first detected. If any malfunction other than a fuel system or engine misfire malfunction has been detected, the MIL may be extinguished if the malfunction does not reoccur during three subsequent sequential trips during which the monitoring system responsible for illuminating the MIL functions without detecting the malfunction, and no new malfunctions have been detected. Upon Administrator approval, statistical MIL illumination protocols may be employed, provided they result in comparable timeliness in detecting a malfunction and evaluating system performance, i.e., three to six driving cycles would be considered acceptable.

(2) *Drive cycle or driving cycle,* in the context of this § 86.007–17 and for model years 2010 and later, a drive cycle means operation that consists of engine startup and engine shutoff and includes the period of engine off time up to the next engine startup. For vehicles that employ engine shutoff strategies (e.g., engine shutoff at idle), the manufacturer may use an alternative definition for drive cycle (e.g., key-on followed by key-off). Any alternative definition must be based on equivalence to engine startup and engine shutoff signaling the beginning and ending of a single driving event for a conventional vehicle. For applications that span 14,000 pounds GVWR, the manufacturer may use the drive cycle definition of § 86.010–18 in lieu of the definition in this paragraph.

(e) *Storing of computer codes.* The OBD system shall record and store in computer memory diagnostic trouble codes and diagnostic readiness codes indicating the status of the emission control system. These codes shall be available through the standardized data link connector per specifications as referenced in paragraph (h) of this section.

(1) A diagnostic trouble code must be stored for any detected and verified malfunction causing MIL illumination. The stored diagnostic trouble code must identify the malfunctioning system or component as uniquely as possible. At the manufacturer's discretion, a diagnostic trouble code may be stored for conditions not causing MIL illumination. Regardless, a separate code should be stored indicating the expected MIL illumination status (i.e., MIL commanded ''ON,'' MIL commanded ''OFF'').

(2) For a single misfiring cylinder, the diagnostic trouble code(s) must uniquely identify the cylinder, unless the manufacturer submits data and/or engineering evaluations which adequately demonstrate that the misfiring cylinder cannot be reliably identified under certain operating conditions. For diesel engines only, the specific cylinder for which combustion cannot be detected need not be identified if new hardware would be required to do so. The diagnostic trouble code must identify multiple misfiring cylinder conditions; under multiple misfire conditions, the misfiring cylinders need not be uniquely identified if a distinct multiple misfire diagnostic trouble code is stored.

(3) The diagnostic system may erase a diagnostic trouble code if the same code is not re-registered in at least 40 engine warm-up cycles, and the malfunction indicator light is not illuminated for that code.

(4) Separate status codes, or readiness codes, must be stored in computer memory to identify correctly functioning emission control systems and those emission control systems which require further engine operation to complete proper diagnostic evaluation. A readiness code need not be stored for those monitors that can be considered continuously operating monitors (e.g., misfire monitor, fuel system monitor, etc.). Readiness codes should never be set to ''not ready'' status upon key-on or key-off; intentional setting of readiness codes to ''not ready'' status via service procedures must apply to all such codes, rather than applying to individual codes. Subject to Administrator approval, if monitoring is disabled for a multiple number of driving cycles (i.e., more than one) due to the continued presence of extreme operating conditions (e.g., ambient temperatures below 40°F, or altitudes above 8000 feet), readiness for the subject monitoring system may be set to ''ready'' status without monitoring having been completed. Administrator approval shall be based on the conditions for monitoring system disablement, and the number of driving cycles specified without completion of monitoring before readiness is indicated.

(f) *Available diagnostic data.*

(1) Upon determination of the first malfunction of any component or system, ''freeze frame'' engine conditions present at the time must be stored in computer memory. Should a subsequent fuel system or misfire malfunction occur, any previously stored freeze frame conditions must be replaced by the fuel system or misfire conditions (whichever occurs first). Stored engine conditions must include, but are not limited to: engine speed, open or closed loop operation, fuel system commands, coolant temperature, calculated load value, fuel pressure, vehicle speed, air flow rate, and intake manifold pressure if the information needed to determine these conditions is available to the computer. For freeze frame storage, the manufacturer must include the most appropriate set of conditions to facilitate effective repairs. If the diagnostic trouble code causing the conditions to be stored is erased in accordance with paragraph (d) of this section, the stored engine conditions may also be erased.

(2) The following data in addition to the required freeze frame information must be made available on demand through the serial port on the standardized data link connector, if the information is available to the on-board computer or can be determined using information available to the on-board computer: Diagnostic trouble codes, engine coolant temperature, fuel control system status (closed loop, open loop, other), fuel trim, ignition timing advance, intake air temperature, manifold air pressure, air flow rate, engine RPM, throttle position sensor output value, secondary air status (upstream, downstream, or atmosphere), calculated load value, vehicle speed, and fuel pressure. The signals must be provided in standard units based on SAE specifications as referenced in paragraph (h) of this section. Actual signals must be clearly identified separately from default value or limp home signals.

(3) For all OBD systems for which specific on-board evaluation tests are conducted (catalyst, oxygen sensor, etc.), the results of the most recent test performed by the vehicle, and the limits to which the system is compared must be available through the standardized data link connector per the appropriate standardized specifications as referenced in paragraph (h) of this section.

(4) Access to the data required to be made available under this section shall be unrestricted and shall not require any access codes or devices that are only available from the manufacturer.

(g) *Exceptions.* The OBD system is not required to evaluate systems or components during malfunction conditions if such evaluation would result in a risk to safety or failure of systems or components. Additionally, the OBD system is not required to evaluate systems or components during operation of a power take-off unit such as a dump bed, snow plow blade, or aerial bucket, etc.

(h) *Reference materials.* The following documents are incorporated by reference, see § 86.1. Anyone may inspect copies at the U.S. EPA or at the National Archives and Records Administration (NARA). For information on the availability of this material at U.S. EPA, NARA, or the standard making bodies directly, refer to § 86.1.

(1) SAE material.

(i) SAE J1850, Revised May 2001, shall be used as the on-board to off-board communications protocol. All emission related messages sent to the scan tool over a J1850 data link shall use the Cyclic Redundancy Check and the three byte header, and shall not use inter-byte separation or check sums.

(ii) SAE J1979, Revised April 2002. Basic diagnostic data (as specified in § 86.007–17(e) and (f)) shall be provided in the format and units in this industry standard.

(iii) SAE J2012, Revised April 2002. Diagnostic trouble codes shall be consistent with this industry standard.

(iv) SAE J1962, Revised April 2002. The connection interface between the OBD system and test equipment and diagnostic tools shall meet the functional requirements of this industry standard.

(v) SAE J1930, Revised April 2002; or, SAE J2403, Revised August 2007. All acronyms, definitions and abbreviations shall be formatted according to one or the other of these industry standards.

(vi) SAE J1978, Revised April 2002. All equipment used to interface, extract and display OBD-related information shall meet this industry standard.

(vii) As an alternative to the above standards, heavy-duty vehicles may conform to the specifications of these SAE standards: SAE J1939–11, Revised October 1999; SAE J1939–13, July 1999; SAE J1939–21, Revised April 2001; SAE J1939–31, Revised December 1997; SAE J1939–71, Revised August 2002; SAE J1939–73, Revised June 2001; SAE J1939–81, July 1997.

(2) ISO materials.

(i) ISO 9141–2, February 1, 1994. This industry standard may be used as an alternative to SAE J1850 (as specified in paragraph (h)(1)(i) of this section) as the on-board to off-board communications protocol.

(ii) ISO 14230–4:2000(E), June 1, 2000. This industry standard may be used as an alternative to SAE J1850 (as specified in paragraph (h)(1)(i) of this section) as the on-board to off-board communications protocol.

(iii) ISO 15765–4.3:2001, December 14, 2001. This industry standard may be

used as an alternative to SAE J1850 (as specified in paragraph (h)(1)(i) of this section) as the on-board to off-board communications protocol.

(iv) ISO 15765–4:2005(E), January 15, 2005. Beginning with the 2008 model year and beyond, this industry standard shall be the only acceptable protocol used for standardized on-board to off-board communications for vehicles below 8500 pounds. For vehicles 8500 to 14000 pounds, either this ISO industry standard or the SAE standards listed in paragraph (h)(1)(vii) of this section shall be the only acceptable protocols used for standardized on-board to off-board communications.

(i) *Deficiencies and alternative fueled engines.* Upon application by the manufacturer, the Administrator may accept an OBD system as compliant even though specific requirements are not fully met. Such compliances without meeting specific requirements, or deficiencies, will be granted only if compliance would be infeasible or unreasonable considering such factors as, but not limited to: technical feasibility of the given monitor and lead time and production cycles including phase-in or phase-out of engines or vehicle designs and programmed upgrades of computers. Unmet requirements should not be carried over from the previous model year except where unreasonable hardware or software modifications would be necessary to correct the deficiency, and the manufacturer has demonstrated an acceptable level of effort toward compliance as determined by the Administrator. Furthermore, EPA will not accept any deficiency requests that include the complete lack of a major diagnostic monitor (''major'' diagnostic monitors being those for exhaust aftertreatment devices, oxygen sensor, air-fuel ratio sensor, NO_X sensor, engine misfire, evaporative leaks, and diesel EGR, if equipped), with the possible exception of the special provisions for alternative fueled engines. For alternative fueled heavy-duty engines (e.g., natural gas, liquefied petroleum gas, methanol, ethanol), manufacturers may request the Administrator to waive specific monitoring requirements of this section for which monitoring may not be reliable with respect to the use of the alternative fuel. At a minimum, alternative fuel engines must be equipped with an OBD system meeting OBD requirements to the extent feasible as approved by the Administrator.

(j) *California OBDII compliance option.* For heavy-duty engines used in applications weighing 14,000 pounds GVWR or less, demonstration of compliance with California OBD II requirements (Title 13 California Code of Regulations § 1968.2 (13 CCR 1968.2)), as modified and approved on November 9, 2007 (incorporated by reference, see § 86.1), shall satisfy the requirements of this section, except that compliance with 13 CCR 1968.2(e)(4.2.2)(C), pertaining to 0.02 inch evaporative leak detection, and 13 CCR 1968.2(d)(1.4), pertaining to tampering protection, are not required to satisfy the requirements of this section. Also, the deficiency provisions of 13 CCR 1968.2(k) do not apply. The deficiency provisions of paragraph (i) of this section and the evaporative leak detection requirement of paragraph (b)(4) of this section apply to manufacturers selecting this paragraph (j) for demonstrating compliance. In addition, demonstration of compliance with 13 CCR 1968.2(e)(15.2.1)(C), to the extent it applies to the verification of proper alignment between the camshaft and crankshaft, applies only to vehicles equipped with variable valve timing.

(k) *Phase-in for heavy-duty engines.* Manufacturers of heavy-duty engines intended for use in a heavy-duty vehicle weighing 14,000 pounds GVWR must comply with the OBD requirements in this section according to the following phase-in schedule, based on the percentage of projected engine sales within each category. The 2007 requirements in the following phase-in schedule apply to all heavy-duty engines intended for use in a heavy-duty vehicle weighing 14,000 pounds GVWR or less. For the purposes of calculating compliance with the phase-in provisions of this paragraph (k), heavy-duty engines may be combined with heavy-duty vehicles subject to the phase-in requirements of paragraph § 86.1806–05(l). The OBD Compliance phase-in table follows:

OBD COMPLIANCE PHASE-IN FOR HEAVY-DUTY ENGINES INTENDED FOR USE IN A HEAVY-DUTY VEHICLE WEIGHING 14,000 POUNDS GVWR OR LESS

Model year	Otto-cycle phase-in based on projected sales	Diesel phase-in based on projected sales
2007 MY	80% compliance; alternative fuel waivers available	100% compliance.
2008+ MY 100% compliance	100% compliance	100% compliance.

■ 4. Section 86.007–30 is added to Subpart A to read as follows:

§ 86.007–30 Certification.

(a)(1)(i) If, after a review of the test reports and data submitted by the manufacturer, data derived from any inspection carried out under § 86.091–7(c) and any other pertinent data or information, the Administrator determines that a test vehicle(s) (or test engine(s)) meets the requirements of the Act and of this subpart, he will issue a certificate of conformity with respect to such vehicle(s) (or engine(s)) except in cases covered by paragraphs (a)(1)(ii) and (c) of this section.

(ii) Gasoline-fueled and methanol-fueled heavy-duty vehicles. If, after a review of the statement(s) of compliance submitted by the manufacturer under § 86.094–23(b)(4) and any other pertinent data or information, the Administrator determines that the requirements of the Act and this subpart have been met, he will issue one certificate of conformity per manufacturer with respect to the evaporative emission family(ies) covered by paragraph (c) of this section.

(2) Such certificate will be issued for such period not to exceed one model year as the Administrator may determine and upon such terms as he may deem necessary or appropriate to assure that any new motor vehicle (or new motor vehicle engine) covered by the certificate will meet the requirements of the Act and of this part.

(3)(i) One such certificate will be issued for each engine family. For gasoline-fueled and methanol-fueled light-duty vehicles and light-duty trucks, and petroleum-fueled diesel cycle light-duty vehicles and light-duty trucks not certified under § 86.098–28(g), one such certificate will be issued for each engine family-evaporative/refueling emission family combination. Each certificate will certify compliance with no more than one set of in-use and certification standards (or family emission limits, as appropriate).

(ii) For gasoline-fueled and methanol fueled heavy-duty vehicles, one such certificate will be issued for each

manufacturer and will certify compliance for those vehicles previously identified in that manufacturer's statement(s) of compliance as required in § 86.098–23(b)(4)(i) and (ii).

(iii) For diesel light-duty vehicles and light-duty trucks, or diesel HDEs, included in the applicable particulate averaging program, the manufacturer may at any time during production elect to change the level of any family particulate emission limit by demonstrating compliance with the new limit as described in § 86.094–28(a)(6), § 86.094–28(b)(5)(i), or § 86.004–28(c)(5)(i). New certificates issued under this paragraph will be applicable only for vehicles (or engines) produced subsequent to the date of issuance.

(iv) For light-duty trucks or HDEs included in the applicable NO_X averaging program, the manufacturer may at any time during production elect to change the level of any family NO_X emission limit by demonstrating compliance with the new limit as described in § 86.094–28(b)(5)(ii) or § 86.004–28(c)(5)(ii). New certificates issued under this paragraph will be applicable only for vehicles (or engines) produced subsequent to the day of issue.

(4)(i) For exempt light-duty vehicles and light-duty trucks under the provisions of § 86.094–8(j) or § 86.094–9(j), an adjustment or modification performed in accordance with instructions provided by the manufacturer for the altitude where the vehicle is principally used will not be considered a violation of section 203(a)(3) of the Clean Air Act (42 U.S.C. 7522(a)(3)).

(ii) A violation of section 203(a)(1) of the Clean Air Act (42 U.S.C. 7522(a)(1)) occurs when a manufacturer sells or delivers to an ultimate purchaser any light-duty vehicle or light-duty truck, subject to the regulations under the Act, under any of the conditions specified in paragraph (a)(4)(ii) of this section.

(A) When a light-duty vehicle or light-duty truck is exempted from meeting high-altitude requirements as provided in § 86.090–8(h) or § 86.094–9(h):

(*1*) At a designated high-altitude location, unless such manufacturer has reason to believe that such vehicle will not be sold to an ultimate purchaser for principal use at a designated high-altitude location; or

(*2*) At a location other than a designated high-altitude location, when such manufacturer has reason to believe that such motor vehicle will be sold to an ultimate purchaser for principal use at a designated high-altitude location.

(B) When a light-duty vehicle or light-duty truck is exempted from meeting low-altitude requirements as provided in § 86.094–8(i) or § 86.094–9(i):

(*1*) At a designated low-altitude location, unless such manufacturer has reason to believe that such vehicle will not be sold to an ultimate purchaser for principal use at a designated low-altitude location; or

(*2*) At a location other than a designated low-altitude location, when such manufacturer has reason to believe that such motor vehicle will be sold to an ultimate purchaser for principal use at a designated low-altitude location.

(iii) A manufacturer shall be deemed to have reason to believe that a light-duty vehicle that has been exempted from compliance with emission standards at high-altitude, or a light-duty truck which is not configured to meet high-altitude requirements, will not be sold to an ultimate purchaser for principal use at a designated high-altitude location if the manufacturer has informed its dealers and field representatives about the terms of these high-altitude regulations, has not caused the improper sale itself, and has taken reasonable action which shall include, but not be limited to, either paragraph (a)(4)(iii) (A) or (B), and paragraph (a)(4)(iii)(C) of this section:

(A) Requiring dealers in designated high-altitude locations to submit written statements to the manufacturer signed by the ultimate purchaser that a vehicle which is not configured to meet high-altitude requirements will not be used principally at a designated high-altitude location; requiring dealers in counties contiguous to designated high-altitude locations to submit written statements to the manufacturer, signed by the ultimate purchaser who represents to the dealer in the normal course of business that he or she resides in a designated high-altitude location, that a vehicle which is not configured to meet high-altitude requirements will not be used principally at a designated high-altitude location; and for each sale or delivery of fleets of ten or more such vehicles in a high-altitude location or in counties contiguous to high-altitude locations, requiring either the selling dealer or the delivering dealer to submit written statements to the manufacturer, signed by the ultimate purchaser who represents to the dealer in the normal course of business that he or she resides in a designated high-altitude location, that a vehicle which is not configured to meet high-altitude requirements will not be used principally at a designated high-altitude location. In addition, the manufacturer will make available to EPA, upon reasonable written request (but not more frequently than quarterly, unless EPA has demonstrated that it has substantial reason to believe that an improperly configured vehicle has been sold), sales, warranty, or other information pertaining to sales of vehicles by the dealers described above maintained by the manufacturer in the normal course of business relating to the altitude configuration of vehicles and the locations of ultimate purchasers; or

(B) Implementing a system which monitors factory orders of low-altitude vehicles by high-altitude dealers, or through other means, identifies dealers that may have sold or delivered a vehicle not configured to meet the high-altitude requirements to an ultimate purchaser for principal use at a designated high-altitude location; and making such information available to EPA upon reasonable written request (but not more frequently than quarterly, unless EPA has demonstrated that it has substantial reason to believe that an improperly configured vehicle has been sold); and

(C) Within a reasonable time after receiving written notice from EPA or a State or local government agency that a dealer may have improperly sold or delivered a vehicle not configured to meet the high-altitude requirements to an ultimate purchaser residing in a designated high-altitude location, or based on information obtained pursuant to paragraph (a)(4)(iii) of this section that a dealer may have improperly sold or delivered a significant number of such vehicles to ultimate purchasers so residing, reminding the dealer in writing of the requirements of these regulations, and, where appropriate, warning the dealer that sale by the dealer of vehicles not configured to meet high-altitude requirements may be contrary to the terms of its franchise agreement with the manufacturer and the dealer certification requirements of § 85.2108 of this chapter.

(iv) A manufacturer shall be deemed to have reason to believe that a light-duty vehicle or light-duty truck which has been exempted from compliance with emission standards at low altitude, as provided in § 86.094–8(i) or § 86.094–9(i), will not be sold to an ultimate purchaser for principal use at a designated low-altitude location if the manufacturer has informed its dealers and field representatives about the terms of the high-altitude regulations, has not caused the improper sale itself, and has taken reasonable action which shall include, but not be limited to either § 86.094–30(a)(4)(iv)(A) or (B) and § 86.094–30(a)(4)(iv)(C):

(A) Requiring dealers in designated low-altitude locations to submit written

statements to the manufacturer signed by the ultimate purchaser that a vehicle which is not configured to meet low-altitude requirements will not be used principally at a designated low-altitude location; requiring dealers in counties contiguous to designated low-altitude locations to submit written statements to the manufacturer, signed by the ultimate purchaser who represents to the dealer in the normal course of business that he or she resides in a designated low-altitude location, that a vehicle which is not configured to meet low-altitude requirements will not be used principally at a designated low-altitude location; and for each sale or delivery of fleets of ten or more such vehicles in a low-altitude location or in counties contiguous to low-altitude locations, requiring either the selling dealer or the delivering dealer to submit written statements to the manufacturer, signed by the ultimate purchaser who represents to the dealer in the normal course of business that he or she resides in a designated low-altitude location, that a vehicle which is not configured to meet low-altitude requirements will not be used principally at a designated high-altitude location. In addition, the manufacturer will make available to EPA, upon reasonable written request (but not more frequently than quarterly, unless EPA has demonstrated that it has substantial reason to believe that an improperly configured vehicle has been sold), sales, warranty, or other information pertaining to sales of vehicles by the dealers described above maintained by the manufacturer in the normal course of business relating to the altitude configuration of vehicles and the locations of ultimate purchasers; or

(B) Implementing a system which monitors factory orders of high-altitude vehicles by low-altitude dealers, or through other means, identifies dealers that may have sold or delivered a vehicle not configured to meet the low-altitude requirements to an ultimate purchaser for principal use at a designated low-altitude location; and making such information available to EPA upon reasonable written request (but not more frequently than quarterly, unless EPA has demonstrated that it has substantial reason to believe that an improperly configured vehicle has been sold); and

(C) Within a reasonable time after receiving written notice from EPA or a state or local government agency that a dealer may have improperly sold or delivered a vehicle not configured to meet the low-altitude requirements to an ultimate purchaser residing in a designated low-altitude location, or based on information obtained pursuant to paragraph (a)(4)(iv) of this section that a dealer may have improperly sold or delivered a significant number of such vehicles to ultimate purchasers so residing, reminding the dealer in writing of the requirements of these regulations, and, where appropriate, warning the dealer that sale by the dealer of vehicles not configured to meet low-altitude requirements may be contrary to the terms of its franchise agreement with the manufacturer and the dealer certification requirements of § 85.2108 of this chapter.

(5)(i) For the purpose of paragraph (a) of this section, a ''designated high-altitude location'' is any county which has substantially all of its area located above 1,219 meters (4,000 feet) and:

(A) Requested and extension past the attainment date of December 31, 1982, for compliance with either the National Ambient Air Quality Standards for carbon monoxide or ozone, as indicated in part 52 (Approval and Promulgation of Implementation Plans) of this title; or

(B) Is in the same state as a county designated as a high-altitude location according to paragraph (a)(5)(i)(A) of this section.

(ii) The designated high-altitude locations defined in paragraph (a)(5)(i) of this section are listed below:

State of Colorado

Adams
Alamosa
Arapahoe
Archuleta
Boulder
Chaffee
Cheyenne
Clear Creek
Conejos
Costilla
Crowley
Custer
Delta
Denver
Dolores
Douglas
Eagle
Elbert
El Paso
Fremont
Garfield
Gilpin
Grand
Gunnison
Hinsdale
Huerfano
Jackson
Jefferson
Kit Carson
Lake
La Plata
Larimer
Las Animas
Lincoln
Mesa
Mineral
Moffat
Montezuma
Montrose
Morgan
Otero
Ouray
Park
Pitkin
Pueblo
Rio Blanco
Rio Grande
Routt
Saguache
San Juan
San Miguel
Summit
Teller
Washington
Weld

State of Nevada

Carson City
Douglas
Elko
Esmeralda
Eureka
Humboldt
Lander
Lincoln
Lyon
Mineral
Nye
Pershing
Storey
Washoe
White Pine

State of New Mexico

Bernalillo
Catron
Colfax
Curry
De Baca
Grant
Guadalupe
Harding
Hidalgo
Lincoln
Los Alamos
Luna
McKinley
Mora
Otero
Rio Arriba
Roosevelt
Sandoval
San Juan
San Miguel Santa Fe
Sierra
Socorro
Taos
Torrance
Union
Valencia

State of Utah

Beaver

Box Elder
Cache
Carbon
Daggett
Davis
Duchesne
Emery
Garfield
Grand
Iron
Juab
Kane
Millard
Morgan
Piute
Rich
Salt Lake
San Juan
Sanpete
Sevier
Summit
Tooele
Uintah
Utah
Wasatch
Wayne
Weber

(iii) For the purpose of paragraph (a) of this section, a ''designated low-altitude location'' is any county which has substantially all of its area located below 1,219 meters (4,000 feet).

(iv) The designated low-altitude locations so defined include all counties in the United States which are not listed in either paragraph (a)(5)(ii) of this section or in the list below:

State of Arizona

Apache
Cochise
Coconino
Navajo
Yavapai

State of Idaho

Bannock
Bear Lake
Bingham
Blaine
Bonneville
Butte
Camas
Caribou
Cassia
Clark
Custer
Franklin
Fremont
Jefferson
Lemhi
Madison
Minidoka
Oneida
Power
Treton
Valley

State of Montana

Beaverhead
Deer Lodge
Gallatin
Jefferson
Judith Basin
Madison
Meagher
Park
Powell
Silver Bow
Wheatland

State of Nebraska

Banner
Cheyenne
Kimball
Sioux

State of Oregon

Harney
Klamath
Lake

State of Texas

Jeff Davis
Hudspeth
Parmer

State of Wyoming

Albany
Campbell
Carbon
Converse
Fremont
Goshen
Hot Springs
Johnson
Laramie
Lincoln
Natrona
Niobrara
Park
Platte
Sublette
Sweetwater
Teton
Uinta
Washakie
Weston

(6) Catalyst-equipped vehicles, otherwise covered by a certificate, which are driven outside the United States, Canada, and Mexico will be presumed to have been operated on leaded gasoline resulting in deactivation of the catalysts. If these vehicles are imported or offered for importation without retrofit of the catalyst, they will be considered not to be within the coverage of the certificate unless included in a catalyst control program operated by a manufacturer or a United States Government agency and approved by the Administrator.

(7) For incomplete light-duty trucks, a certificate covers only those new motor vehicles which, when completed by having the primary load-carrying device or container attached, conform to the maximum curb weight and frontal area limitations described in the application for certification as required in § 86.094–21(d).

(8) For heavy-duty engines, a certificate covers only those new motor vehicle engines installed in heavy-duty vehicles which conform to the minimum gross vehicle weight rating, curb weight, or frontal area limitations for heavyduty vehicles described in § 86.082–2.

(9) For incomplete gasoline-fueled and methanol-fueled heavy-duty vehicles a certificate covers only those new motor vehicles which, when completed, conform to the nominal maximum fuel tank capacity limitations as described in the application for certification as required in § 86.094–21(e).

(10)(i) For diesel-cycle light-duty vehicle and diesel-cycle light-duty truck families which are included in a particulate averaging program, the manufacturer's production-weighted average of the particulate emission limits of all engine families in a participating class or classes shall not exceed the applicable diesel-cycle particulate standard, or the composite particulate standard defined in § 86.090–2 as appropriate, at the end of the model year, as determined in accordance with this part. The certificate shall be void *ab initio* for those vehicles causing the production-weighted family emission limit (FEL) to exceed the particulate standard.

(ii) For all heavy-duty diesel-cycle engines which are included in the particulate ABT programs under § 86.098–15 or superseding ABT sections as applicable, the provisions of paragraphs (a)(10)(ii)(A)–(C) of this section apply.

(A) All certificates issued are conditional upon the manufacturer complying with the provisions of § 86.098–15 or superseding ABT sections as applicable and the ABT related provisions of other applicable sections, both during and after the model year production.

(B) Failure to comply with all provisions of § 86.098–15 or superseding ABT sections as applicable will be considered to be a failure to satisfy the conditions upon which the certificate was issued, and the certificate may be deemed void *ab initio.*

(C) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied or excused.

(11)(i) For light-duty truck families which are included in a NO_X averaging program, the manufacturer's production-weighted average of the NO_X

emission limits of all such engine families shall not exceed the applicable NO_X emission standard, or the composite NO_X emission standard defined in § 86.088–2, as appropriate, at the end of the model year, as determined in accordance with this part. The certificate shall be void *ab initio* for those vehicles causing the production-weighted FEL to exceed the NO_X standard.

(ii) For all HDEs which are included in the NO_X plus NMHC ABT programs contained in § 86.098–15, or superseding ABT sections as applicable, the provisions of paragraphs (a)(11)(ii)(A)–(C) of this section apply.

(A) All certificates issued are conditional upon the manufacturer complying with the provisions of § 86.098–15 or superseding ABT sections as applicable and the ABT related provisions of other applicable sections, both during and after the model year production.

(B) Failure to comply with all provisions of § 86.098–15 or superseding ABT sections as applicable will be considered to be a failure to satisfy the conditions upon which the certificate was issued, and the certificate may be deemed void *ab initio*.

(C) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied or excused.

(12) For all light-duty vehicles certified to standards under § 86.094–8 or to which standards under § 86.708–94 are applicable, the provisions of paragraphs (a)(12)(i) through (iii) of this section apply.

(13) For all light-duty trucks certified to Tier 0 standards under § 86.094–9 and to which standards under § 86.709–94 are applicable:

(i) All certificates issued are conditional upon the manufacturer complying with all provisions of §§ 86.094–9 and 86.709–94 both during and after model year production.

(ii) Failure to meet the required implementation schedule sales percentages as specified in §§ 86.094–9 and 86.709–94 will be considered to be a failure to satisfy the conditions upon which the certificate(s) was issued and the individual vehicles sold in violation of the implementation schedule shall not be covered by the certificate.

(iii) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied.

(14) For all light-duty vehicles and light-duty trucks certified with an Alternative Service Accumulation Durability Program under § 86.094–13(e), paragraphs (a)(14)(i) through (iii) of this section apply.

(i) All certificates issued are conditional upon the manufacturer performing the in-use verification program pursuant to the agreement described in § 86.094–13(e)(8).

(ii) Failure to fully comply with all the terms of the in-use verification program pursuant to the agreement described in § 86.094–13(e)(8) will be considered a failure to satisfy the conditions upon which the certificate was issued. A vehicle or truck will be considered to be covered by the certificate only if the manufacturer fulfills the conditions upon which the certificate is issued.

(iii) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied.

(15) For all light-duty vehicles certified to evaporative test procedures and accompanying standards specified under § 86.096–8:

(i) All certificates issued are conditional upon the manufacturer complying with all provisions of § 86.096–8 both during and after model year production.

(ii) Failure to meet the required implementation schedule sales percentages as specified in § 86.096–8 will be considered to be a failure to satisfy the conditions upon which the certificate was issued and the vehicles sold in violation of the implementation schedule shall not be covered by the certificate.

(iii) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied.

(16) For all light-duty trucks certified to evaporative test procedures and accompanying standards specified under § 86.096–9:

(i) All certificates issued are conditional upon the manufacturer complying with all provisions of § 86.096–9 both during and after model year production.

(ii) Failure to meet the required implementation schedule sales percentages as specified in § 86.096–9 will be considered to be a failure to satisfy the conditions upon which the certificate was issued and the vehicles sold in violation of the implementation schedule shall not be covered by the certificate.

(iii) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied.

(17) For all heavy-duty vehicles certified to evaporative test procedures and accompanying standards specified under § 86.096–10:

(i) All certificates issued are conditional upon the manufacturer complying with all provisions of § 86.096–10 both during and after model year production.

(ii) Failure to meet the required implementation schedule sales percentages as specified in § 86.096–10 will be considered to be a failure to satisfy the conditions upon which the certificate was issued and the vehicles sold in violation of the implementation schedule shall not be covered by the certificate.

(iii) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied.

(18) For all heavy-duty vehicles certified to evaporative test procedures and accompanying standards specified under § 86.098–11:

(i) All certificates issued are conditional upon the manufacturer complying with all provisions of § 86.098–11 both during and after model year production.

(ii) Failure to meet the required implementation schedule sales percentages as specified in § 86.098–11 will be considered to be a failure to satisfy the conditions upon which the certificate was issued and the vehicles sold in violation of the implementation schedule shall not be covered by the certificate.

(iii) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied.

(19) For all light-duty vehicles certified to refueling emission standards under § 86.098–8, the provisions of paragraphs (a)(19) (i) through (iii) of this section apply.

(i) All certificates issued are conditional upon the manufacturer complying with all provisions of § 86.098–8, both during and after model year production.

(ii) Failure to meet the required implementation schedule sales percentages as specified in § 86.094–8 be considered to be a failure to satisfy the conditions upon which the certificate(s) was issued and the vehicles sold in violation of the implementation schedule shall not be covered by the certificate.

(iii) The manufacturer shall bear the burden of establishing to the satisfaction

of the Administrator that the conditions upon which the certificate was issued were satisfied.

(20) For all light-duty trucks certified to refueling emission standards under § 86.001–9, the provisions of paragraphs (a)(20)(i)–(iii) this section apply.

(i) All certificates issued are conditional upon the manufacturer complying with all provisions of § 86.001–9 both during and after model year production.

(ii) Failure to meet the required implementation schedule sales percentages as specified in § 86.001–9 will be considered to be a failure to satisfy the conditions upon which the certificate(s) was issued and the individual vehicles sold in violation of the implementation schedule shall not be covered by the certificate.

(iii) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied.

(21) For all light-duty trucks certified to refueling emission standards under § 86.004–9, the provisions of paragraphs (a)(21)(i)–(iii) of this section apply.

(i) All certificates issued are conditional upon the manufacturer complying with all provisions of § 86.004–9 both during and after model year production.

(ii) Failure to meet the required implementation schedule sales percentages as specified in § 86.004–9 will be considered to be a failure to satisfy the conditions upon which the certificate(s) was issued and the individual vehicles sold in violation of the implementation schedule shall not be covered by the certificate.

(iii) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied.

(b)(1) The Administrator will determine whether a vehicle (or engine) covered by the application complies with applicable standards (or family emission limits, as appropriate) by observing the following relationships: in paragraphs (b)(1)(i) through (iv) of this section:

(i) *Light-duty vehicles.*

(A) The durability data vehicle(s) selected under § 86.094–24(c)(1)(i) shall represent all vehicles of the same engine system combination.

(B) The emission data vehicle(s) selected under § 86.094–24(b)(1) (ii) through (iv) shall represent all vehicles of the same engine-system combination as applicable.

(C) The emission data vehicle(s) selected under § 86.094–24(b)(1)(vii)(A) and (B) shall represent all vehicles of the same evaporative control system within the evaporative family.

(ii) *Light-duty trucks.*

(A) The emission data vehicle(s) selected under § 86.094–24(b)(1)(ii), shall represent all vehicles of the same engine-system combination as applicable.

(B) The emission data vehicle(s) selected under § 86.001–24(b)(vii)(A) and (B) shall represent all vehicles of the same evaporative/refueling control system within the evaporative/refueling family.

(C) The emission data vehicle(s) selected under § 86.09424(b)(1)(v) shall represent all vehicles of the same engine system combination as applicable.

(D) The emission-data vehicle(s) selected under § 86.098–24(b)(1)(viii) shall represent all vehicles of the same evaporative/refueling control system within the evaporative/refueling emission family, as applicable.

(iii) *Heavy-duty engines.*

(A) An Otto-cycle emission data test engine selected under § 86.094–24(b)(2)(iv) shall represent all engines in the same family of the same engine displacement-exhaust emission control system combination.

(B) An Otto-cycle emission data test engine selected under § 86.094–24(b)(2)(iii) shall represent all engines in the same engine family of the same engine displacement-exhaust emission control system combination.

(C) A diesel emission data test engine selected under § 86.094–24(b)(3)(ii) shall represent all engines in the same engine-system combination.

(D) A diesel emission data test engine selected under § 86.094–24(b)(3)(iii) shall represent all engines of that emission control system at the rated fuel delivery of the test engine.

(iv) Gasoline-fueled and methanol-fueled heavy-duty vehicles. A statement of compliance submitted under § 86.094–23(b)(4)(i) or (ii) shall represent all vehicles in the same evaporative emission family-evaporative emission control system combination.

(2) The Administrator will proceed as in paragraph (a) of this section with respect to the vehicles (or engines) belonging to an engine family or engine family-evaporative/refueling emission family combination (as applicable), all of which comply with all applicable standards (or family emission limits, as appropriate).

(3) If after a review of the test reports and data submitted by the manufacturer, data derived from any additional testing conducted pursuant to § 86.091–29, data or information derived from any inspection carried out under § 86.094–7(d) or any other pertinent data or information, the Administrator determines that one or more test vehicles (or test engines) of the certification test fleet do not meet applicable standards (or family emission limits, as appropriate), he will notify the manufacturer in writing, setting forth the basis for his determination. Within 30 days following receipt of the notification, the manufacturer may request a hearing on the Administrator's determination. The request shall be in writing, signed by an authorized representative of the manufacturer and shall include a statement specifying the manufacturer's objections to the Administrator's determination and data in support of such objections. If, after a review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.078–6 with respect to such issue.

(4) For light-duty vehicles and light-duty trucks the manufacturer may, at its option, proceed with any of the following alternatives with respect to an emission data vehicle determined not in compliance with all applicable standards (or family emission limits, as appropriate) for which it was tested:

(i) Request a hearing under § 86.078–6; or

(ii) Remove the vehicle configuration (or evaporative/refueling vehicle configuration, as applicable) which failed, from his application:

(A) If the failed vehicle was tested for compliance with exhaust emission standards (or family emission limits, as appropriate) only: The Administrator may select, in place of the failed vehicle, in accordance with the selection criteria employed in selecting the failed vehicle, a new emission data vehicle to be tested for exhaust emission compliance only; or

(B) If the failed vehicle was tested for compliance with one or more of the exhaust, evaporative and refueling emission standards: The Administrator may select, in place of the failed vehicle, in accordance with the selection criteria employed in selecting the failed vehicle, a new emission data vehicle which will be tested for compliance with all of the applicable emission standards. If one vehicle cannot be selected in accordance with the selection criteria employed in selecting the failed vehicle, then two or more vehicles may be selected (e.g., one vehicle to satisfy the exhaust emission vehicle selection criteria and one vehicle to satisfy the evaporative and refueling emission vehicle selection criteria). The vehicle selected to satisfy

the exhaust emission vehicle selection criteria will be tested for compliance with exhaust emission standards (or family emission limits, as appropriate) only. The vehicle selected to satisfy the evaporative and/or refueling emission vehicle selection criteria will be tested for compliance with exhaust, evaporative and/or refueling emission standards; or

(iii) Remove the vehicle configuration (or evaporative/refueling vehicle configuration, as applicable) which failed from the application and add a vehicle configuration(s) (or evaporative/refueling vehicle configuration(s), as applicable) not previously listed. The Administrator may require, if applicable, that the failed vehicle be modified to the new engine code (or evaporative/refueling emission code, as applicable) and demonstrate by testing that it meets applicable standards (or family emission limits, as appropriate) for which it was originally tested. In addition, the Administrator may select, in accordance with the vehicle selection criteria given in § 86.001–24(b), a new emission data vehicle or vehicles. The vehicles selected to satisfy the exhaust emission vehicle selection criteria will be tested for compliance with exhaust emission standards (or family emission limits, as appropriate) only. The vehicles selected to satisfy the evaporative emission vehicle selection criteria will be tested for compliance with all of the applicable emission standards (or family emission limits, as appropriate); or

(iv) Correct a component or system malfunction and show that with a correctly functioning system or component the failed vehicle meets applicable standards (or family emission limits, as appropriate) for which it was originally tested. The Administrator may require a new emission data vehicle, of identical vehicle configuration (or evaporative/refueling vehicle configuration, as applicable) to the failed vehicle, to be operated and tested for compliance with the applicable standards (or family emission limits, as appropriate) for which the failed vehicle was originally tested.

(5) For heavy-duty engines the manufacturer may, at his option, proceed with any of the following alternatives with respect to any engine family represented by a test engine(s) determined not in compliance with applicable standards (or family emission limit, as appropriate):

(i) Request a hearing under § 86.078–6; or

(ii) Delete from the application for certification the engines represented by the failing test engine. (Engines so deleted may be included in a later request for certification under § 86.079–32.) The Administrator may then select in place of each failing engine an alternate engine chosen in accordance with selection criteria employed in selecting the engine that failed; or

(iii) Modify the test engine and demonstrate by testing that it meets applicable standards. Another engine which is in all material respect the same as the first engine, as modified, may then be operated and tested in accordance with applicable test procedures.

(6) If the manufacturer does not request a hearing or present the required data under paragraphs (b)(4) or (5) of this section (as applicable) of this section, the Administrator will deny certification.

(c)(1) Notwithstanding the fact that any certification vehicle(s) (or certification engine(s)) may comply with other provisions of this subpart, the Administrator may withhold or deny the issuance of a certificate of conformity (or suspend or revoke any such certificate which has been issued) with respect to any such vehicle(s) (or engine(s)) if:

(i) The manufacturer submits false or incomplete information in his application for certification thereof;

(ii) The manufacturer renders inaccurate any test data which he submits pertaining thereto or otherwise circumvents the intent of the Act, or of this part with respect to such vehicle (or engine);

(iii) Any EPA Enforcement Officer is denied access on the terms specified in § 86.091–7(d) to any facility or portion thereof which contains any of the following:

(A) The vehicle (or engine);

(B) Any components used or considered for use in its modification or buildup into a certification vehicle (or certification engine);

(C) Any production vehicle (or production engine) which is or will be claimed by the manufacturer to be covered by the certificate;

(D) Any step in the construction of a vehicle (or engine) described in paragraph (c)(iii)(C) of this section;

(E) Any records, documents, reports, or histories required by this part to be kept concerning any of the above; or

(iv) Any EPA Enforcement Officer is denied ''reasonable assistance'' (as defined in § 86.091–7(d) in examining any of the items listed in paragraph (c)(1)(iii) of this section.

(2) The sanctions of withholding, denying, revoking, or suspending of a certificate may be imposed for the reasons in paragraphs (c)(1)(i), (ii), (iii), or (iv) of this section only when the infraction is substantial.

(3) In any case in which a manufacturer knowingly submits false or inaccurate information or knowingly renders inaccurate or invalid any test data or commits any other fraudulent acts and such acts contribute substantially to the Administrator's decision to issue a certificate of conformity, the Administrator may deem such certificate void *ab initio*.

(4) In any case in which certification of a vehicle (or engine) is proposed to be withheld, denied, revoked, or suspended under paragraph (c)(1)(iii) or (iv) of this section, and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.091–7(d) in fact occurred, the manufacturer, if he wishes to contend that, even though the violation occurred, the vehicle (or engine) in question was not involved in the violation to a degree that would warrant withholding, denial, revocation, or suspension of certification under either paragraph (c)(1)(iii) or (iv) of this section, shall have the burden of establishing that contention to the satisfaction of the Administrator.

(5) Any revocation or suspension of certification under paragraph (c)(1) of this section shall:

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.078–6 hereof; and

(ii) Extend no further than to forbid the introduction into commerce of vehicles (or engines) previously covered by the certification which are still in the hands of the manufacturer, except in cases of such fraud or other misconduct as makes the certification invalid ab initio.

(6) The manufacturer may request in the form and manner specified in paragraph (b)(3) of this section that any determination made by the Administrator under paragraph (c)(1) of this section to withhold or deny certification be reviewed in a hearing conducted in accordance with § 86.078–6. If the Administrator finds, after a review of the request and supporting data, that the request raises a substantial factual issue, he will grant the request with respect to such issue.

(d)(1) For light-duty vehicles. Notwithstanding the fact that any vehicle configuration or engine family may be covered by a valid outstanding certificate of conformity, the Administrator may suspend such outstanding certificate of conformity in whole or in part with respect to such

vehicle configuration or engine family if:

(i) The manufacturer refuses to comply with the provisions of a test order issued by the Administrator pursuant to § 86.603; or

(ii) The manufacturer refuses to comply with any of the requirements of § 86.603; or

(iii) The manufacturer submits false or incomplete information in any report or information provided pursuant to the requirements of § 86.609; or

(iv) The manufacturer renders inaccurate any test data which he submits pursuant to § 86.609; or

(v) Any EPA Enforcement Officer is denied the opportunity to conduct activities related to entry and access as authorized in § 86.606 of this part and in a warrant or court order presented to the manufacturer or the party in charge of a facility in question; or

(vi) EPA Enforcement Officers are unable to conduct activities related to entry and access or to obtain ''reasonable assistance'' as authorized in § 86.606 of this part because a manufacturer has located its facility in a foreign jurisdiction where local law prohibits those activities; or

(vii) The manufacturer refuses to or in fact does not comply with § 86.604(a), § 86.605, § 86.607, § 86.608, or § 86.610.

(2) The sanction of suspending a certificate may not be imposed for the reasons in paragraph (d)(1)(i), (ii), or (vii) of this section where the refusal is caused by conditions and circumstances outside the control of the manufacturer which render it impossible to comply with those requirements.

(3) The sanction of suspending a certificate may be imposed for the reasons in paragraph (d)(1)(iii), (iv), or (v) of this section only when the infraction is substantial.

(4) In any case in which a manufacturer knowingly submitted false or inaccurate information or knowingly rendered inaccurate any test data or committed any other fraudulent acts, and such acts contributed substantially to the Administrator's original decision not to suspend or revoke a certificate of conformity in whole or in part, the Administrator may deem such certificate void from the date of such fraudulent act.

(5) In any case in which certification of a vehicle is proposed to be suspended under paragraph (d)(1)(v) of this section and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.606 in fact occurred, if the manufacturer wishes to contend that, although the violation occurred, the vehicle configuration or engine family in question was not involved in the violation to a degree that would warrant suspension of certification under paragraph (d)(1)(v) of this section, the manufacturer shall have the burden of establishing the contention to the satisfaction of the Administrator.

(6) Any suspension of certification under paragraph (d)(1) of this section shall:

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.614; and

(ii) Not apply to vehicles no longer in the hands of the manufacturer.

(7) Any voiding of a certificate of conformity under paragraph (d)(4) of this section will be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.614.

(8) Any voiding of the certificate under § 86.091–30(a)(10) will be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.614.

(e) *For light-duty trucks and heavy-duty engines.*

(1) Notwithstanding the fact that any vehicle configuration or engine family may be covered by a valid outstanding certificate of conformity, the Administrator may suspend such outstanding certificate of conformity in whole or in part with respect to such vehicle or engine configuration or engine family if:

(i) The manufacturer refuses to comply with the provisions of a test order issued by the Administrator pursuant to § 86.1003; or

(ii) The manufacturer refuses to comply with any of the requirements of § 86.1003; or

(iii) The manufacturer submits false or incomplete information in any report or information provided pursuant to the requirements of § 86.1009; or

(iv) The manufacturer renders inaccurate any test data submitted pursuant to § 86.1009; or

(v) Any EPA Enforcement Officer is denied the opportunity to conduct activities related to entry and access as authorized in § 86.1006 of this part and in a warrant or court order presented to the manufacturer or the party in charge of a facility in question; or

(vi) EPA Enforcement Officers are unable to conduct activities related to entry and access as authorized in § 86.1006 of this part because a manufacturer has located a facility in a foreign jurisdiction where local law prohibits those activities; or

(vii) The manufacturer refuses to or in fact does not comply with the requirements of §§ 86.1004(a), 86.1005, 86.1007, 86.1008, 86.1010, 86.1011, or 86.1013.

(2) The sanction of suspending a certificate may not be imposed for the reasons in paragraph (e)(1) (i), (ii), or (vii) of this section where such refusal or denial is caused by conditions and circumstances outside the control of the manufacturer which renders it impossible to comply with those requirements. Such conditions and circumstances shall include, but are not limited to, any uncontrollable factors which result in the temporary unavailability of equipment and personnel needed to conduct the required tests, such as equipment breakdown or failure or illness of personnel, but shall not include failure of the manufacturers to adequately plan for and provide the equipment and personnel needed to conduct the tests. The manufacturer will bear the burden of establishing the presence of the conditions and circumstances required by this paragraph.

(3) The sanction of suspending a certificate may be imposed for the reasons outlined in paragraph (e)(1)(iii), (iv), or (v) of this section only when the infraction is substantial.

(4) In any case in which a manufacturer knowingly submitted false or inaccurate information or knowingly rendered inaccurate any test data or committed any other fraudulent acts, and such acts contributed substantially to the Administrator's original decision not to suspend or revoke a certificate of conformity in whole or in part, the Administrator may deem such certificate void from the date of such fraudulent act.

(5) In any case in which certification of a light-duty truck or heavy-duty engine is proposed to be suspended under paragraph (e)(1)(v) of this section and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.1006 in fact occurred, if the manufacturer wishes to contend that, although the violation occurred, the vehicle or engine configuration or engine family in question was not involved in the violation to a degree that would warrant suspension of certification under paragraph (e)(1)(v) of this section, he shall have the burden of establishing that contention to the satisfaction of the Administrator.

(6) Any suspension of certification under paragraph (e)(1) of this section shall:

(i) Be made only after the manufacturer concerned has been

offered an opportunity for a hearing conducted in accordance with § 86.1014; and

(ii) Not apply to vehicles or engines no longer in the hands of the manufacturer.

(7) Any voiding of a certificate of conformity under paragraph (e)(4) of this section shall be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.1014.

(8) Any voiding of the certificate under paragraph (a) (10) or (11) of this section will be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.1014.

(f) For engine families required to have an OBD system and meant for applications less than or equal to 14,000 pounds, certification will not be granted if, for any test vehicle approved by the Administrator in consultation with the manufacturer, the malfunction indicator light does not illuminate under any of the following circumstances, unless the manufacturer can demonstrate that any identified OBD problems discovered during the Administrator's evaluation will be corrected on production vehicles.

(1)(i) *Otto-cycle.* A catalyst is replaced with a deteriorated or defective catalyst, or an electronic simulation of such, resulting in an increase of 1.5 times the NMHC+NO_X standard or FEL above the NMHC+NO_X emission level measured using a representative 4000 mile catalyst system.

(ii) *Diesel.*

(A) If monitored for emissions performance—a reduction catalyst is replaced with a deteriorated or defective catalyst, or an electronic simulation of such, resulting in exhaust emissions exceeding, for model years 2007 through 2012, 1.75 times the applicable NO_X standard for engines certified to a NO_X FEL greater than 0.50 g/bhp-hr, or the applicable NO_X FEL+0.6 g/bhp-hr for engines certified to a NO_X FEL less than or equal to 0.50 g/bhp-hr and, for model years 2013 and later, the applicable NO_X FEL+0.3 g/bhp-hr. Also if monitored for emissions performance—an oxidation catalyst is replaced with a deteriorated or defective catalyst, or an electronic simulation of such, resulting in exhaust NMHC emissions exceeding, for model years 2007 through 2012, 2.5 times the applicable NMHC standard and, for model years 2013 and later, 2 times the applicable NMHC standard. If monitored for exotherm performance, an oxidation catalsyt is replaced with a deteriorated or defective catalyst, or an electronic simulation of such, resulting in an inability to achieve a 100 degree C temperature rise, or the necessary regeneration temperature, within 60 seconds of initiating a DPF regeneration.

(B) If monitored for performance—a diesel particulate filter (DPF) is replaced with a DPF that has catastrophically failed, or an electronic simulation of such; or, for model years 2010 and later, a DPF is replaced with a deteriorated or defective DPF, or an electronic simulation of such, resulting in either exhaust PM emissions exceeding the applicable FEL+0.04 g/bhp-hr or 0.05 g/bhp-hr PM, whichever is higher. If monitored for a decrease in the expected pressure drop according to the alternative monitoring provision of § 86.007–17(b)(1)(ii)(B), the OBD system fails to detect any of the pressure drop values across the DPF provided by the manufacturer at each of the nine engine speed/load operating points regardless of how those pressure drops are generated.

(2)(i) *Otto-cycle.* An engine misfire condition is induced resulting in exhaust emissions exceeding 1.5 times the applicable standards or FEL for NMHC+NO_X or CO.

(ii) *Diesel.* An engine misfire condition is induced and is not detected.

(3) *Exhaust gas sensors.*

(i) *Oxygen sensors and air-fuel ratio sensors downstream of aftertreatment devices.*

(A) *Otto-cycle.* If so equipped, any oxygen sensor or air-fuel ratio sensor located downstream of aftertreatment devices is replaced with a deteriorated or defective sensor, or an electronic simulation of such, resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC, NO_X or CO.

(B) *Diesel.* If so equipped, any oxygen sensor or air-fuel ratio sensor located downstream of aftertreatment devices is replaced with a deteriorated or defective sensor, or an electronic simulation of such, resulting in exhaust emissions exceeding any of the following levels: The applicable PM FEL+0.04 g/bhp-hr or 0.05 g/bhp-hr PM, whichever is higher; or, for model years 2007 through 2012, 1.75 times the applicable NO_X standard for engines certified to a NO_X FEL greater than 0.50 g/bhp-hr, or the applicable NO_X FEL+0.6 g/bhp-hr for engines certified to a NO_X FEL less than or equal to 0.50 g/bhp-hr and, for model years 2013 and later, the applicable NO_X FEL+0.3 g/bhp-hr; or, for model years 2007 through 2012, 2.5 times the applicable NMHC standard and, for model years 2013 and later, 2 times the applicable NMHC standard.

(ii) *Oxygen sensors and air-fuel ratio sensors upstream of aftertreatment devices.*

(A) *Otto-cycle.* If so equipped, any oxygen sensor or air-fuel ratio sensor located upstream of aftertreatment devices is replaced with a deteriorated or defective sensor, or an electronic simulation of such, resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC, NO_X or CO.

(B) *Diesel.* If so equipped, any oxygen sensor or air-fuel ratio sensor located upstream of aftertreatment devices is replaced with a deteriorated or defective sensor, or an electronic simulation of such, resulting in exhaust emissions exceeding any of the following levels: For model years 2007 through 2012, the applicable PM FEL+0.04 g/bhp-hr or 0.05 g/bhp-hr PM, whichever is higher and, for model years 2013 and later, the applicable PM FEL+0.02 g/bhp-hr or 0.03 g/bhp-hr PM, whichever is higher; or, for model years 2007 through 2012, 1.75 times the applicable NO_X standard for engines certified to a NO_X FEL greater than 0.50 g/bhp-hr, or the applicable NO_X FEL+0.6 g/bhp-hr for engines certified to a NO_X FEL less than or equal to 0.50 g/bhp-hr and, for model years 2013 and later, the applicable NO_X FEL+0.3 g/bhp-hr; or, for model years 2007 through 2012, 2.5 times the applicable NMHC standard and, for model years 2013 and later, 2 times the applicable NMHC standard; or, for model years 2007 through 2012, 2.5 times the applicable CO standard and, for model years 2013 and later, 2 times the applicable CO standard.

(iii) *NO_X sensors.*

(A) *Otto-cycle.* If so equipped, any NO_X sensor is replaced with a deteriorated or defective sensor, or an electronic simulation of such, resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC, NO_X or CO.

(B) *Diesel.* If so equipped, any NO_X sensor is replaced with a deteriorated or defective sensor, or an electronic simulation of such, resulting in exhaust emissions exceeding any of the following levels: The applicable PM FEL+0.04 g/bhp-hr or 0.05 g/bhp-hr PM, whichever is higher; or, for model years 2007 through 2012, 1.75 times the applicable NO_X standard for engines certified to a NO_X FEL greater than 0.50 g/bhp-hr, or the applicable NO_X FEL+0.6 g/bhp-hr for engines certified to a NO_X FEL less than or equal to 0.50 g/bhp-hr and, for model years 2013 and later, the applicable NO_X FEL+0.3 g/bhp-hr.

(4) If so equipped and for Otto-cycle engines, a vapor leak is introduced in

the evaporative and/or refueling system (excluding the tubing and connections between the purge valve and the intake manifold) greater than or equal in magnitude to a leak caused by a 0.040 inch diameter orifice, or the evaporative purge air flow is blocked or otherwise eliminated from the complete evaporative emission control system.

(5)(i) *Otto-cycle.* A malfunction condition is induced in any emission-related engine system or component, including but not necessarily limited to, the exhaust gas recirculation (EGR) system, if equipped, the secondary air system, if equipped, and the fuel control system, singularly resulting in exhaust emissions exceeding 1.5 times the applicable emission standard or FEL for NMHC, NO_X, or CO.

(ii) *Diesel.* A malfunction condition is induced in any emission-related engine system or component, including but not necessarily limited to, the exhaust gas recirculation (EGR) system, if equipped, and the fuel control system, singularly resulting in exhaust emissions exceeding any of the following levels: The applicable PM FEL+0.04 g/bhp-hr or 0.05 g/bhp-hr PM, whichever is higher; or, for model years 2007 through 2012, 1.75 times the applicable NO_X standard for engines certified to a NO_X FEL greater than 0.50 g/bhp-hr, or the applicable NO_X FEL+0.6 g/bhp-hr for engines certified to a NO_X FEL less than or equal to 0.50 g/bhp-hr and, for model years 2013 and later, the applicable NO_X FEL+0.3 g/bhp-hr; or, for model years 2007 through 2012, 2.5 times the applicable NMHC standard and, for model years 2013 and later, 2 times the applicable NMHC standard; or, for model years 2007 through 2012, 2.5 times the applicable CO standard and, for model years 2013 and later, 2 times the applicable CO standard.

(6) A malfunction condition is induced in an electronic emission-related engine system or component not otherwise described above that either provides input to or receives commands from the on-board computer resulting in a measurable impact on emissions.

■ 5. Section 86.010–2 is added to Subpart A to read as follows:

§ 86.010–2 Definitions.

The definitions of § 86.004–2 continue to apply to 2004 and later model year vehicles. The definitions listed in this section apply beginning with the 2010 model year.

DTC means diagnostic trouble code.

Engine or engine system as used in §§ 86.007–17, 86.007–30, 86.010–18, and 86.010–38 means the engine, fuel system, induction system, aftertreatment system, and everything that makes up the system for which an engine manufacturer has received a certificate of conformity.

Engine start as used in § 86.010–18 means the point when the engine reaches a speed 150 rpm below the normal, warmed-up idle speed (as determined in the drive position for vehicles equipped with an automatic transmission). For hybrid vehicles or for engines employing alternative engine start hardware or strategies (e.g., integrated starter and generators.), the manufacturer may use an alternative definition for engine start (e.g., key-on) provided the alternative definition is based on equivalence to an engine start for a conventional vehicle.

Functional check, in the context of onboard diagnostics, means verifying that a component and/or system that receives information from a control computer responds properly to a command from the control computer.

Ignition cycle as used in § 86.010–18 means a cycle that begins with engine start, meets the engine start definition for at least two seconds plus or minus one second, and ends with engine shutoff.

Limp-home operation as used in § 86.010–18 means an operating mode that an engine is designed to enter upon determining that normal operation cannot be maintained. In general, limp-home operation implies that a component or system is not operating properly or is believed to be not operating properly.

Malfunction means the conditions have been met that require the activation of an OBD malfunction indicator light and storage of a DTC.

MIL-on DTC means the diagnostic trouble code stored when an OBD system has detected and confirmed that a malfunction exists (e.g., typically on the second drive cycle during which a given OBD monitor has evaluated a system or component). Industry standards may refer to this as a confirmed or an active DTC.

Onboard Diagnostics (OBD) group means a combination of engines, engine families, or engine ratings that use the same OBD strategies and similar calibrations.

Pending DTC means the diagnostic trouble code stored upon the detection of a potential malfunction.

Permanent DTC means a DTC that corresponds to a MIL-on DTC and is stored in non-volatile random access memory (NVRAM). A permanent DTC can only be erased by the OBD system itself and cannot be erased through human interaction with the OBD system or any onboard computer.

Potential malfunction means that conditions have been detected that meet the OBD malfunction criteria but for which more drive cycles are allowed to provide further evaluation prior to confirming that a malfunction exists.

Previous-MIL-on DTC means a DTC that corresponds to a MIL-on DTC but is distinguished by representing a malfunction that the OBD system has determined no longer exists but for which insufficient operation has occurred to satisfy the DTC erasure provisions.

Rationality check, in the context of onboard diagnostics, means verifying that a component that provides input to a control computer provides an accurate input to the control computer while in the range of normal operation and when compared to all other available information.

Similar conditions, in the context of onboard diagnostics, means engine conditions having an engine speed within 375 rpm, load conditions within 20 percent, and the same warm up status (i.e., cold or hot). The manufacturer may use other definitions of similar conditions based on comparable timeliness and reliability in detecting similar engine operation.

■ 6. Section 86.010–18 is added to Subpart A to read as follows:

§ 86.010–18 On-board Diagnostics for engines used in applications greater than 14,000 pounds GVWR.

(a) *General.* According to the implementation schedule shown in paragraph (o) of this section, heavy-duty engines intended for use in a heavy-duty vehicle weighing more than 14,000 pounds GVWR must be equipped with an on-board diagnostic (OBD) system capable of monitoring all emission-related engine systems or components during the life of the engine. The OBD system is required to detect all malfunctions specified in paragraphs (g), (h), and (i) of this § 86.010–18 although the OBD system is not required to use a unique monitor to detect each of those malfunctions.

(1) When the OBD system detects a malfunction, it must store a pending, a MIL-on, or a previous-MIL-on diagnostic trouble code (DTC) in the onboard computer's memory. A malfunction indicator light (MIL) must also be activated as specified in paragraph (b) of this section.

(2) *Data link connector.*

(i) For model years 2010 through 2012, the OBD system must be equipped with a data link connector to provide access to the stored DTCs as specified in paragraph (k)(2) of this section.

(ii) For model years 2013 and later, the OBD system must be equipped with a standardized data link connector to provide access to the stored DTCs as specified in paragraph (k)(2) of this section.

(3) The OBD system cannot be programmed or otherwise designed to deactivate based on age and/or mileage. This requirement does not alter existing law and enforcement practice regarding a manufacturer's liability for an engine beyond its regulatory useful life, except where an engine has been programmed or otherwise designed so that an OBD system deactivates based on age and/or mileage of the engine.

(4) *Drive cycle or driving cycle*, in the context of this § 86.010–18, means operation that meets any of the conditions of paragraphs (a)(4)(i) through (a)(4)(iv) of this section. Further, for OBD monitors that run during engine-off conditions, the period of engine-off time following engine shutoff and up to the next engine start may be considered part of the drive cycle for the conditions of paragraphs (a)(4)(i) and (a)(4)(iv) of this section. For engines/vehicles that employ engine shutoff OBD monitoring strategies that do not require the vehicle operator to restart the engine to continue vehicle operation (e.g., a hybrid bus with engine shutoff at idle), the manufacturer may use an alternative definition for drive cycle (e.g., key-on followed by key-off). Any alternative definition must be based on equivalence to engine startup and engine shutoff signaling the beginning and ending of a single driving event for a conventional vehicle. For engines that are not likely to be routinely operated for long continuous periods of time, a manufacturer may also request approval to use an alternative definition for drive cycle (e.g., solely based on engine start and engine shutoff without regard to four hours of continuous engine-on time). Administrator approval of the alternative definition will be based on manufacturer-submitted data and/or information demonstrating the typical usage, operating habits, and/or driving patterns of these vehicles.

(i) Begins with engine start and ends with engine shutoff;

(ii) Begins with engine start and ends after four hours of continuous engine-on operation;

(iii) Begins at the end of the previous four hours of continuous engine-on operation and ends after four hours of continuous engine-on operation; or

(iv) Begins at the end of the previous four hours of continuous engine-on operation and ends with engine shutoff.

(5) As an alternative to demonstrating compliance with the provisions of paragraphs (b) through (l) of this § 86.010–18, a manufacturer may demonstrate how the OBD system they have designed to comply with California OBD requirements for engines used in applications greater than 14,000 pounds also complies with the intent of the provisions of paragraphs (b) through (l) of this section. To make use of this alternative, the manufacturer must demonstrate to the Administrator how the OBD system they intend to certify meets the intent behind all of the requirements of this section, where applicable (e.g., paragraph (h) of this section would not apply for a diesel fueled/CI engine). Furthermore, if making use of this alternative, the manufacturer must comply with the specific certification documentation requirements of paragraph (m)(3) of this section.

(6) *Temporary provisions to address hardship due to unusual circumstances.*

(i) After considering the unusual circumstances, the Administrator may permit the manufacturer to introduce into U.S. commerce engines that do not comply with this § 86.010–18 for a limited time if all the following conditions apply:

(A) Unusual circumstances that are clearly outside the manufacturer's control prevent compliance with the requirements of this § 86.010–18.

(B) The manufacturer exercised prudent planning and was not able to avoid the violation and has taken all reasonable steps to minimize the extent of the nonconformity.

(C) No other allowances are available under the regulations in this chapter to avoid the impending violation.

(ii) To apply for an exemption, the manufacturer must send to the Administrator a written request as soon as possible before being in violation. In the request, the manufacturer must show that all the conditions and requirements of paragraph (a)(6)(i) of this section are met.

(iii) The request must also include a plan showing how all the applicable requirements will be met as quickly as possible.

(iv) The manufacturer shall give the Administrator other relevant information upon request.

(v) The Administrator may include additional conditions on an approval granted under the provisions of this paragraph (a)(6), including provisions that may require field repair at the manufacturer's expense to correct the noncompliance.

(vi) Engines sold as non-compliant under this temporary hardship provision must display ''non-OBD'' in the data stream as required under paragraph (k)(4)(ii) of this section. Upon correcting the noncompliance, the data stream value must be updated accordingly.

(b) *Malfunction indicator light (MIL) and Diagnostic Trouble Codes (DTC).* The OBD system must incorporate a malfunction indicator light (MIL) or equivalent and must store specific types of diagnostic trouble codes (DTC). Unless otherwise specified, all provisions of this paragraph (b) apply for 2010 and later model years.

(1) *MIL specifications.*

(i) For model years 2013 and later, the MIL must be located on the primary driver's side instrument panel and be of sufficient illumination and location to be readily visible under all lighting conditions. The MIL must be amber (yellow) in color; the use of red for the OBD-related MIL is prohibited. More than one general purpose malfunction indicator light for emission-related problems shall not be used; separate specific purpose warning lights (e.g., brake system, fasten seat belt, oil pressure, etc.) are permitted. When activated, the MIL shall display the International Standards Organization (ISO) engine symbol.

(ii) The OBD system must activate the MIL when the ignition is in the key-on/engine-off position before engine cranking to indicate that the MIL is functional. The MIL shall be activated continuously during this functional check for a minimum of 5 seconds. During this MIL key-on functional check, the data stream value (see paragraph (k)(4)(ii) of this section) for MIL status must indicate ''commanded off'' unless the OBD system has detected a malfunction and has stored a MIL-on DTC. This MIL key-on functional check is not required during vehicle operation in the key-on/engine-off position subsequent to the initial engine cranking of an ignition cycle (e.g., due to an engine stall or other non-commanded engine shutoff).

(iii) As an option, the MIL may be used to indicate readiness status (see paragraph (k)(4)(i) of this section) in a standardized format in the key-on/engine-off position.

(iv) A manufacturer may also use the MIL to indicate which, if any, DTCs are currently stored (e.g., to ''blink'' the stored DTCs). Such use must not activate unintentionally during routine driver operation.

(v) For model years 2013 and later, the MIL required by this paragraph (b) must not be used in any other way than is specified in this section.

(2) *MIL activation and DTC storage protocol.*

(i) Within 10 seconds of detecting a potential malfunction, the OBD system must store a pending DTC that identifies the potential malfunction.

(ii) If the potential malfunction is again detected before the end of the next drive cycle during which monitoring occurs (i.e., the potential malfunction has been confirmed as a malfunction), then within 10 seconds of such detection the OBD system must activate the MIL continuously and store a MIL-on DTC (systems using the SAE J1939 standard protocol specified in paragraph (k)(1) of this section may either erase or retain the pending DTC in conjunction with storing the MIL-on DTC). If the potential malfunction is not detected before the end of the next drive cycle during which monitoring occurs (i.e., there is no indication of the malfunction at any time during the drive cycle), the corresponding pending DTC should be erased at the end of the drive cycle. Similarly, if a malfunction is detected for the first time and confirmed on a given drive cycle without need for further evaluation, then within 10 seconds of such detection the OBD system must activate the MIL continuously and store a MIL-on DTC (again, systems using the SAE J1939 standard protocol specified in paragraph (k)(1) of this section may optionally store a pending DTC in conjunction with storing the MIL-on DTC).

(iii) A manufacturer may request Administrator approval to employ alternative statistical MIL activation and DTC storage protocols to those specified in paragraphs (b)(2)(i) and (b)(2)(ii) of this section. Approval will depend upon the manufacturer providing data and/or engineering evaluations that demonstrate that the alternative protocols can evaluate system performance and detect malfunctions in a manner that is equally effective and timely. Strategies requiring on average more than six drive cycles for MIL activation will not be accepted.

(iv) The OBD system must store a ''freeze frame'' of the operating conditions (as defined in paragraph (k)(4)(iii) of this section) present upon detecting a malfunction or a potential malfunction. In the event that a pending DTC has matured to a MIL-on DTC, the manufacturer shall either retain the currently stored freeze frame conditions or replace the stored freeze frame with freeze frame conditions regarding the MIL-on DTC. Any freeze frame stored in conjunction with any pending DTC or MIL-on DTC should be erased upon erasure of the corresponding DTC.

(v) If the engine enters a limp-home mode of operation that can affect emissions or the performance of the OBD system, or in the event of a malfunction of an onboard computer(s) itself that can affect the performance of the OBD system, the OBD system must activate the MIL and store a MIL-on DTC within 10 seconds to inform the vehicle operator. If the limp-home mode of operation is recoverable (i.e., operation automatically returns to normal at the beginning of the following ignition cycle), the OBD system may wait to activate the MIL and store the MIL-on DTC if the limp-home mode of operation is again entered before the end of the next ignition cycle rather than activating the MIL within 10 seconds on the first drive cycle during which the limp-home mode of operation is entered.

(vi) Before the end of an ignition cycle, the OBD system must store a permanent DTC(s) that corresponds to any stored MIL-on DTC(s).

(3) *MIL deactivation and DTC erasure protocol.*

(i) *Deactivating the MIL.* Except as otherwise provided for in paragraphs (g)(2)(iv)(E) and (g)(6)(iv)(B) of this section for diesel misfire malfunctions and empty reductant tanks, and paragraphs (h)(1)(iv)(F), (h)(2)(viii), and (h)(7)(iv)(B) of this section for gasoline fuel system, misfire, and evaporative system malfunctions, once the MIL has been activated, it may be deactivated after three subsequent sequential drive cycles during which the monitoring system responsible for activating the MIL functions and the previously detected malfunction is no longer present and provided no other malfunction has been detected that would independently activate the MIL according to the requirements outlined in paragraph (b)(2) of this section.

(ii) *Erasing a MIL-on DTC.* The OBD system may erase a MIL-on DTC if the identified malfunction has not again been detected in at least 40 engine warm up cycles and the MIL is presently not activated for that malfunction. The OBD system may also erase a MIL-on DTC upon deactivating the MIL according to paragraph (b)(3)(i) of this section provided a previous-MIL-on DTC is stored upon erasure of the MIL-on DTC. The OBD system may erase a previous-MIL-on DTC if the identified malfunction has not again been detected in at least 40 engine warm up cycles and the MIL is presently not activated for that malfunction.

(iii) *Erasing a permanent DTC.* The OBD system can erase a permanent DTC only if:

(A) The OBD system itself determines that the malfunction that caused the corresponding permanent DTC to be stored is no longer present and is not commanding activation of the MIL, concurrent with the requirements of paragraph (b)(3)(i) of this section which, for purposes of this paragraph (b)(3)(iii), shall apply to all monitors.

(B) All externally erasable DTC information stored in the onboard computer has been erased (i.e., through the use of a scan tool or battery disconnect) and the monitor of the malfunction that caused the permanent DTC to be stored is subject to the minimum ratio requirements of paragraph (d) of this section, the OBD system shall erase the permanent DTC at the end of a drive cycle if the monitor has run and made one or more determinations during a drive cycle that the malfunction of the component or the system is not present and has not made any determinations within the same drive cycle that the malfunction is present.

(C) (1) All externally erasable DTC information stored in the onboard computer has been erased (i.e., through the use of a scan tool or battery disconnect) and the monitor of the malfunction that caused the permanent DTC to be stored is not subject to the minimum ratio requirements of paragraph (d) of this section, the OBD system shall erase the permanent DTC at the end of a drive cycle provided the following two criteria have independently been satisfied:

(i) The monitor has run and made one or more determinations during a drive cycle that the malfunction is no longer present and has not made any determinations within the same drive cycle that the malfunction is present; and,

(ii) The monitor does not detect a malfunction on a drive cycle and the criteria of paragraph (d)(4)(ii) of this section has been met.

(2) These two separate criteria may be met on the same or different drive cycles provided the monitor never detects a malfunction during either drive cycle, and if criteria (b)(3)(iii)(C)(*1*)(*i*) happens first then no malfunction may be detected before criteria (b)(3)(iii)(C)(*1*)(*ii*) occurs. If a malfunction occurs after criteria (b)(3)(iii)(C)(*1*)(*i*) then criteria (b)(3)(iii)(C)(*1*)(*i*) must be satisfied again. For the second criterion, the manufacturer must exclude any temperature and/or elevation provisions of paragraph (d)(4)(ii) of this section. For this paragraph (b)(3)(iii)(C), monitors required to use ''similar conditions'' as defined in § 86.010–2 to

store and erase pending and MIL-on DTCs cannot require that the similar conditions be met prior to erasure of the permanent DTC.

(D) The Administrator shall allow monitors subject to paragraph (b)(3)(iii)(B) of this section to use the criteria of paragraph (b)(3)(iii)(C) of this section in lieu of paragraph (b)(3)(iii)(B). Further, manufacturers may request Administrator approval to use alternative criteria to erase the permanent DTC. The Administrator shall approve alternate criteria that will not likely require driving conditions that are longer and more difficult to meet than those required under paragraph (b)(3)(iii)(C) of this section and do not require access to enhanced scan tools to determine conditions necessary to erase the permanent DTC.

(4) *Exceptions to MIL and DTC requirements.*

(i) If a limp-home mode of operation causes a overt indication (e.g., activation of a red engine shut-down warning light) such that the driver is certain to respond and have the problem corrected, a manufacturer may choose not to activate the MIL as required by paragraph (b)(2)(v) of this section. Additionally, if an auxiliary emission control device has been properly activated as approved by the Administrator, a manufacturer may choose not to activate the MIL.

(ii) For gasoline engines, a manufacturer may choose to meet the MIL and DTC requirements in § 86.007–17 in lieu of meeting the requirements of paragraph (b) of this § 86.010–18.

(c) *Monitoring conditions.* The OBD system must monitor and detect the malfunctions specified in paragraphs (g), (h), and (i) of this section under the following general monitoring conditions. The more specific monitoring conditions of paragraph (d) of this section are sometimes required according to the provisions of paragraphs (g), (h), and (i) of this section.

(1) As specifically provided for in paragraphs (g), (h), and (i) of this section, the monitoring conditions for detecting malfunctions must be technically necessary to ensure robust detection of malfunctions (e.g., avoid false passes and false indications of malfunctions); designed to ensure monitoring will occur under conditions that may reasonably be expected to be encountered in normal vehicle operation and normal vehicle use; and, designed to ensure monitoring will occur during the FTP transient test cycle contained in Appendix I paragraph (f), of this part, or similar drive cycle as approved by the Administrator.

(2) Monitoring must occur at least once per drive cycle in which the monitoring conditions are met.

(3) Manufacturers may define monitoring conditions that are not encountered during the FTP cycle as required in paragraph (c)(1) of this section. In doing so, the manufacturer would be expected to consider the degree to which the requirement to run during the FTP transient cycle restricts monitoring during in-use operation, the technical necessity for defining monitoring conditions that are not encountered during the FTP cycle, whether monitoring is otherwise not feasible during the FTP cycle, and/or the ability to demonstrate that the monitoring conditions satisfy the minimum acceptable in-use monitor performance ratio requirement as defined in paragraph (d) of this section.

(d) *In-use performance tracking.* As specifically required in paragraphs (g), (h), and (i) of this section, the OBD system must monitor and detect the malfunctions specified in paragraphs (g), (h), and (i) of this section according to the criteria of this paragraph (d). The OBD system is not required to track and report in-use performance for monitors other than those specifically identified in paragraph (d)(1) of this section, but all monitors on applicable model year engines are still required to meet the in-use performance ratio as specified in paragraph (d)(1)(ii) of this section.

(1) The manufacturer must implement software algorithms in the OBD system to individually track and report the in-use performance of the following monitors, if equipped, in the standardized format specified in paragraph (e) of this section: NMHC converting catalyst (paragraph (g)(5) of this section); NO_X converting catalyst (paragraph (g)(6) of this section); gasoline catalyst (paragraph (h)(6) of this section); exhaust gas sensor (paragraph (g)(9) of this section) or paragraph(h)(8) of this section); evaporative system (paragraph (h)(7) of this section); EGR system (paragraph (g)(3) of this section or (h)(3) of this section); VVT system (paragraph (g)(10) of this section or (h)(9) of this section); secondary air system (paragraph (h)(5) of this section); DPF system (paragraph (g)(8) of this section); boost pressure control system (paragraph (g)(4) of this section); and, NO_X adsorber system (paragraph (g)(7) of this section).

(i) The manufacturer shall not use the calculated ratio specified in paragraph (d)(2) of this section or any other indication of monitor frequency as a monitoring condition for a monitor (e.g., using a low ratio to enable more frequent monitoring through diagnostic executive priority or modification of other monitoring conditions, or using a high ratio to enable less frequent monitoring).

(ii) For model years 2013 and later, manufacturers must define monitoring conditions that, in addition to meeting the criteria in paragraphs (c)(1) and (d)(1) of this section, ensure that the monitor yields an in-use performance ratio (as defined in paragraph (d)(2) of this section) that meets or exceeds the minimum acceptable in-use monitor performance ratio of 0.100 for all monitors specifically required in paragraphs (g), (h), and (i) of this section to meet the monitoring condition requirements of this paragraph (d).

(iii) If the most reliable monitoring method developed requires a lower ratio for a specific monitor than that specified in paragraph (d)(1)(ii) of this section, the Administrator may lower the minimum acceptable in-use monitoring performance ratio.

(2) *In-use performance ratio definition.* For monitors required to meet the requirements of paragraph (d) of this section, the performance ratio must be calculated in accordance with the specifications of this paragraph (d)(2).

(i) The numerator of the performance ratio is defined as the number of times a vehicle has been operated such that all monitoring conditions have been encountered that are necessary for the specific monitor to detect a malfunction.

(ii) The denominator is defined as the number of times a vehicle has been operated in accordance with the provisions of paragraph (d)(4) of this section.

(iii) The performance ratio is defined as the numerator divided by the denominator.

(3) *Specifications for incrementing the numerator.*

(i) Except as provided for in paragraph (d)(3)(v) of this section, the numerator, when incremented, must be incremented by an integer of one. The numerator shall not be incremented more than once per drive cycle.

(ii) The numerator for a specific monitor must be incremented within 10 seconds if and only if the following criteria are satisfied on a single drive cycle:

(A) Every monitoring condition has been satisfied that is necessary for the specific monitor to detect a malfunction and store a pending DTC, including applicable enable criteria, presence or absence of related DTCs, sufficient length of monitoring time, and diagnostic executive priority assignments (e.g., diagnostic ''A'' must execute prior to diagnostic ''B''). For the

purpose of incrementing the numerator, satisfying all the monitoring conditions necessary for a monitor to determine that the monitor is not malfunctioning shall not, by itself, be sufficient to meet this criteria.

(B) For monitors that require multiple stages or events in a single drive cycle to detect a malfunction, every monitoring condition necessary for all events to complete must be satisfied.

(C) For monitors that require intrusive operation of components to detect a malfunction, a manufacturer must request approval of the strategy used to determine that, had a malfunction been present, the monitor would have detected the malfunction. Administrator approval of the request will be based on the equivalence of the strategy to actual intrusive operation and the ability of the strategy to determine accurately if every monitoring condition was satisfied that was necessary for the intrusive event to occur.

(D) For the secondary air system monitor, the criteria in paragraphs (d)(3)(ii)(A) through (d)(3)(ii)(C) of this section are satisfied during normal operation of the secondary air system. Monitoring during intrusive operation of the secondary air system later in the same drive cycle for the sole purpose of monitoring shall not, by itself, be sufficient to meet these criteria.

(iii) For monitors that can generate results in a ''gray zone'' or ''non-detection zone'' (i.e., monitor results that indicate neither a properly operating system nor a malfunctioning system) or in a ''non-decision zone'' (e.g., monitors that increment and decrement counters until a pass or fail threshold is reached), the numerator, in general, shall not be incremented when the monitor indicates a result in the ''non-detection zone'' or prior to the monitor reaching a complete decision. When necessary, the Administrator will consider data and/or engineering analyses submitted by the manufacturer demonstrating the expected frequency of results in the ''non-detection zone'' and the ability of the monitor to determine accurately, had an actual malfunction been present, whether or not the monitor would have detected a malfunction instead of a result in the ''non-detection zone.''

(iv) For monitors that run or complete their evaluation with the engine off, the numerator must be incremented either within 10 seconds of the monitor completing its evaluation in the engine off state, or during the first 10 seconds of engine start on the subsequent drive cycle.

(v) Manufacturers that use alternative statistical MIL activation protocols as allowed in paragraph (b)(2)(iii) of this section for any of the monitors requiring a numerator, are required to increment the numerator(s) appropriately. The manufacturer may be required to provide supporting data and/or engineering analyses demonstrating both the equivalence of their incrementing approach to the incrementing specified in this paragraph (d)(3) for monitors using the standard MIL activation protocol, and the overall equivalence of the incrementing approach in determining that the minimum acceptable in-use performance ratio of paragraph (d)(1)(ii) of this section, if applicable, has been satisfied.

(4) *Specifications for incrementing the denominator.*

(i) The denominator, when incremented, must be incremented by an integer of one. The denominator shall not be incremented more than once per drive cycle.

(ii) The denominator for each monitor must be incremented within 10 seconds if and only if the following criteria are satisfied on a single drive cycle:

(A) Cumulative time since the start of the drive cycle is greater than or equal to 600 seconds while at an elevation of less than 8,000 feet (2,400 meters) above sea level and at an ambient temperature of greater than or equal to 20 degrees Fahrenheit (−7 C);

(B) Cumulative gasoline engine operation at or above 25 miles per hour or diesel engine operation at or above 1,150 rotations per minute (diesel engines may use the gasoline criterion for 2010 through 2012 model years), either of which occurs for greater than or equal to 300 seconds while at an elevation of less than 8,000 feet (2,400 meters) above sea level and at an ambient temperature of greater than or equal to 20 degrees Fahrenheit (−7 C); and,

(C) Continuous engine operation at idle (e.g., accelerator pedal released by driver and engine speed less than or equal to 200 rpm above normal warmed-up idle (as determined in the drive position for vehicles equipped with an automatic transmission) or vehicle speed less than or equal to one mile per hour) for greater than or equal to 30 seconds while at an elevation of less than 8,000 feet (2,400 meters) above sea level and at an ambient temperature of greater than or equal to 20 degrees Fahrenheit (−7 C).

(iii) In addition to the requirements of paragraph (d)(4)(ii) of this section, the evaporative system monitor denominator(s) may be incremented if and only if:

(A) Cumulative time since the start of the drive cycle is greater than or equal to 600 seconds while at an ambient temperature of greater than or equal to 40 degrees Fahrenheit (4 C) but less than or equal to 95 degrees Fahrenheit (35 C); and,

(B) Engine cold start occurs with the engine coolant temperature greater than or equal to 40 degrees Fahrenheit (4 C) but less than or equal to 95 degrees Fahrenheit (35 C) and less than or equal to 12 degrees Fahrenheit (7 C) higher than the ambient temperature.

(iv) In addition to the requirements of paragraph (d)(4)(ii) of this section, the denominator(s) for the following monitors may be incremented if and only if the component or strategy is commanded ''on'' for a cumulative time greater than or equal to 10 seconds. For purposes of determining this commanded ''on'' time, the OBD system shall not include time during intrusive operation of any of the components or strategies that occurs later in the same drive cycle for the sole purpose of monitoring.

(A) Secondary air system (paragraph (h)(5) of this section).

(B) Cold start emission reduction strategy (paragraph (h)(4) of this section).

(C) Components or systems that operate only at engine start-up (e.g., glow plugs, intake air heaters) and are subject to monitoring under ''other emission control systems'' (paragraph (i)(4) of this section) or comprehensive component output components (paragraph (i)(3)(iii) of this section).

(v) In addition to the requirements of paragraph (d)(4)(ii) of this section, the denominator(s) for the following monitors of output components (except those operated only at engine start-up and subject to the requirements of paragraph (d)(4)(iv) of this section, may be incremented if and only if the component is commanded to function (e.g., commanded ''on'', ''opened'', ''closed'', ''locked'') on two or more occasions during the drive cycle or for a cumulative time greater than or equal to 10 seconds, whichever occurs first:

(A) Variable valve timing and/or control system (paragraph (g)(10) of this section or (h)(9) of this section).

(B) ''Other emission control systems'' (paragraph (i)(4) of this section).

(C) Comprehensive component output component (paragraph (i)(3) of this section) (e.g., turbocharger waste-gates, variable length manifold runners).

(vi) For monitors of the following components, the manufacturer may use alternative or additional criteria for incrementing the denominator to that set forth in paragraph (d)(4)(ii) of this

section. To do so, the alternative criteria must be based on equivalence to the criteria of paragraph (d)(4)(ii) of this section in measuring the frequency of monitor operation relative to the amount of engine operation:

(A) Engine cooling system input components (paragraph (i)(1) of this section).

(B) ''Other emission control systems'' (paragraph (i)(4) of this section).

(C) Comprehensive component input components that require extended monitoring evaluation (paragraph (i)(3) of this section) (e.g., stuck fuel level sensor rationality).

(D) Comprehensive component input component temperature sensor rationality monitors (paragraph (i)(3) of this section) (e.g., intake air temperature sensor, ambient temperature sensor, fuel temperature sensor).

(E) Diesel particulate filter (DPF) frequent regeneration (paragraph (g)(8)(ii)(B) of this section).

(vii) For monitors of the following components or other emission controls that experience infrequent regeneration events, the manufacturer may use alternative or additional criteria for incrementing the denominator to that set forth in paragraph (d)(4)(ii) of this section. To do so, the alternative criteria must be based on equivalence to the criteria of paragraph (d)(4)(ii) of this section in measuring the frequency of monitor operation relative to the amount of engine operation:

(A) NMHC converting catalyst (paragraph (g)(5) of this section).

(B) Diesel particulate filter (DPF) (paragraphs (g)(8)(ii)(A) and (g)(8)(ii)(D) of this section).

(viii) In addition to the requirements of paragraph (d)(4)(ii) of this section, the denominator(s) for the following monitors shall be incremented if and only if a regeneration event is commanded for a time greater than or equal to 10 seconds:

(A) DPF incomplete regeneration (paragraph (g)(8)(ii)(C) of this section).

(B) DPF active/intrusive injection (paragraph (g)(8)(ii)(E) of this section).

(ix) For hybrids that employ alternative engine start hardware or strategies (e.g., integrated starter and generators), or alternative fuel vehicles (e.g., dedicated, bi-fuel, or dual-fuel applications), the manufacturer may use alternative criteria for incrementing the denominator to that set forth in paragraph (d)(4)(ii) of this section. In general, the Administrator will not approve alternative criteria for those hybrids that employ engine shut off only at or near idle and/or vehicle stop conditions. To use alternative criteria, the alternative criteria must be based on the equivalence to the criteria of paragraph (d)(4)(ii) of this section in measuring the amount of vehicle operation relative to the measure of conventional vehicle operation.

(5) *Disablement of numerators and denominators.*

(i) Within 10 seconds of detecting a malfunction (i.e., a pending or a MIL-on DTC has been stored) that disables a monitor for which the monitoring conditions in paragraph (d) of this section must be met, the OBD system must stop incrementing the numerator and denominator for any monitor that may be disabled as a consequence of the detected malfunction. Within 10 seconds of the time at which the malfunction is no longer being detected (e.g., the pending DTC is erased through OBD system self-clearing or through a scan tool command), incrementing of all applicable numerators and denominators must resume.

(ii) Within 10 seconds of the start of a power take-off unit (e.g., dump bed, snow plow blade, or aerial bucket, etc.) that disables a monitor for which the monitoring conditions in paragraph (d) of this section must be met, the OBD system must stop incrementing the numerator and denominator for any monitor that may be disabled as a consequence of power take-off operation. Within 10 seconds of the time at which the power take-off operation ends, incrementing of all applicable numerators and denominators must resume.

(iii) Within 10 seconds of detecting a malfunction (i.e., a pending or a MIL-on DTC has been stored) of any component used to determine if the criteria of paragraphs (d)(4)(ii) and (d)(4)(iii) of this section are satisfied, the OBD system must stop incrementing all applicable numerators and denominators. Within 10 seconds of the time at which the malfunction is no longer being detected (e.g., the pending DTC is erased through OBD system self-clearing or through a scan tool command), incrementing of all applicable numerators and denominators must resume.

(e) *Standardized tracking and reporting of in-use monitor performance.*

(1) *General.* For monitors required to track and report in-use monitor performance according to paragraph (d) of this section, the performance data must be tracked and reported in accordance with the specifications in paragraphs (d)(2), (e), and (k)(5) of this section. The OBD system must separately report an in-use monitor performance numerator and denominator for each of the following components:

(i) For diesel engines, NMHC catalyst bank 1, NMHC catalyst bank 2, NO_X catalyst bank 1, NO_X catalyst bank 2, exhaust gas sensor bank 1, exhaust gas sensor bank 2, EGR/VVT system, DPF, boost pressure control system, and NO_X adsorber. The OBD system must also report a general denominator and an ignition cycle counter in the standardized format specified in paragraphs (e)(5), (e)(6), and (k)(5) of this section.

(ii) For gasoline engines, catalyst bank 1, catalyst bank 2, exhaust gas sensor bank 1, exhaust gas sensor bank 2, evaporative leak detection system, EGR/VVT system, and secondary air system. The OBD system must also report a general denominator and an ignition cycle counter in the standardized format specified in paragraphs (e)(5), (e)(6), and (k)(5) of this section.

(iii) For specific components or systems that have multiple monitors that are required to be reported under paragraphs (g) and (h) of this section (e.g., exhaust gas sensor bank 1 may have multiple monitors for sensor response or other sensor characteristics), the OBD system must separately track numerators and denominators for each of the specific monitors and report only the corresponding numerator and denominator for the specific monitor that has the lowest numerical ratio. If two or more specific monitors have identical ratios, the corresponding numerator and denominator for the specific monitor that has the highest denominator must be reported for the specific component.

(2) *Numerator.*

(i) The OBD system must report a separate numerator for each of the applicable components listed in paragraph (e)(1) of this section.

(ii) The numerator(s) must be reported in accordance with the specifications in paragraph (k)(5)(ii) of this section.

(3) *Denominator.*

(i) The OBD system must report a separate denominator for each of the applicable components listed in paragraph (e)(1) of this section.

(ii) The denominator(s) must be reported in accordance with the specifications in paragraph (k)(5)(ii) of this section.

(4) *Monitor performance ratio.* For purposes of determining which corresponding numerator and denominator to report as required in paragraph (e)(1)(iii) of this section, the ratio must be calculated in accordance with the specifications in paragraph (k)(5)(iii) of this section.

(5) *Ignition cycle counter.*

(i) The ignition cycle counter is defined as a counter that indicates the number of ignition cycles a vehicle has experienced according to the specifications of paragraph (e)(5)(ii)(B) of this section. The ignition cycle counter must be reported in accordance with the specifications in paragraph (k)(5)(ii) of this section.

(ii) The ignition cycle counter must be incremented as follows:

(A) The ignition cycle counter, when incremented, must be incremented by an integer of one. The ignition cycle counter shall not be incremented more than once per ignition cycle.

(B) The ignition cycle counter must be incremented within 10 seconds if and only if the engine exceeds an engine speed of 50 to 150 rpm below the normal, warmed-up idle speed (as determined in the drive position for engines paired with an automatic transmission) for at least two seconds plus or minus one second.

(iii) Within 10 seconds of detecting a malfunction (i.e., a pending or a MIL-on DTC has been stored) of any component used to determine if the criteria in paragraph (e)(5)(ii)(B) of this section are satisfied (i.e., engine speed or time of operation), the OBD system must stop incrementing the ignition cycle counter. Incrementing of the ignition cycle counter shall not be stopped for any other condition. Within 10 seconds of the time at which the malfunction is no longer being detected (e.g., the pending DTC is erased through OBD system self-clearing or through a scan tool command), incrementing of the ignition cycle counter must resume.

(6) *General denominator.*

(i) The general denominator is defined as a measure of the number of times an engine has been operated according to the specifications of paragraph (e)(6)(ii)(B) of this section. The general denominator must be reported in accordance with the specifications in paragraph (k)(5)(ii) of this section.

(ii) The general denominator must be incremented as follows:

(A) The general denominator, when incremented, must be incremented by an integer of one. The general denominator shall not be incremented more than once per drive cycle.

(B) The general denominator must be incremented within 10 seconds if and only if the criteria identified in paragraph (d)(4)(ii) of this section are satisfied on a single drive cycle.

(C) Within 10 seconds of detecting a malfunction (i.e., a pending or a MIL-on DTC has been stored) of any component used to determine if the criteria in paragraph (d)(4)(ii) of this section are satisfied (i.e., vehicle speed/load, ambient temperature, elevation, idle operation, or time of operation), the OBD system must stop incrementing the general denominator. Incrementing of the general denominator shall not be stopped for any other condition (e.g., the disablement criteria in paragraphs (d)(5)(i) and (d)(5)(ii) of this section shall not disable the general denominator). Within 10 seconds of the time at which the malfunction is no longer being detected (e.g., the pending DTC is erased through OBD system self-clearing or through a scan tool command), incrementing of the general denominator must resume.

(f) *Malfunction criteria determination.*

(1) In determining the malfunction criteria for the diesel engine monitors required under paragraphs (g) and (i) of this section that are required to indicate a malfunction before emissions exceed an emission threshold based on any applicable standard, the manufacturer must:

(i) Use the emission test cycle and standard (i.e., the transient FTP or the supplemental emissions test (SET)) determined by the manufacturer to provide the most effective monitoring conditions and robust monitor provided all other applicable requirements of this section are met.

(ii) Identify in the certification documentation required under paragraph (m) of this section, the test cycle and standard determined by the manufacturer to be the most stringent for each applicable monitor and the most effective and robust for each applicable monitor.

(iii) If the Administrator reasonably believes that a manufacturer has determined incorrectly the test cycle and standard that is most stringent or effective, the manufacturer must be able to provide emission data and/or engineering analysis supporting their choice of test cycle and standard.

(2) On engines equipped with emission controls that experience infrequent regeneration events, a manufacturer need not adjust the emission test results that are used to determine the malfunction criteria for monitors that are required to indicate a malfunction before emissions exceed a certain emission threshold. For each such monitor, should the manufacturer choose to adjust the emission test results, the manufacturer must adjust the emission result as done in accordance with the provisions of § 86.004–28(i) with the component for which the malfunction criteria are being established having been deteriorated to the malfunction threshold. The adjusted emission value must be used for purposes of determining whether or not the applicable emission threshold is exceeded.

(i) For purposes of this paragraph (f)(2), regeneration means an event, by design, during which emissions levels change while the emission control performance is being restored.

(ii) For purposes of this paragraph (f)(2), infrequent means having an expected frequency of less than once per transient FTP cycle.

(3) For gasoline engines, rather than meeting the malfunction criteria specified under paragraphs (h) and (i) of this section, the manufacturer may request approval to use an OBD system certified to the requirements of § 86.007–17. To do so, the manufacturer must demonstrate use of good engineering judgment in determining equivalent malfunction detection criteria to those required in this section.

(g) *OBD monitoring requirements for diesel-fueled/compression-ignition engines.* The following table shows the thresholds at which point certain components or systems, as specified in this paragraph (g), are considered malfunctioning.

TABLE 1—OBD EMISSIONS THRESHOLDS FOR DIESEL-FUELED/COMPRESSION-IGNITION ENGINES MEANT FOR PLACEMENT IN APPLICATIONS GREATER THAN 14,000 POUNDS GVWR (G/BHP-HR)

Component	§ 86.010–18 reference	NMHC	CO	NO_X	PM
Model years 2010–2012:					
NO_X aftertreatment system	(g)(6) (g)(7)	.....	.....	+0.6	
Diesel particulate filter (DPF) system	(g)(8)	2.5x	.....	.....	0.05/+0.04
Air-fuel ratio sensors upstream of aftertreatment devices	(g)(9)	2.5x	2.5x	+0.3	0.03/+0.02

TABLE 1—OBD EMISSIONS THRESHOLDS FOR DIESEL-FUELED/COMPRESSION-IGNITION ENGINES MEANT FOR PLACEMENT IN APPLICATIONS GREATER THAN 14,000 POUNDS GVWR (G/BHP-HR)—Continued

Component	§ 86.010–18 reference	NMHC	CO	NO_X	PM
Air-fuel ratio sensors downstream of aftertreatment devices	(g)(9)	2.5x	.....	+0.3	0.05/+0.04
NO_X sensors	(g)(9)	.....	.....	+0.6	0.05/+0.04
"Other monitors" with emissions thresholds	(g)(1) (g)(3) (g)(4) (g)(10)	2.5x	2.5x	+0.3	0.03/+0.02
Model years 2013 and later:					
NO_X aftertreatment system	(g)(6) (g)(7)	.....	.....	+0.3	
Diesel particulate filter (DPF) system	(g)(8)	2x	.....	.....	0.05/+0.04
Air-fuel ratio sensors upstream of aftertreatment devices	(g)(9)	2x	2x	+0.3	0.03/+0.02
Air-fuel ratio sensors downstream of aftertreatment devices	(g)(9)	2x	.....	+0.3	0.05/+0.04
NO_X sensors	(g)(9)	.....	.....	+0.3	0.05/+0.04
"Other monitors" with emissions thresholds	(g)(1) (g)(2) (g)(3) (g)(4) (g)(10)	2x	2x	+0.3	0.03/+0.02

Notes: FEL = Family Emissions Limit; 2.5x std means a multiple of 2.5 times the applicable emissions standard; +0.3 means the standard or FEL plus 0.3; 0.05/+0.04 means an absolute level of 0.05 or an additive level of the standard or FEL plus 0.04, whichever level is higher; these emissions thresholds apply to the monitoring requirements of paragraph (g) of this § 86.010–18.

(1) *Fuel system monitoring.*

(i) *General.* The OBD system must monitor the fuel delivery system to verify that it is functioning properly. The individual electronic components (e.g., actuators, valves, sensors, pumps) that are used in the fuel system and are not specifically addressed in this paragraph (g)(1) must be monitored in accordance with the requirements of paragraph (i)(3) of this section.

(ii) *Fuel system malfunction criteria.*

(A) *Fuel system pressure control.* The OBD system must monitor the fuel system's ability to control to the desired fuel pressure. This monitoring must be done continuously unless new hardware has to be added, in which case the monitoring must be done at least once per drive cycle. The OBD system must detect a malfunction of the fuel system's pressure control system when the pressure control system is unable to maintain an engine's emissions at or below the emissions thresholds for ''other monitors'' as shown in Table 1 of this paragraph (g). For engines in which no failure or deterioration of the fuel system pressure control could result in an engine's emissions exceeding the applicable emissions thresholds, the OBD system must detect a malfunction when the system has reached its control limits such that the commanded fuel system pressure cannot be delivered. For model year 2010 to 2012 engines with a unit injector fuel system, this requirement may be met by conducting a functional check of the fuel system pressure control in lieu of monitoring for conditions that could cause an engine's emissions to exceed the applicable emissions thresholds.

(B) *Fuel system injection quantity.* The OBD system must detect a malfunction of the fuel injection system when the system is unable to deliver the commanded quantity of fuel necessary to maintain an engine's emissions at or below the emissions thresholds for ''other monitors'' as shown in Table 1 of this paragraph (g). For engines in which no failure or deterioration of the fuel injection quantity could result in an engine's emissions exceeding the applicable emissions thresholds, the OBD system must detect a malfunction when the system has reached its control limits such that the commanded fuel quantity cannot be delivered. For model year 2010 to 2012 engines with a unit injector fuel system, this requirement may be met by conducting a functional check of the fuel system injection quantity in lieu of monitoring for conditions that could cause an engine's emissions to exceed the applicable emissions thresholds.

(C) *Fuel system injection timing.* The OBD system must detect a malfunction of the fuel injection system when the system is unable to deliver fuel at the proper crank angle/timing (e.g., injection timing too advanced or too retarded) necessary to maintain an engine's emissions at or below the emissions thresholds for ''other monitors'' as shown in Table 1 of this paragraph (g). For engines in which no failure or deterioration of the fuel injection timing could result in an engine's emissions exceeding the applicable emissions thresholds, the OBD system must detect a malfunction when the system has reached its control limits such that the commanded fuel injection timing cannot be achieved. For model year 2010 to 2012 engines with a unit injector fuel system, this requirement may be met by conducting a functional check of the fuel system injection timing in lieu of monitoring for conditions that could cause an engine's emissions to exceed the applicable emissions thresholds.

(D) *Combined Monitoring.* For engines with a unit injector fuel system, the manufacturer may request Administrator approval to combine the malfunction criteria of paragraphs (g)(1)(ii)(A) through (g)(1)(ii)(C) of this section into one malfunction provided the manufacturer can demonstrate that the combined malfunction will satisfy the intent of each separate malfunction criteria. For engines with a common rail fuel system, the manufacturer may request Administrator approval to combine the malfunction criteria of paragraphs (g)(1)(ii)(B) through (g)(1)(ii)(C) of this section into one malfunction provided the manufacturer can demonstrate that the combined malfunction will satisfy the intent of each separate malfunction criteria.

(E) *Fuel system feedback control.* See paragraph (i)(6) of this section.

(iii) *Fuel system monitoring conditions.*

(A) With the exceptions noted in this paragraph for unit injector systems, the OBD system must monitor continuously for malfunctions identified in paragraphs (g)(1)(ii)(A) and (g)(1)(ii)(E) of this section. For 2010 through 2012

unit injector systems, where functional monitoring is done in lieu of emission threshold monitoring for malfunctions identified in paragraph (g)(1)(ii)(A) of this section, the manufacturer must define the monitoring conditions in accordance with paragraphs (c) and (d) of this section. For 2013 and later unit injector systems, the manufacturer must define the monitoring conditions for malfunctions identified in paragraph (g)(1)(ii)(A) of this section in accordance with paragraphs (c) and (d) of this section, with the exception that monitoring must occur every time the monitoring conditions are met during the drive cycle rather than once per drive cycle as required in paragraph (c)(2) of this section.

(B) For 2010 through 2012, the manufacturer must define the monitoring conditions for malfunctions identified in paragraphs (g)(1)(ii)(B), (g)(1)(ii)(C), and (g)(1)(ii)(D) of this section in accordance with paragraphs (c) and (d) of this section. For 2013 and later, the manufacturer must define the monitoring conditions in accordance with paragraphs (c) and (d) of this section, with the exception that monitoring must occur every time the monitoring conditions are met during the drive cycle rather than once per drive cycle as required in paragraph (c)(2) of this section.

(iv) *Fuel system MIL activation and DTC storage.* The MIL must activate and DTCs must be stored according to the provisions of paragraph (b) of this section.

(2) *Engine misfire monitoring.*

(i) *General.* The OBD system must monitor the engine for misfire causing excess emissions.

(ii) *Engine misfire malfunction criteria.*

(A) The OBD system must be capable of detecting misfire occurring in one or more cylinders. To the extent possible without adding hardware for this specific purpose, the OBD system must also identify the specific misfiring cylinder. If more than one cylinder is misfiring continuously, or if more than one but less than half of the cylinders are misfiring continuously (if the manufacturer can demonstrate the robustness of their monitor to the approval of the Administrator), a separate DTC must be stored indicating that multiple cylinders are misfiring. When identifying multiple cylinder misfire, the OBD system is not required to identify individually through separate DTCs each of the continuously misfiring cylinders.

(B) For model years 2013 and later, on engines equipped with sensors that can detect combustion or combustion quality (e.g., for use in engines with homogeneous charge compression ignition (HCCI) control systems), the OBD system must detect a misfire malfunction causing emissions to exceed the applicable thresholds for ''other monitors'' shown in Table 1 of this paragraph (g). To determine what level of misfire would cause emissions to exceed the applicable emissions thresholds, the manufacturer must determine the percentage of misfire evaluated in 1,000 revolution increments that would cause emissions from an emission durability demonstration engine to exceed the emissions thresholds if the percentage of misfire were present from the beginning of the test. To establish this percentage of misfire, the manufacturer must use misfire events occurring at equally spaced, complete engine cycle intervals, across randomly selected cylinders throughout each 1,000-revolution increment. If this percentage of misfire is determined to be lower than one percent, the manufacturer may set the malfunction criteria at one percent. Any misfire malfunction must be detected if the percentage of misfire established via this testing is exceeded regardless of the pattern of misfire events (e.g., random, equally spaced, continuous). The manufacturer may employ other revolution increments besides the 1,000 revolution increment. To do so, the manufacturer must demonstrate that the strategy is equally effective and timely in detecting misfire.

(iii) *Engine misfire monitoring conditions.*

(A) The OBD system must monitor for engine misfire during engine idle conditions at least once per drive cycle in which the monitoring conditions for misfire are met. The manufacturer must be able to demonstrate via engineering analysis and/or data that the self-defined monitoring conditions: are technically necessary to ensure robust detection of malfunctions (e.g., avoid false passes and false detection of malfunctions); require no more than 1000 cumulative engine revolutions; and, do not require any single continuous idle operation of more than 15 seconds to make a determination that a malfunction is present (e.g., a decision can be made with data gathered during several idle operations of 15 seconds or less); or, satisfy the requirements of paragraph (c) of this section with alternative engine operating conditions.

(B) Manufacturers may employ alternative monitoring conditions (e.g., off-idle) provided the manufacturer is able to demonstrate that the alternative monitoring ensure equivalent robust detection of malfunctions and equivalent timeliness in detection of malfunctions.

(C) For model years 2013 and later, on engines equipped with sensors that can detect combustion or combustion quality the OBD system must monitor continuously for engine misfire under all positive torque engine speed and load conditions. If a monitoring system cannot detect all misfire patterns under all required engine speed and load conditions, the manufacturer may request that the Administrator approve the monitoring system nonetheless. In evaluating the manufacturer's request, the Administrator will consider the following factors: the magnitude of the region(s) in which misfire detection is limited; the degree to which misfire detection is limited in the region(s) (i.e., the probability of detection of misfire events); the frequency with which said region(s) are expected to be encountered in-use; the type of misfire patterns for which misfire detection is troublesome; and demonstration that the monitoring technology employed is not inherently incapable of detecting misfire under required conditions (i.e., compliance can be achieved on other engines). The evaluation will be based on the following misfire patterns: equally spaced misfire occurring on randomly selected cylinders; single cylinder continuous misfire; and, paired cylinder (cylinders firing at the same crank angle) continuous misfire.

(iv) *Engine misfire MIL activation and DTC storage.*

(A) General requirements for MIL activation and DTC storage are set forth in paragraph (b) of this section.

(B) For model years 2013 and later, on engines equipped with sensors that can detect combustion or combustion quality, upon detection of the percentage of misfire specified in paragraph (g)(2)(ii)(B) of this section, the following criteria shall apply for MIL activation and DTC storage: A pending DTC must be stored no later than after the fourth exceedance of the percentage of misfire specified in paragraph (g)(2)(ii) of this section during a single drive cycle; if a pending fault code has been stored, the OBD system must activate the MIL and store a MIL-on DTC within 10 seconds if the percentage of misfire specified in paragraph (g)(2)(ii) of this section is again exceeded four times during the drive cycle immediately following storage of the pending DTC, regardless of the conditions encountered during the drive cycle, or on the next drive cycle in which similar conditions are encountered to those that were occurring when the pending DTC was stored. Similar conditions means an

engine speed within 375 rpm, engine load within 20 percent, and the same warm up status (i.e., cold or hot). The Administrator may approve other definitions of similar conditions based on comparable timeliness and reliability in detecting similar engine operation. The pending DTC may be erased at the end of the next drive cycle in which similar conditions are encountered to those that were occurring when the pending DTC was stored provided the specified percentage of misfire was not again exceeded. The pending DTC may also be erased if similar conditions are not encountered during the 80 drive cycles immediately following initial detection of the malfunction.

(C) For model years 2013 and later, on engines equipped with sensors that can detect combustion or combustion quality, the OBD system must store and erase freeze frame conditions either in conjunction with storing and erasing a pending DTC or in conjunction with storing and erasing a MIL-on DTC. If freeze frame conditions are stored for a malfunction other than a misfire malfunction when a DTC is stored as specified in paragraph (g)(2)(iv)(B) of this section, the stored freeze frame information must be replaced with the freeze frame information regarding the misfire malfunction.

(D) For model years 2013 and later, on engines equipped with sensors that can detect combustion or combustion quality, upon detection of misfire according to paragraph (g)(2)(iv)(B) of this section, the OBD system must also store the following engine conditions: engine speed, load, and warm up status of the first misfire event that resulted in the storage of the pending DTC.

(E) For model years 2013 and later, on engines equipped with sensors that can detect combustion or combustion quality, the MIL may be deactivated after three sequential drive cycles in which similar conditions have been encountered without an exceedance of the specified percentage of misfire.

(3) *EGR system monitoring.*

(i) *General.* The OBD system must monitor the EGR system on engines so equipped for low flow rate, high flow rate, and slow response malfunctions. For engines equipped with EGR coolers (e.g., heat exchangers), the OBD system must monitor the cooler for insufficient cooling malfunctions. The individual electronic components (e.g., actuators, valves, sensors) that are used in the EGR system must be monitored in accordance with the comprehensive component requirements in paragraph (i)(3) of this section.

(ii) *EGR system malfunction criteria.*

(A) *EGR low flow.* The OBD system must detect a malfunction of the EGR system prior to a decrease from the manufacturer's specified EGR flow rate that would cause an engine's emissions to exceed the emissions thresholds for ''other monitors'' as shown in Table 1 of this paragraph (g). For engines in which no failure or deterioration of the EGR system that causes a decrease in flow could result in an engine's emissions exceeding the applicable emissions thresholds, the OBD system must detect a malfunction when the system has reached its control limits such that it cannot increase EGR flow to achieve the commanded flow rate.

(B) *EGR high flow.* The OBD system must detect a malfunction of the EGR system, including a leaking EGR valve (i.e., exhaust gas flowing through the valve when the valve is commanded closed) prior to an increase from the manufacturer's specified EGR flow rate that would cause an engine's emissions to exceed the emissions thresholds for ''other monitors'' as shown in Table 1 of this paragraph (g). For engines in which no failure or deterioration of the EGR system that causes an increase in flow could result in an engine's emissions exceeding the applicable emissions thresholds, the OBD system must detect a malfunction when the system has reached its control limits such that it cannot reduce EGR flow to achieve the commanded flow rate.

(C) *EGR slow response.* The OBD system must detect a malfunction of the EGR system prior to any failure or deterioration in the capability of the EGR system to achieve the commanded flow rate within a manufacturer-specified time that would cause an engine's emissions to exceed the emissions thresholds for ''other monitors'' as shown in Table 1 of this paragraph (g). The OBD system must monitor both the capability of the EGR system to respond to a commanded increase in flow and the capability of the EGR system to respond to a commanded decrease in flow.

(D) *EGR system feedback control.* See paragraph (i)(6) of this section.

(E) *EGR cooler performance.* The OBD system must detect a malfunction of the EGR cooler prior to a reduction from the manufacturer's specified cooling performance that would cause an engine's emissions to exceed the emissions thresholds for ''other monitors'' as shown in Table 1 of this paragraph (g). For engines in which no failure or deterioration of the EGR cooler could result in an engine's emissions exceeding the applicable emissions thresholds, the OBD system must detect a malfunction when the system has no detectable amount of EGR cooling.

(iii) *EGR system monitoring conditions.*

(A) The OBD system must monitor continuously for malfunctions identified in paragraphs (g)(3)(ii)(A), (g)(3)(ii)(B), and (g)(3)(ii)(D) of this section.

(B) The manufacturer must define the monitoring conditions for malfunctions identified in paragraph (g)(3)(ii)(C) of this section in accordance with paragraphs (c) and (d) of this section, with the exception that monitoring must occur every time the monitoring conditions are met during the drive cycle rather than once per drive cycle as required in paragraph (c)(2) of this section. For purposes of tracking and reporting as required in paragraph (d)(1) of this section, all monitors used to detect malfunctions identified in paragraph (g)(3)(ii)(C) of this section must be tracked separately but reported as a single set of values as specified in paragraph (e)(1)(iii) of this section.

(C) The manufacturer must define the monitoring conditions for malfunctions identified in paragraph (g)(3)(ii)(E) of this section in accordance with paragraphs (c) and (d) of this section. For purposes of tracking and reporting as required in paragraph (d)(1) of this section, all monitors used to detect malfunctions identified in paragraph (g)(3)(ii)(E) of this section must be tracked separately but reported as a single set of values as specified in paragraph (e)(1)(iii) of this section.

(D) The manufacturer may request Administrator approval to disable temporarily the EGR system monitor(s) under specific ambient conditions (e.g., when freezing may affect performance of the system) or during specific operating conditions (e.g., transients, extreme low or high flow conditions). The manufacturer must be able to demonstrate via data or engineering analysis that a reliable system monitor cannot be run when these conditions exist because it cannot robustly distinguish between a malfunctioning system and a properly operating system. The manufacturer is still required to maintain comprehensive component monitoring as required in paragraph (i)(3) of this section.

(iv) *EGR system MIL activation and DTC storage.* The MIL must activate and DTCs must be stored according to the provisions of paragraph (b) of this section.

(4) *Turbo boost control system monitoring.*

(i) *General.* The OBD system must monitor the boost pressure control system (e.g., turbocharger) on engines so

equipped for under and over boost malfunctions. For engines equipped with variable geometry turbochargers (VGT), the OBD system must monitor the VGT system for slow response malfunctions. For engines equipped with charge air cooler systems, the OBD system must monitor the charge air cooler system for cooling system performance malfunctions. The individual electronic components (e.g., actuators, valves, sensors) that are used in the boost pressure control system must be monitored in accordance with the comprehensive component requirements in paragraph (i)(3) of this section.

(ii) *Turbo boost control system malfunction criteria.*

(A) *Turbo underboost.* The OBD system must detect a malfunction of the boost pressure control system prior to a decrease from the manufacturer's commanded boost pressure, or expected boost pressure on engines not equipped with a boost pressure control system, that would cause an engine's emissions to exceed the emissions thresholds for ''other monitors'' as shown in Table 1 of this paragraph (g). For engines in which no failure or deterioration of the boost pressure control system that causes a decrease in boost could result in an engine's emissions exceeding the applicable emissions thresholds, the OBD system must detect a malfunction when the system has reached its control limits such that it cannot increase boost to achieve the commanded boost pressure.

(B) *Turbo overboost.* The OBD system must detect a malfunction of the boost pressure control system on engines so equipped prior to an increase from the manufacturer's commanded boost pressure that would cause an engine's emissions to exceed the emissions thresholds for ''other monitors'' as shown in Table 1 of this paragraph (g). For engines in which no failure or deterioration of the boost pressure control system that causes an increase in boost could result in an engine's emissions exceeding the applicable emissions thresholds, the OBD system must detect a malfunction when the system has reached its control limits such that it cannot decrease boost to achieve the commanded boost pressure.

(C) *VGT slow response.* The OBD system must detect a malfunction prior to any failure or deterioration in the capability of the VGT system on engines so equipped to achieve the commanded turbocharger geometry within a manufacturer-specified time that would cause an engine's emissions to exceed the emissions thresholds for ''other monitors'' as shown in Table 1 of this paragraph (g). For engines in which no failure or deterioration of the VGT system response could result in an engine's emissions exceeding the applicable emissions thresholds, the OBD system must detect a malfunction of the VGT system when proper functional response of the system to computer commands does not occur.

(D) *Turbo boost feedback control.* See paragraph (i)(6)of this section.

(E) *Charge air undercooling.* The OBD system must detect a malfunction of the charge air cooling system prior to a decrease from the manufacturer's specified cooling rate that would cause an engine's emissions to exceed the emissions thresholds for ''other monitors'' as shown in Table 1 of this paragraph (g). For engines in which no failure or deterioration of the charge air cooling system that causes a decrease in cooling performance could result in an engine's emissions exceeding the applicable emissions thresholds, the OBD system must detect a malfunction when the system has no detectable amount of charge air cooling.

(iii) *Turbo boost monitoring conditions.*

(A) The OBD system must monitor continuously for malfunctions identified in paragraphs (g)(4)(ii)(A), (g)(4)(ii)(B), and (g)(4)(ii)(D) of this section.

(B) The manufacturer must define the monitoring conditions for malfunctions identified in paragraph (g)(4)(ii)(C) of this section in accordance with paragraphs (c) and (d) of this section, with the exception that monitoring must occur every time the monitoring conditions are met during the drive cycle rather than once per drive cycle as required in paragraph (c)(2) of this section. For purposes of tracking and reporting as required in paragraph (d)(1) of this section, all monitors used to detect malfunctions identified in paragraph (g)(4)(ii)(C) of this section must be tracked separately but reported as a single set of values as specified in paragraph (e)(1)(iii) of this section.

(C) The manufacturer must define the monitoring conditions for malfunctions identified in paragraph (g)(4)(ii)(E) of this section in accordance with paragraphs (c) and (d) of this section. For purposes of tracking and reporting as required in paragraph (d)(1) of this section, all monitors used to detect malfunctions identified in paragraph (g)(4)(ii)(E) of this section must be tracked separately but reported as a single set of values as specified in paragraph (e)(1)(iii) of this section.

(D) The manufacturer may request Administrator approval to disable temporarily the turbo boost system monitor(s) during specific operating conditions (e.g., transients, extreme low or high flow conditions). The manufacturer must be able to demonstrate via data or engineering analysis that a reliable system monitor cannot be run when these conditions exist because it cannot robustly distinguish between a malfunctioning system and a properly operating system. The manufacturer is still required to maintain comprehensive component monitoring as required in paragraph (i)(3) of this section.

(iv) *Turbo boost system MIL activation and DTC storage.* The MIL must activate and DTCs must be stored according to the provisions of paragraph (b) of this section.

(5) *NMHC converting catalyst monitoring.*

(i) *General.* The OBD system must monitor the NMHC converting catalyst(s) for proper NMHC conversion capability. For purposes of this paragraph (g)(5), each catalyst that converts NMHC must be monitored either individually or in combination with others. For purposes of this paragraph (g)(5), NMHC conversion that may occur over the DPF or other aftertreatment devices is not included.

(ii) *NMHC converting catalyst malfunction criteria.*

(A) *NMHC converting catalyst conversion efficiency.* The OBD system must detect a malfunction when the catalyst has no detectable amount of NMHC conversion capability.

(B) *NMHC converting catalyst aftertreatment assistance functions.* For catalysts used to generate an exotherm to assist DPF regeneration, the OBD system must detect a malfunction when the catalyst is unable to generate a sufficient exotherm to achieve DPF regeneration. In meeting this requirement, the OBD system must detect a malfunction when the DOC is unable to generate a temperature rise of 100 degrees C, or to reach the necessary DPF regeneration temperature, within 60 seconds of initiating an active DPF regeneration. Further, the OBD system must detect a malfunction when the DOC is unable to sustain the necessary regeneration temperature for the duration of the regeneration event. The OBD or control system must abort the regeneration if the regeneration temperature has not been reached within five minutes of initiating an active regeneration event, or if the regeneration temperature cannot be sustained for the duration of the regeneration event. As an alternative to these specific malfunction criteria, the manufacturer may employ different criteria. To do so, the manufacturer

must submit a description with supporting data, subject to Administrator approval, of their DPF regeneration monitoring strategy. The Administrator will consider the strategy's equivalence to the specific criteria stated in this paragraph when considering the request. Also as an alternative to these specific malfunction criteria, the manufacturer may employ an OBD monitor that detects a catalyst malfunction when the catalyst conversion capability decreases to the point that NMHC emissions exceed 2.5 times the applicable NMHC emission standard but must adjust emission test results pursuant to paragraph (f)(2) of this section. For catalysts located downstream of a DPF and used to convert NMHC emissions during DPF regeneration, the OBD system must detect a malfunction when the catalyst has no detectable amount of NMHC conversion capability unless the manufacturer can demonstrate that deterioration or malfunction of the catalyst will not result in emissions that exceed the applicable NMHC standard.

(iii) *NMHC converting catalyst monitoring conditions*. The manufacturer must define the monitoring conditions for malfunctions identified in paragraphs (g)(5)(ii)(A) and (g)(5)(ii)(B) of this section in accordance with paragraphs (c) and (d) of this section. For purposes of tracking and reporting as required in paragraph (d)(1) of this section, all monitors used to detect malfunctions identified in paragraphs (g)(5)(ii)(A) and (g)(5)(ii)(B) of this section must be tracked separately but reported as a single set of values as specified in paragraph (e)(1)(iii) of this section.

(iv) *NMHC converting catalyst MIL activation and DTC storage*. The MIL must activate and DTCs must be stored according to the provisions of paragraph (b) of this section. The monitoring method for the NMHC converting catalyst(s) must be capable of detecting all instances, except diagnostic self-clearing, when a catalyst DTC has been erased but the catalyst has not been replaced (e.g., catalyst over-temperature histogram approaches are not acceptable).

(6) *Selective catalytic reduction (SCR) and lean NO_X catalyst monitoring*.

(i) *General*. The OBD system must monitor the SCR and/or the lean NO_X converting catalyst(s) for proper conversion capability. For engines equipped with SCR systems or other catalyst systems that use an active/intrusive reductant injection (e.g., active lean NO_X catalysts that use diesel fuel post-injection or in-exhaust injection), the OBD system must monitor the active/intrusive reductant injection system for proper performance. The individual electronic components (e.g., actuators, valves, sensors, heaters, pumps) in the active/intrusive reductant injection system must be monitored in accordance with the comprehensive component requirements in paragraph (i)(3) of this section. For purposes of this paragraph (g)(6), each catalyst that converts NO_X must be monitored either individually or in combination with others.

(ii) *SCR and lean NO_X catalyst malfunction criteria*.

(A) *SCR and lean NO_X catalyst conversion efficiency*. The OBD system must detect a catalyst malfunction when the catalyst conversion capability decreases to the point that would cause an engine's emissions to exceed the emissions thresholds for NO_X aftertreatment systems as shown in Table 1 of this paragraph (g). If no failure or deterioration of the catalyst NO_X conversion capability could result in an engine's emissions exceeding any of the applicable emissions thresholds, the OBD system must detect a malfunction when the catalyst has no detectable amount of NO_X conversion capability.

(B) *SCR and lean NO_X catalyst active/intrusive reductant delivery performance*. The OBD system must detect a malfunction prior to any failure or deterioration of the system to properly regulate reductant delivery (e.g., urea injection, separate injector fuel injection, post injection of fuel, air assisted injection/mixing) that would cause an engine's emissions to exceed any of the applicable emissions thresholds for NO_X aftertreatment systems as shown in Table 1 of this paragraph (g). If no failure or deterioration of the reductant delivery system could result in an engine's emissions exceeding any of the applicable thresholds, the OBD system must detect a malfunction when the system has reached its control limits such that it is no longer able to deliver the desired quantity of reductant.

(C) *SCR and lean NO_X catalyst active/intrusive reductant quantity*. If the SCR or lean NO_X catalyst system uses a reductant other than the fuel used for the engine, or uses a reservoir/tank for the reductant that is separate from the fuel tank used for the engine, the OBD system must detect a malfunction when there is no longer sufficient reductant available (e.g., the reductant tank is empty).

(D) *SCR and lean NO_X catalyst active/intrusive reductant quality*. If the SCR or lean NO_X catalyst system uses a reservoir/tank for the reductant that is separate from the fuel tank used for the engine, the OBD system must detect a malfunction when an improper reductant is used in the reductant reservoir/tank (e.g., the reductant tank is filled with something other than the reductant).

(E) *SCR and lean NO_X catalyst active/intrusive reductant feedback control*. See paragraph (i)(6) of this section.

(iii) *SCR and lean NO_X catalyst monitoring conditions*.

(A) The manufacturers must define the monitoring conditions for malfunctions identified in paragraphs (g)(6)(ii)(A) and (g)(6)(ii)(D) of this section in accordance with paragraphs (c) and (d) of this section. For purposes of tracking and reporting as required in paragraph (d)(1) of this section, all monitors used to detect malfunctions identified in paragraph (g)(6)(ii)(A) of this section must be tracked separately but reported as a single set of values as specified in paragraph (e)(1)(iii) of this section.

(B) The OBD system must monitor continuously for malfunctions identified in paragraphs (g)(6)(ii)(B), (g)(6)(ii)(C), and (g)(6)(ii)(E) of this section.

(iv) *SCR and lean NO_X catalyst MIL activation and DTC storage*.

(A) For malfunctions identified in paragraph (g)(6)(ii)(A) of this section, the MIL must activate and DTCs must be stored according to the provisions of paragraph (b) of this section.

(B) For malfunctions identified in paragraphs (g)(6)(ii)(B), (g)(6)(ii)(C), and (g)(6)(ii)(D) of this section, the manufacturer may delay activating the MIL if the vehicle is equipped with an alternative indicator for notifying the vehicle operator of the malfunction. The alternative indicator must be of sufficient illumination and be located such that it is readily visible to the vehicle operator under all lighting conditions. If the vehicle is not equipped with such an alternative indicator and the OBD MIL activates, the MIL may be immediately deactivated and the corresponding DTC(s) erased once the OBD system has verified that the reductant tank has been refilled properly and the MIL has not been activated for any other malfunction. The Administrator may approve other strategies that provide equivalent assurance that a vehicle operator would be promptly notified and that corrective action would be taken.

(C) The monitoring method for the SCR and lean NO_X catalyst(s) must be capable of detecting all instances, except diagnostic self-clearing, when a catalyst DTC(s) has been erased but the

catalyst has not been replaced (*e.g.*, catalyst over-temperature histogram approaches are not acceptable).

(7) *NO_X adsorber system monitoring.*

(i) *General.* The OBD system must monitor the NO_X adsorber on engines so-equipped for proper performance. For engines equipped with active/intrusive injection (e.g., in-exhaust fuel and/or air injection) to achieve desorption of the NO_X adsorber, the OBD system must monitor the active/intrusive injection system for proper performance. The individual electronic components (e.g., injectors, valves, sensors) that are used in the active/intrusive injection system must be monitored in accordance with the comprehensive component requirements in paragraph (i)(3) of this section.

(ii) *NO_X adsorber system malfunction criteria.*

(A) *NO_X adsorber system capability.* The OBD system must detect a NO_X adsorber malfunction when its capability (i.e., its combined adsorption and conversion capability) decreases to the point that would cause an engine's NO_X emissions to exceed the emissions thresholds for NO_X aftertreatment systems as shown in Table 1 of this paragraph (g). If no failure or deterioration of the NO_X adsorber capability could result in an engine's NO_X emissions exceeding the applicable emissions thresholds, the OBD system must detect a malfunction when the system has no detectable amount of NO_X adsorber capability.

(B) *NO_X adsorber system active/intrusive reductant delivery performance.* For NO_X adsorber systems that use active/intrusive injection (e.g., in-cylinder post fuel injection, in-exhaust air-assisted fuel injection) to achieve desorption of the NO_X adsorber, the OBD system must detect a malfunction if any failure or deterioration of the injection system's ability to properly regulate injection causes the system to be unable to achieve desorption of the NO_X adsorber.

(C) *NO_X adsorber system feedback control.* Malfunction criteria for the NO_X adsorber and the NO_X adsorber active/instrusive reductant delivery system are contained in paragraph (i)(6) of this section.

(iii) *NO_X adsorber system monitoring conditions.*

(A) The manufacturer must define the monitoring conditions for malfunctions identified in paragraph (g)(7)(ii)(A) of this section in accordance with paragraphs (c) and (d) of this section. For purposes of tracking and reporting as required in paragraph (d)(1) of this section, all monitors used to detect malfunctions identified in paragraph (g)(7)(ii)(A) of this section must be tracked separately but reported as a single set of values as specified in paragraph (e)(1)(iii) of this section.

(B) The OBD system must monitor continuously for malfunctions identified in paragraphs (g)(7)(ii)(B) and (g)(7)(ii)(C) of this section.

(iv) *NO_X adsorber system MIL activation and DTC storage.* The MIL must activate and DTCs must be stored according to the provisions of paragraph (b) of this section.

(8) *Diesel particulate filter (DPF) system monitoring.*

(i) *General.* The OBD system must monitor the DPF on engines so-equipped for proper performance. For engines equipped with active regeneration systems that use an active/intrusive injection (*e.g.*, in-exhaust fuel injection, in-exhaust fuel/air burner), the OBD system must monitor the active/intrusive injection system for proper performance. The individual electronic components (*e.g.*, injectors, valves, sensors) that are used in the active/intrusive injection system must be monitored in accordance with the comprehensive component requirements in paragraph (i)(3) of this section.

(ii) *DPF system malfunction criteria.*

(A) *DPF filtering performance.* The OBD system must detect a malfunction prior to a decrease in the PM filtering capability of the DPF (e.g., cracking, melting, etc.) that would cause an engine's PM emissions to exceed the emissions thresholds for DPF systems as shown in Table 1 of this paragraph (g). If no failure or deterioration of the PM filtering performance could result in an engine's PM emissions exceeding the applicable emissions thresholds, the OBD system must detect a malfunction when no detectable amount of PM filtering occurs. As an alternative to a threshold monitor, the OBD system, on model year 2010 through 2012 engines only, can be designed to detect a malfunction based on a detectable decrease in the expected pressure drop across the DPF for a period of 5 seconds or more. The monitoring area for this alternative is determined using engine speed and load points defined in test cycles and procedures for the supplemental emissions test (SET) under § 86.1360–2007. The monitoring area shall include all engine speed and load points greater than a region bounded by a line connecting mode numbers 2, 6, 3, and 13 (i.e. A100, A75, B50, and C50). At engine speeds greater than ''speed C'', the monitor shall run whenever engine load is greater than 50%. For purposes of this paragraph, the detectable change in pressure drop is determined by operating the engine at the B50 engine speed and load point (as described in the SET test procedures), observing the pressure drop on a clean, nominal DPF, and multiplying the observed pressure drop by 0.5 or other factor supported by data and approved by the Administrator. The detectable change in pressure drop shall be reported in units of kilopascals (kPa). At time of certification, manufacturers shall provide the detectable change in pressure drop value along with OBD data stream parameters recorded with a clean DPF under the following nine engine speed/load operating points of the SET: A50, A75, A100, B50, B75, B100, C50, C75, and C100. The OBD data stream parameters to be reported are described in (k)(4)(ii) of this section and shall include the following: Engine speed; calculated load; air flow rate from mass air flow sensor (if so equipped); fuel rate; and DPF delta pressure.

(B) *DPF regeneration frequency.* The OBD system must detect a malfunction when the DPF regeneration frequency increases from (*i.e.*, occurs more often than) the manufacturer's specified regeneration frequency to a level such that it would cause an engine's NMHC emissions to exceed the emissions threshold for DPF systems as shown in Table 1 of this paragraph (g). If no such regeneration frequency exists that could cause NMHC emissions to exceed the applicable emission threshold, the OBD system must detect a malfunction when the DPF regeneration frequency exceeds the manufacturer's specified design limits for allowable regeneration frequency.

(C) *DPF incomplete regeneration.* The OBD system must detect a regeneration malfunction when the DPF does not properly regenerate under manufacturer-defined conditions where regeneration is designed to occur.

(D) *DPF missing substrate.* The OBD system must detect a malfunction if either the DPF substrate is completely destroyed, removed, or missing, or if the DPF assembly has been replaced with a muffler or straight pipe.

(E) *DPF system active/intrusive injection.* For DPF systems that use active/intrusive injection (e.g., in-cylinder post fuel injection, in-exhaust air-assisted fuel injection) to achieve regeneration of the DPF, the OBD system must detect a malfunction if any failure or deterioration of the injection system's ability to properly regulate injection causes the system to be unable to achieve regeneration of the DPF.

(F) *DPF regeneration feedback control.* See paragraph (i)(6) of this section.

(iii) *DPF monitoring conditions.* The manufacturer must define the monitoring conditions for malfunctions identified in paragraph (g)(8)(ii) of this section in accordance with paragraphs (c) and (d) of this section, with the exception that monitoring must occur every time the monitoring conditions are met during the drive cycle rather than once per drive cycle as required in paragraph (c)(2) of this section. For OBD systems designed to the alternative malfunction criteria of paragraph (g)(8)(ii)(A) of this section, the alternative DPF monitor shall run continuously whenever engine speed and load conditions are within the monitoring area described in paragraph (g)(8)(ii)(A). The OBD system may make a malfunction or potential malfunction determination during any successful monitoring event but shall include in the enable criteria of any subsequent monitoring events a confirmed successful and complete DPF regeneration. The subsequent monitoring events must be conducted within an operating period that ensures that the detected malfunction has not ''healed'' due to trapped particulates in the compromised portion of the DPF substrate. For purposes of tracking and reporting as required in paragraph (d)(1) of this section, all monitors used to detect malfunctions identified in paragraph (g)(8)(ii) of this section must be tracked separately but reported as a single set of values as specified in paragraph (e)(1)(iii) of this section.

(iv)*DPF system MIL activation and DTC storage.* The MIL must activate and DTCs must be stored according to the provisions of paragraph (b) of this section.

(9) *Exhaust gas sensor and sensor heater monitoring.*

(i) *General.* The OBD system must monitor for proper output signal, activity, response rate, and any other parameter that can affect emissions, all exhaust gas sensors (e.g., oxygen, air-fuel ratio, NO_X) used for emission control system feedback (e.g., EGR control/feedback, SCR control/feedback, NO_X adsorber control/feedback) and/or as a monitoring device. For engines equipped with heated exhaust gas sensors, the OBD system must monitor the heater for proper performance.

(ii) *Malfunction criteria for air-fuel ratio sensors located upstream of aftertreatment devices.*

(A)*Sensor performance.* The OBD system must detect a malfunction prior to any failure or deterioration of the sensor voltage, resistance, impedance, current, response rate, amplitude, offset, or other characteristic(s) that would cause an engine's emissions to exceed the emissions thresholds for ''other monitors'' as shown in Table 1 of this paragraph (g).

(B) *Circuit integrity.* The OBD system must detect malfunctions of the sensor related to a lack of circuit continuity or signal out-of-range values.

(C) *Feedback function.* The OBD system must detect a malfunction of the sensor if the emission control system (e.g., EGR, SCR, or NO_X adsorber) is unable to use that sensor as a feedback input (e.g., causes limp-home or open-loop operation).

(D) *Monitoring function.* To the extent feasible, the OBD system must detect a malfunction of the sensor when the sensor output voltage, resistance, impedance, current, amplitude, activity, offset, or other characteristics are no longer sufficient for use as an OBD system monitoring device (e.g., for catalyst, EGR, SCR, or NO_X adsorber monitoring).

(iii) *Malfunction criteria for air-fuel ratio sensors located downstream of aftertreatment devices.*

(A) *Sensor performance.* The OBD system must detect a malfunction prior to any failure or deterioration of the sensor voltage, resistance, impedance, current, response rate, amplitude, offset, or other characteristic(s) that would cause an engine's emissions to exceed the emissions thresholds for air-fuel ratio sensors downstream of aftertreatment devices as shown in Table 1 of this paragraph (g).

(B) *Circuit integrity.* The OBD system must detect malfunctions of the sensor related to a lack of circuit continuity or signal out-of-range values.

(C) *Feedback function.* The OBD system must detect a malfunction of the sensor if the emission control system (e.g., EGR, SCR, or NO_X absorber) is unable to use that sensor as a feedback input (e.g., causes limp-home or open-loop operation).

(D) *Monitoring function.* To the extent feasible, the OBD system must detect a malfunction of the sensor when the sensor output voltage, resistance, impedance, current, amplitude, activity, offset, or other characteristics are no longer sufficient for use as an OBD system monitoring device (e.g., for catalyst, EGR, SCR, or NO_X absorber monitoring).

(iv) *Malfunction criteria for* NO_X *sensors.*

(A) *Sensor performance.* The OBD system must detect a malfunction prior to any failure or deterioration of the sensor voltage, resistance, impedance, current, response rate, amplitude, offset, or other characteristic(s) that would cause an engine's emissions to exceed the emissions thresholds for NO_X sensors as shown in Table 1 of this paragraph (g).

(B) *Circuit integrity.* The OBD system must detect malfunctions of the sensor related to a lack of circuit continuity or signal out-of-range values.

(C) *Feedback function.* The OBD system must detect a malfunction of the sensor if the emission control system (*e.g.*, EGR, SCR, or NO_X adsorber) is unable to use that sensor as a feedback input (*e.g.*, causes limp-home or open-loop operation).

(D) *Monitoring function.* To the extent feasible, the OBD system must detect a malfunction of the sensor when the sensor output voltage, resistance, impedance, current, amplitude, activity, offset, or other characteristics are no longer sufficient for use as an OBD system monitoring device (*e.g.*, for catalyst, EGR, SCR, or NO_X adsorber monitoring).

(v) *Malfunction criteria for other exhaust gas sensors.* For other exhaust gas sensors, the manufacturer must submit a monitoring plan to the Administrator for approval. The plan must include data and/or engineering evaluations that demonstrate that the monitoring plan is as reliable and effective as the monitoring required in paragraphs (g)(9)(ii), (g)(9)(iii), (g)(9)(iv) of this section.

(vi) *Malfunction criteria for exhaust gas sensor heaters.*

(A) The OBD system must detect a malfunction of the heater performance when the current or voltage drop in the heater circuit is no longer within the manufacturer's specified limits for normal operation (*i.e.*, within the criteria required to be met by the component vendor for heater circuit performance at high mileage). The manufacturer may use other malfunction criteria for heater performance malfunctions. To do so, the manufacturer must be able to demonstrate via data and/or an engineering evaluation that the monitor is reliable and robust.

(B) The OBD system must detect malfunctions of the heater circuit including open or short circuits that conflict with the commanded state of the heater (*e.g.*, shorted to 12 Volts when commanded to 0 Volts (ground)).

(vii) *Monitoring conditions for exhaust gas sensors.*

(A) The manufacturer must define the monitoring conditions for malfunctions identified in paragraphs (g)(9)(ii)(A), (g)(9)(iii)(A), and (g)(9)(iv)(A) of this section (*i.e.*, sensor performance) in accordance with paragraphs (c) and (d)

of this section. For purposes of tracking and reporting as required in paragraph (d)(1) of this section, all monitors used to detect malfunctions identified in paragraphs (g)(9)(ii)(A), (g)(9)(iii)(A), and (g)(9)(iv)(A) of this section must be tracked separately but reported as a single set of values as specified in paragraph (e)(1)(iii) of this section.

(B) The manufacturer must define the monitoring conditions for malfunctions identified in paragraphs (g)(9)(ii)(D), (g)(9)(iii)(D), and (g)(9)(iv)(D) of this section (*i.e.*, monitoring function) in accordance with paragraphs (c) and (d) of this section with the exception that monitoring must occur every time the monitoring conditions are met during the drive cycle rather than once per drive cycle as required in paragraph (c)(2) of this section.

(C) Except as provided for in paragraph (g)(9)(vii)(D) of this section, the OBD system must monitor continuously for malfunctions identified in paragraphs (g)(9)(ii)(B), (g)(9)(ii)(C), (g)(9)(iii)(B), (g)(9)(iii)(C), (g)(9)(iv)(B), (g)(9)(iv)(C) of this section (*i.e.*, circuit integrity and feedback function).

(D) A manufacturer may request approval to disable continuous exhaust gas sensor monitoring when an exhaust gas sensor malfunction cannot be distinguished from other effects (*e.g.*, disable monitoring for out-of-range on the low side during fuel cut conditions). To do so, the manufacturer must demonstrate via data and/or engineering analyses that a properly functioning sensor cannot be distinguished from a malfunctioning sensor and that the disablement interval is limited only to that necessary for avoiding false malfunction detection.

(viii) *Monitoring conditions for exhaust gas sensor heaters.*

(A) The manufacturer must define monitoring conditions for malfunctions identified in paragraph (g)(9)(vi)(A) of this section (*i.e.*, sensor heater performance) in accordance with paragraphs (c) and (d) of this section.

(B) The OBD system must monitor continuously for malfunctions identified in paragraph (g)(9)(vi)(B) of this section (*i.e.*, circuit malfunctions).

(ix) *Exhaust gas sensor and sensor heater MIL activation and DTC storage.* The MIL must activate and DTCs must be stored according to the provisions of paragraph (b) of this section.

(10) *Variable Valve Timing (VVT) system monitoring.*

(i) *General.* The OBD system must monitor the VVT system on engines so equipped for target error and slow response malfunctions. The individual electronic components (*e.g.*, actuators, valves, sensors) that are used in the VVT system must be monitored in accordance with the comprehensive components requirements in paragraph (i)(3) of this section.

(ii) *VVT system malfunction criteria.*

(A) *VVT system target error.* The OBD system must detect a malfunction prior to any failure or deterioration in the capability of the VVT system to achieve the commanded valve timing and/or control within a crank angle and/or lift tolerance that would cause an engine's emissions to exceed the emission thresholds for ''other monitors'' as shown in Table 1 of this paragraph (g).

(B) *VVT slow response.* The OBD system must detect a malfunction prior to any failure or deterioration in the capability of the VVT system to achieve the commanded valve timing and/or control within a manufacturer-specified time that would cause an engine's emissions to exceed the emission thresholds for ''other monitors'' as shown in Table 1 of this paragraph (g).

(C) For engines in which no failure or deterioration of the VVT system could result in an engine's emissions exceeding the applicable emissions thresholds of paragraphs (g)(10)(ii)(A) and (g)(10)(ii)(B) of this section, the OBD system must detect a malfunction of the VVT system when proper functional response of the system to computer commands does not occur.

(iii) *VVT system monitoring conditions.* Manufacturers must define the monitoring conditions for VVT system malfunctions identified in paragraph (g)(10)(ii) of this section in accordance with paragraphs (c) and (d) of this section, with the exception that monitoring must occur every time the monitoring conditions are met during the drive cycle rather than once per drive cycle as required in paragraph (c)(2) of this section. For purposes of tracking and reporting as required in paragraph (d)(1) of this section, all monitors used to detect malfunctions identified in paragraph (g)(10)(ii) of this section must be tracked separately but reported as a single set of values as specified in paragraph (e)(1)(iii) of this section.

(iv) *VVT MIL activation and DTC storage.* The MIL must activate and DTCs must be stored according to the provisions of paragraph (b) of this section.

(h) *OBD monitoring requirements for gasoline-fueled/spark-ignition engines.* The following table shows the thresholds at which point certain components or systems, as specified in this paragraph (h), are considered malfunctioning.

TABLE 2—OBD EMISSIONS THRESHOLDS FOR GASOLINE-FUELED/SPARK-IGNITION ENGINES MEANT FOR PLACEMENT IN APPLICATIONS GREATER THAN 14,000 POUNDS GVWR (G/BHP-HR)

Component	NO_X	NMHC	CO	§ 86.010–18 reference
Catalyst system	1.75x std	1.75x std		(h)(6)
Evaporative emissions control system.		0.150 inch leak		(h)(7)
''Other monitors'' with emissions thresholds.	1.5x std	1.5x std	1.5x std	(h)(1), (h)(2), (h)(3), (h)(4), (h)(5), (h)(8), (h)(9)

Notes: 1.75x std means a multiple of 1.75 times the applicable emissions standard; these emissions thresholds apply to the monitoring requirements of paragraph (h) of this section; The evaporative emissions control system threshold is not, technically, an emissions threshold but rather a leak size that must be detected; nonetheless, for ease we refer to this as the threshold.

(1) *Fuel system monitoring.*

(i) *General.* The OBD system must monitor the fuel delivery system to determine its ability to provide compliance with emission standards.

(ii) *Fuel system malfunction criteria.*

(A) The OBD system must detect a malfunction of the fuel delivery system (including feedback control based on a secondary oxygen sensor) when the fuel delivery system is unable to maintain an engine's emissions at or below the emissions thresholds for ''other monitors'' as shown in Table 2 of this paragraph (h).

(B) Except as provided for in paragraph (h)(1)(ii)(C) of this section, if the engine is equipped with adaptive

feedback control, the OBD system must detect a malfunction when the adaptive feedback control has used up all of the adjustment allowed by the manufacturer.

(C) If the engine is equipped with feedback control that is based on a secondary oxygen (or equivalent) sensor, the OBD system is not required to detect a malfunction of the fuel system solely when the feedback control based on a secondary oxygen sensor has used up all of the adjustment allowed by the manufacturer. However, if a failure or deterioration results in engine emissions that exceed the emissions thresholds for ''other monitors'' as shown in Table 2 of this paragraph (h), the OBD system is required to detect a malfunction.

(D) The OBD system must detect a malfunction whenever the fuel control system fails to enter closed loop operation following engine start within a manufacturer specified time interval. The specified time interval must be supported by data and/or engineering analyses submitted by the manufacturer.

(E) The manufacturer may adjust the malfunction criteria and/or monitoring conditions to compensate for changes in altitude, for temporary introduction of large amounts of purge vapor, or for other similar identifiable operating conditions when such conditions occur.

(iii) *Fuel system monitoring conditions.* The fuel system must be monitored continuously for the presence of a malfunction.

(iv) *Fuel system MIL activation and DTC storage.*

(A) A pending DTC must be stored immediately upon the fuel system exceeding the malfunction criteria established in paragraph (h)(1)(ii) of this section.

(B) Except as provided for in paragraph (h)(1)(iv)(C) of this section, if a pending DTC is stored, the OBD system must activate the MIL immediately and store a MIL-on DTC if a malfunction is again detected during either the drive cycle immediately following storage of the pending DTC regardless of the conditions encountered during that drive cycle, or on the next drive cycle in which similar conditions are encountered to those that occurred when the pending DTC was stored. Similar conditions means engine conditions having an engine speed within 375 rpm, load conditions within 20 percent, and the same warm-up status (i.e., cold or hot) as the engine conditions stored pursuant to paragraph (h)(1)(iv)(E) of this section. Other definitions of similar conditions may be used but must result in comparable timeliness and reliability in detecting similar engine operation.

(C) The pending DTC may be erased at the end of the next drive cycle in which similar conditions have been encountered without having again exceeded the specified fuel system malfunction criteria. The pending DTC may also be erased if similar conditions are not encountered during the 80 drive cycles immediately following detection of the potential malfunction for which the pending DTC was stored.

(D) Storage of freeze frame conditions. The OBD system must store and erase freeze frame conditions either in conjunction with storing and erasing a pending DTC or in conjunction with storing and erasing a MIL-on DTC. Freeze frame information associated with a fuel system malfunction shall be stored in preference to freeze frame information required elsewhere in paragraphs (h) or (i) of this section.

(E) Storage of fuel system conditions for determining similar conditions of operation. The OBD must store the engine speed, load, and warm-up status present at the time it first detects a potential malfunction meeting the criteria of paragraph (h)(1)(ii) of this section and stores a pending DTC.

(F) Deactivating the MIL. The MIL may be extinguished after three sequential driving cycles in which similar conditions have been encountered without detecting a malfunction of the fuel system.

(2) *Engine misfire monitoring.*

(i) *General.*

(A) The OBD system must monitor the engine for misfire causing catalyst damage and misfire causing excess emissions.

(B) The OBD system must identify the specific cylinder that is misfiring. The manufacturer may store a general misfire DTC instead of a cylinder specific DTC under certain operating conditions. To do so, the manufacturer must submit data and/or engineering analyses that demonstrate that the misfiring cylinder cannot be identified reliably when the conditions occur.

(C) If more than one cylinder is misfiring, a separate DTC must be stored to indicate that multiple cylinders are misfiring unless otherwise allowed by this paragraph (h)(2). When identifying multiple cylinder misfire, the OBD system is not required to also identify using separate DTCs each of the misfiring cylinders individually. If more than 90 percent of the detected misfires occur in a single cylinder, an appropriate DTC may be stored that indicates the specific misfiring cylinder rather than storing the multiple cylinder misfire DTC. If two or more cylinders individually have more than 10 percent of the total number of detected misfires, a multiple cylinder DTC must be stored.

(ii) *Engine misfire malfunction criteria.*

(A) *Misfire causing catalyst damage.* The manufacturer must determine the percentage of misfire evaluated in 200 revolution increments for each engine speed and load condition that would result in a temperature that causes catalyst damage. If this percentage of misfire is exceeded, it shall be considered a malfunction that must be detected. For every engine speed and load condition for which this percentage of misfire is determined to be lower than five percent, the manufacturer may set the malfunction criteria at five percent. The manufacturer may use a longer interval than 200 revolutions but only for determining, on a given drive cycle, the first misfire exceedance as provided in paragraph (h)(2)(iv)(A) of this section. To do so, the manufacturer must demonstrate that the interval is not so long that catalyst damage would occur prior to the interval being elapsed.

(B) *Misfire causing emissions to exceed the applicable thresholds.* The manufacturer must determine the percentage of misfire evaluated in 1000 revolution increments that would cause emissions from an emissions durability demonstration engine to exceed the emissions thresholds for ''other monitors'' as shown in Table 2 of this paragraph (h) if that percentage of misfire were present from the beginning of the test. If this percentage of misfire is exceeded, regardless of the pattern of misfire events (e.g., random, equally spaced, continuous), it shall be considered a malfunction that must be detected. To establish this percentage of misfire, the manufacturer must use misfire events occurring at equally spaced, complete engine cycle intervals, across randomly selected cylinders throughout each 1000-revolution increment. If this percentage of misfire is determined to be lower than one percent, the manufacturer may set the malfunction criteria at one percent. The manufacturer may use a longer interval than 1000 revolutions. To do so, the manufacturer must demonstrate that the strategy would be equally effective and timely at detecting misfire.

(iii) *Engine misfire monitoring conditions.*

(A) The OBD system must monitor continuously for misfire under the following conditions: from no later than the end of the second crankshaft revolution after engine start; during the rise time and settling time for engine speed to reach the desired idle engine speed at engine start-up (i.e., ''flare-up''

and ''flare-down''); and, under all positive torque engine speeds and load conditions except within the engine operating region bound by the positive torque line (i.e., engine load with the transmission in neutral), and the points represented by an engine speed of 3000 rpm with the engine load at the positive torque line and the redline engine speed with the engine's manifold vacuum at four inches of mercury lower than that at the positive torque line. For this purpose, redline engine speed is defined as either the recommended maximum engine speed as displayed on the instrument panel tachometer, or the engine speed at which fuel shutoff occurs.

(B) If an OBD monitor cannot detect all misfire patterns under all required engine speed and load conditions as required by paragraph (h)(2)(iii)(A) of this section, the OBD system may still be acceptable. The Administrator will evaluate the following factors in making a determination: The magnitude of the region(s) in which misfire detection is limited; the degree to which misfire detection is limited in the region(s) (i.e., the probability of detection of misfire events); the frequency with which said region(s) are expected to be encountered in-use; the type of misfire patterns for which misfire detection is troublesome; and demonstration that the monitoring technology employed is not inherently incapable of detecting misfire under the required conditions (i.e., compliance can be achieved on other engines). The evaluation will be based on the following misfire patterns: equally spaced misfire occurring on randomly selected cylinders; single cylinder continuous misfire; and paired cylinder (cylinders firing at the same crank angle) continuous misfire.

(C) The manufacturer may use monitoring system that has reduced misfire detection capability during the portion of the first 1000 revolutions after engine start that a cold start emission reduction strategy is active that reduces engine torque (e.g., spark retard strategies). To do so, the manufacturer must demonstrate that the probability of detection is greater than or equal to 75 percent during the worst case condition (i.e., lowest generated torque) for a vehicle operated continuously at idle (park/neutral idle) on a cold start between 50 and 86 degrees Fahrenheit and that the technology cannot reliably detect a higher percentage of the misfire events during the conditions.

(D) The manufacturer may disable misfire monitoring or use an alternative malfunction criterion when misfire cannot be distinguished from other effects. To do so, the manufacturer must demonstrate that the disablement interval or the period of use of an alternative malfunction criterion is limited only to that necessary for avoiding false detection and for one or more of the following operating conditions: Rough road; fuel cut; gear changes for manual transmission vehicles; traction control or other vehicle stability control activation such as anti-lock braking or other engine torque modifications to enhance vehicle stability; off-board control or intrusive activation of vehicle components or monitors during service or assembly plant testing; portions of intrusive evaporative system or EGR monitors that can significantly affect engine stability (i.e., while the purge valve is open during the vacuum pull-down of an evaporative system leak check but not while the purge valve is closed and the evaporative system is sealed or while an EGR monitor causes the EGR valve to be cycled intrusively on and off during positive torque conditions); or, engine speed, load, or torque transients due to throttle movements more rapid than those that occur over the FTP cycle for the worst case engine within each engine family. In general, the Administrator will not approve disablement for conditions involving normal air conditioning compressor cycling from on-to-off or off-to-on, automatic transmission gear shifts (except for shifts occurring during wide open throttle operation), transitions from idle to off-idle, normal engine speed or load changes that occur during the engine speed rise time and settling time (i.e., ''flare-up'' and ''flare-down'') immediately after engine starting without any vehicle operator-induced actions (e.g., throttle stabs), or excess acceleration (except for acceleration rates that exceed the maximum acceleration rate obtainable at wide open throttle while the vehicle is in gear due to abnormal conditions such as slipping of a clutch). The Administrator may approve misfire monitoring disablement or use of an alternate malfunction criterion for any other condition on a case by case basis upon determining that the manufacturer has demonstrated that the request is based on an unusual or unforeseen circumstance and that it is applying the best available computer and monitoring technology.

(E) For engines with more than eight cylinders that cannot meet the requirements of paragraph (h)(2)(iii)(A) of this section, a manufacturer may use alternative misfire monitoring conditions. Such use must be based on data and/or an engineering evaluation submitted by the manufacturer that demonstrate that misfire detection throughout the required operating region cannot be achieved when employing proven monitoring technology (i.e., a technology that provides for compliance with these requirements on other engines) and provided misfire is detected to the fullest extent permitted by the technology. However, the misfire detection system must still monitor during all positive torque operating conditions encountered during an FTP cycle.

(iv) *MIL activation and DTC storage for engine misfire causing catalyst damage.*

(A) *Pending DTCs.* A pending DTC must be stored immediately if, during a single drive cycle, the specified misfire percentage described in paragraph (h)(2)(ii)(A) of this section is exceeded three times when operating in the positive torque region encountered during a FTP cycle or is exceeded on a single occasion when operating at any other engine speed and load condition in the positive torque region defined in paragraph (h)(2)(iii)(A) of this section. Immediately after a pending DTC is stored pursuant to this paragraph, the MIL must blink once per second at all times during the drive cycle that engine misfire is occurring. The MIL may be deactivated during those times that misfire is not occurring. If, at the time that a catalyst damaging misfire malfunction occurs, the MIL is already activated for a malfunction other than misfire, the MIL must still blink once per second at all times during the drive cycle that engine misfire is occurring. If misfire ceases, the MIL must stop blinking but remain activated as appropriate in accordance with the other malfunction.

(B) *MIL-on DTCs.* If a pending DTC is stored in accordance with paragraph (h)(2)(iv)(A) of this section, the OBD system must immediately store a MIL-on DTC if the percentage of misfire described in paragraph (h)(2)(ii)(A) of this section is again exceeded one or more times during either the drive cycle immediately following storage of the pending DTC, regardless of the conditions encountered during that drive cycle, or on the next drive cycle in which similar conditions are encountered to those that occurred when the pending DTC was stored. If, during a previous drive cycle, a pending DTC is stored in accordance with paragraph (h)(2)(iv)(A) of this section, a MIL-on DTC must be stored immediately upon exceeding the percentage misfire described in

paragraph (h)(2)(ii)(A) of this section regardless of the conditions encountered. Upon storage of a MIL-on DTC, the MIL must blink once per second at all times during the drive cycle that engine misfire is occurring. If misfire ceases, the MIL must stop blinking but remain activated until the conditions are met for extinguishing the MIL.

(C) *Erasure of pending DTCs.* Pending DTCs stored in accordance with paragraph (h)(2)(iv)(A) of this section must be erased at the end of the next drive cycle in which similar conditions are encountered to those that occurred when the pending DTC was stored provided no exceedances have been detected of the misfire percentage described in paragraph (h)(2)(ii)(A) of this section. The pending DTC may also be erased if similar conditions are not encountered during the next 80 drive cycles immediately following storage of the pending DTC.

(D) *Exemptions for engines with fuel shutoff and default fuel control.* In engines that provide for fuel shutoff and default fuel control to prevent over fueling during catalyst damaging misfire conditions, the MIL need not blink as required by paragraphs (h)(2)(iv)(A) and (h)(2)(iv)(B) of this section. Instead, the MIL may be activated continuously upon misfire detection provided that the fuel shutoff and default fuel control are activated immediately upon misfire detection. Fuel shutoff and default fuel control may be deactivated only when the engine is outside of the misfire range except that the manufacturer may periodically, but not more than once every 30 seconds, deactivate fuel shutoff and default fuel control to determine if the catalyst damaging misfire is still occurring. Normal fueling and fuel control may be resumed if the catalyst damaging misfire is no longer occurring.

(E) The manufacturer may use a strategy that activates the MIL continuously rather than blinking the MIL during extreme catalyst damage misfire conditions (i.e., catalyst damage misfire occurring at all engine speeds and loads). Use of such a strategy must be limited to catalyst damage misfire levels that cannot be avoided during reasonable driving conditions. To use such a strategy, the manufacturer must be able to demonstrate that the strategy will encourage operation of the vehicle in conditions that will minimize catalyst damage (e.g., at low engine speeds and loads).

(v) *MIL activation and DTC storage for engine misfire causing emissions to exceed applicable emissions thresholds.*

(A) Immediately upon detection, during the first 1000 revolutions after engine start of the misfire percentage described in paragraph (h)(2)(ii)(B) of this section, a pending DTC must be stored. If such a pending DTC is stored already and another such exceedance of the misfire percentage is detected within the first 1000 revolutions after engine start on any subsequent drive cycle, the MIL must activate and a MIL-on DTC must be stored. The pending DTC may be erased if, at the end of the next drive cycle in which similar conditions are encountered to those that occurred when the pending DTC was stored, there has been no exceedance of the misfire percentage described in paragraph (h)(2)(ii)(B) of this section. The pending DTC may also be erased if similar conditions are not encountered during the next 80 drive cycles immediately following storage of the pending DTC.

(B) No later than the fourth detection during a single drive cycle, following the first 1000 revolutions after engine start of the misfire percentage described in paragraph (h)(2)(ii)(B) of this section, a pending DTC must be stored. If such a pending DTC is stored already, then the MIL must activate and a MIL-on DTC must be stored within 10 seconds of the fourth detection of the misfire percentage described in paragraph (h)(2)(ii)(B) of this section during either the drive cycle immediately following storage of the pending DTC, regardless of the conditions encountered during that drive cycle excepting those conditions within the first 1000 revolutions after engine start, or on the next drive cycle in which similar conditions are encountered to those that occurred when the pending DTC was stored excepting those conditions within the first 1000 revolutions after engine start. The pending DTC may be erased if, at the end of the next drive cycle in which similar conditions are encountered to those that occurred when the pending DTC was stored, there has been no exceedance of the misfire percentage described in paragraph (h)(2)(ii)(B) of this section. The pending DTC may also be erased if similar conditions are not encountered during the next 80 drive cycles immediately following storage of the pending DTC.

(vi) *Storage of freeze frame conditions for engine misfire.*

(A) The OBD system must store and erase freeze frame conditions (as defined in paragraph (k)(4)(iii) of this section) either in conjunction with storing and erasing a pending DTC or in conjunction with storing and erasing a MIL-on DTC.

(B) If, upon storage of a DTC as required by paragraphs (h)(2)(iv) and (h)(2)(v) of this section, there already exist stored freeze frame conditions for a malfunction other than a misfire or fuel system malfunction (see paragraph (h)(1) of this section) then the stored freeze frame information shall be replaced with freeze frame information associated with the misfire malfunction.

(vii) *Storage of engine conditions in association with engine misfire.* Upon detection of the misfire percentages described in paragraphs (h)(2)(ii)(A) and (h)(2)(ii)(B) of this section, the following engine conditions must be stored for use in determining similar conditions: Engine speed, load, and warm up status of the first misfire event that resulted in pending DTC storage.

(viii) *MIL deactivation in association with engine misfire.* The MIL may be deactivated after three sequential drive cycles in which similar conditions have been encountered without an exceedance of the misfire percentages described in paragraphs (h)(2)(ii)(A) and (h)(2)(ii)(B) of this section.

(3) *Exhaust gas recirculation system monitoring.*

(i) *General.* The OBD system must monitor the EGR system on engines so equipped for low and high flow rate malfunctions. The individual electronic components (e.g., actuators, valves, sensors) that are used in the EGR system must be monitored in accordance with the comprehensive component requirements in paragraph (i)(3) of this section.

(ii) *EGR system malfunction criteria.*

(A) The OBD system must detect a malfunction of the EGR system prior to a decrease from the manufacturer's specified EGR flow rate that would cause an engine's emissions to exceed the emissions thresholds for ''other monitors'' as shown in Table 2 of this paragraph (h). For engines in which no failure or deterioration of the EGR system that causes a decrease in flow could result in an engine's emissions exceeding the applicable emissions thresholds, the OBD system must detect a malfunction when the system has no detectable amount of EGR flow.

(B) The OBD system must detect a malfunction of the EGR system prior to an increase from the manufacturer's specified EGR flow rate that would cause an engine's emissions to exceed the emissions thresholds for ''other monitors'' as shown in Table 2 of this paragraph (h). For engines in which no failure or deterioration of the EGR system that causes an increase in flow could result in an engine's emissions exceeding the applicable emissions thresholds, the OBD system must detect a malfunction when the system has

reached its control limits such that it cannot reduce EGR flow.

(iii) *EGR system monitoring conditions.*

(A) The manufacturer must define the monitoring conditions for malfunctions identified in paragraph (h)(3)(ii) of this section in accordance with paragraphs (c) and (d) of this section. For purposes of tracking and reporting as required by paragraph (d)(1) of this section, all monitors used to detect malfunctions identified in paragraph (h)(3)(ii) of this section must be tracked separately but reported as a single set of values as specified in paragraph (e)(1)(iii) of this section.

(B) The manufacturer may disable temporarily the EGR monitor under conditions when monitoring may not be reliable (e.g., when freezing may affect performance of the system). To do so, the manufacturer must be able to demonstrate that the monitor is unreliable when such conditions exist.

(iv) *EGR system MIL activation and DTC storage.* The MIL must activate and DTCs must be stored according to the provisions of paragraph (b) of this section.

(4) *Cold start emission reduction strategy monitoring.*

(i) *General.* If an engine incorporates a specific engine control strategy to reduce cold start emissions, the OBD system must monitor the key components (e.g., idle air control valve), other than secondary air, while the control strategy is active to ensure proper operation of the control strategy.

(ii) *Cold start strategy malfunction criteria.*

(A) The OBD system must detect a malfunction prior to any failure or deterioration of the individual components associated with the cold start emission reduction control strategy that would cause an engine's emissions to exceed the emissions thresholds for ''other monitors'' as shown in Table 2 of this paragraph (h). The manufacturer must establish the malfunction criteria based on data from one or more representative engine(s) and provide an engineering evaluation for establishing the malfunction criteria for the remainder of the manufacturer's product line.

(B) Where no failure or deterioration of a component used for the cold start emission reduction strategy could result in an engine's emissions exceeding the applicable emissions thresholds, the individual component must be monitored for proper functional response while the control strategy is active in accordance with the malfunction criteria in paragraphs (i)(3)(ii) and (i)(3)(iii) of this section.

(iii) *Cold start strategy monitoring conditions.* The manufacturer must define monitoring conditions for malfunctions identified in paragraph (h)(4)(ii) of this section in accordance with paragraphs (c) and (d) of this section.

(iv) *Cold start strategy MIL activation and DTC storage.* The MIL must activate and DTCs must be stored according to the provisions of paragraph (b) of this section.

(5) *Secondary air system monitoring.*

(i) *General.* The OBD system on engines equipped with any form of secondary air delivery system must monitor the proper functioning of the secondary air delivery system including all air switching valve(s). The individual electronic components (e.g., actuators, valves, sensors) that are used in the secondary air system must be monitored in accordance with the comprehensive component requirements in paragraph (i)(3) of this section. For purposes of this paragraph (h)(5), ''air flow'' is defined as the air flow delivered by the secondary air system to the exhaust system. For engines using secondary air systems with multiple air flow paths/distribution points, the air flow to each bank (i.e., a group of cylinders that share a common exhaust manifold, catalyst, and control sensor) must be monitored in accordance with the malfunction criteria in paragraph (h)(5)(ii) of this section. Also for purposes of this paragraph (h)(5), ''normal operation'' is defined as the condition when the secondary air system is activated during catalyst and/or engine warm-up following engine start. ''Normal operation'' does not include the condition when the secondary air system is turned on intrusively for the sole purpose of monitoring.

(ii) *Secondary air system malfunction criteria.*

(A) Except as provided in paragraph (h)(5)(ii)(C) of this section, the OBD system must detect a secondary air system malfunction prior to a decrease from the manufacturer's specified air flow during normal operation that would cause an engine's emissions to exceed the emissions thresholds for ''other monitors'' as shown in Table 2 of this paragraph (h).

(B) Except as provided in paragraph (h)(5)(ii)(C) of this section, the OBD system must detect a secondary air system malfunction prior to an increase from the manufacturer's specified air flow during normal operation that would cause an engine's emissions to exceed the emissions thresholds for ''other monitors'' as shown in Table 2 of this paragraph (h).

(C) For engines in which no deterioration or failure of the secondary air system would result in an engine's emissions exceeding the applicable emissions thresholds, the OBD system must detect a malfunction when no detectable amount of air flow is delivered by the secondary air system during normal operation.

(iii) *Secondary air system monitoring conditions.* The manufacturer must define monitoring conditions for malfunctions identified in paragraph (h)(5)(ii) of this section in accordance with paragraphs (c) and (d) of this section. For purposes of tracking and reporting as required by paragraph (d)(1) of this section, all monitors used to detect malfunctions identified in paragraph (h)(5)(ii) of this section must be tracked separately but reported as a single set of values as specified in paragraph (e)(1)(iii) of this section.

(iv) *Secondary air system MIL activation and DTC storage.* The MIL must activate and DTCs must be stored according to the provisions of paragraph (b) of this section.

(6) *Catalyst system monitoring.*

(i) *General.* The OBD system must monitor the catalyst system for proper conversion capability.

(ii) *Catalyst system malfunction criteria.* The OBD system must detect a catalyst system malfunction when the catalyst system's conversion capability decreases to the point that emissions exceed the emissions thresholds for the catalyst system as shown in Table 2 of this paragraph (h).

(iii) *Catalyst system monitoring conditions.* The manufacturer must define monitoring conditions for malfunctions identified in paragraph (h)(6)(ii) of this section in accordance with paragraphs (c) and (d) of this section. For purposes of tracking and reporting as required by paragraph (d)(1) of this section, all monitors used to detect malfunctions identified in paragraph (h)(6)(ii) of this section must be tracked separately but reported as a single set of values as specified in paragraph (e)(1)(iii) of this section.

(iv) *Catalyst system MIL activation and DTC storage.*

(A) The MIL must activate and DTCs must be stored according to the provisions of paragraph (b) of this section.

(B) The monitoring method for the catalyst system must be capable of detecting when a catalyst DTC has been erased (except OBD system self erasure), but the catalyst has not been replaced (e.g., catalyst overtemperature histogram approaches are not acceptable).

(7) *Evaporative system monitoring.*

(i) *General.* The OBD system must verify purge flow from the evaporative system and monitor the complete evaporative system, excluding the tubing and connections between the purge valve and the intake manifold, for vapor leaks to the atmosphere. Individual components of the evaporative system (e.g. valves, sensors) must be monitored in accordance with the comprehensive components requirements in paragraph (i)(3) of this section.

(ii) *Evaporative system malfunction criteria.*

(A) *Purge monitor.* The OBD system must detect an evaporative system malfunction when no purge flow from the evaporative system to the engine can be detected by the OBD system.

(B) *Leak monitor.* The OBD system must detect an evaporative system malfunction when the complete evaporative system contains a leak or leaks that cumulatively are greater than or equal to a leak caused by a 0.150 inch diameter hole.

(C) The manufacturer may demonstrate that detection of a larger hole is more appropriate than that specified in paragraph (h)(7)(ii)(B) of this section. To do so, the manufacturer must demonstrate through data and/or engineering analyses that holes smaller than the proposed detection size would not result in evaporative or running loss emissions that exceed 1.5 times the applicable evaporative emissions standards. Upon such a demonstration, the proposed detection size could be substituted for the requirement of paragraph (h)(7)(ii)(B) of this section.

(iii) *Evaporative system monitoring conditions.*

(A) The manufacturer must define monitoring conditions for malfunctions identified in paragraph (h)(7)(ii)(A) of this section in accordance with paragraphs (c) and (d) of this section.

(B) The manufacturer must define monitoring conditions for malfunctions identified in paragraph (h)(7)(ii)(B) of this section in accordance with paragraphs (c) and (d) of this section. For purposes of tracking and reporting as required by paragraph (d)(1) of this section, all monitors used to detect malfunctions identified in paragraph (h)(7)(ii)(B) of this section must be tracked separately but reported as a single set of values as specified in paragraph (e)(1)(iii) of this section.

(C) The manufacturer may disable or abort an evaporative system monitor when the fuel tank level is over 85 percent of nominal tank capacity or during a refueling event.

(D) The manufacturer may request Administrator approval to run the evaporative system monitor during only those drive cycles characterized as cold starts provided such a condition is needed to ensure reliable monitoring. In making the request, the manufacturer must demonstrate through data and/or engineering analyses that a reliable monitor can only be run on drive cycles that begin with a specific set of cold start criteria. A set of cold start criteria based solely on ambient temperature exceeding engine coolant temperature will not be acceptable.

(E) The OBD system may disable temporarily the evaporative purge system to run an evaporative system leak monitor.

(iv) *Evaporative system MIL activation and DTC storage.*

(A) Except as provided for in paragraph (h)(7)(iv)(B) of this section, the MIL must activate and DTCs must be stored according to the provisions of paragraph (b) of this section.

(B) If the OBD system is capable of discerning that a system leak is being caused by a missing or improperly secured gas cap, the OBD system need not activate the MIL or store a DTC provided the vehicle is equipped with an alternative indicator for notifying the operator of the gas cap problem. The alternative indicator must be of sufficient illumination and location to be readily visible under all lighting conditions. If the vehicle is not equipped with such an alternative indicator, the MIL must activate and a DTC be stored as required in paragraph (h)(7)(iv)(A) of this section; however, these may be deactivated and erased, respectively, if the OBD system determines that the gas cap problem has been corrected and the MIL has not been activated for any other malfunction. The Administrator may approve other strategies that provide equivalent assurance that a vehicle operator will be notified promptly of a missing or improperly secured gas cap and that corrective action will be undertaken.

(8) *Exhaust gas sensor monitoring.*

(i) *General.*

(A) The OBD system must monitor for malfunctions the output signal, response rate, and any other parameter that can affect emissions of all primary (i.e., fuel control) exhaust gas sensors (e.g., oxygen, wide-range air/fuel). Both the lean-to-rich and rich-to-lean response rates must be monitored.

(B) The OBD system must also monitor all secondary exhaust gas sensors (those used for secondary fuel trim control or as a monitoring device) for proper output signal, activity, and response rate.

(C) For engines equipped with heated exhaust gas sensor, the OBD system must monitor the heater for proper performance.

(ii) *Primary exhaust gas sensor malfunction criteria.*

(A) The OBD system must detect a malfunction prior to any failure or deterioration of the exhaust gas sensor output voltage, resistance, impedance, current, response rate, amplitude, offset, or other characteristic(s) (including drift or bias corrected for by secondary sensors) that would cause an engine's emissions to exceed the emissions thresholds for ''other monitors'' as shown in Table 2 of this paragraph (h).

(B) The OBD system must detect malfunctions of the exhaust gas sensor caused by either a lack of circuit continuity or out-of-range values.

(C) The OBD system must detect a malfunction of the exhaust gas sensor when a sensor failure or deterioration causes the fuel system to stop using that sensor as a feedback input (e.g., causes default or open-loop operation).

(D) The OBD system must detect a malfunction of the exhaust gas sensor when the sensor output voltage, resistance, impedance, current, amplitude, activity, or other characteristics are no longer sufficient for use as an OBD system monitoring device (e.g., for catalyst monitoring).

(iii) *Secondary exhaust gas sensor malfunction criteria.*

(A) The OBD system must detect a malfunction prior to any failure or deterioration of the exhaust gas sensor voltage, resistance, impedance, current, response rate, amplitude, offset, or other characteristic(s) that would cause an engine's emissions to exceed the emissions thresholds for ''other monitors'' as shown in Table 2 of this paragraph (h).

(B) The OBD system must detect malfunctions of the exhaust gas sensor caused by a lack of circuit continuity.

(C) To the extent feasible, the OBD system must detect a malfunction of the exhaust gas sensor when the sensor output voltage, resistance, impedance, current, amplitude, activity, offset, or other characteristics are no longer sufficient for use as an OBD system monitoring device (e.g., for catalyst monitoring).

(D) The OBD system must detect malfunctions of the exhaust gas sensor caused by out-of-range values.

(E) The OBD system must detect a malfunction of the exhaust gas sensor when a sensor failure or deterioration causes the fuel system (e.g., fuel control) to stop using that sensor as a feedback input (e.g., causes default or open-loop operation).

(iv) *Exhaust gas sensor heater malfunction criteria.*

(A) The OBD system must detect a malfunction of the heater performance when the current or voltage drop in the heater circuit is no longer within the manufacturer's specified limits for normal operation (i.e., within the criteria required to be met by the component vendor for heater circuit performance at high mileage). Other malfunction criteria for heater performance malfunctions may be used upon demonstrating via data or engineering analyses that the monitoring reliability and timeliness is equivalent to the stated criteria in this paragraph (h)(8)(iv)(A).

(B) The OBD system must detect malfunctions of the heater circuit including open or short circuits that conflict with the commanded state of the heater (e.g., shorted to 12 Volts when commanded to 0 Volts (ground)).

(v) *Primary exhaust gas sensor monitoring conditions.*

(A) The manufacturer must define monitoring conditions for malfunctions identified in paragraphs (h)(8)(ii)(A) and (h)(8)(ii)(D) of this section in accordance with paragraphs (c) and (d) of this section. For purposes of tracking and reporting as required by paragraph (d)(1) of this section, all monitors used to detect malfunctions identified in paragraphs (h)(8)(ii)(A) and (h)(8)(ii)(D) of this section must be tracked separately but reported as a single set of values as specified in paragraph (e)(1)(iii) of this section.

(B) Except as provided for in paragraph (h)(8)(v)(C) of this section, monitoring for malfunctions identified in paragraphs (h)(8)(ii)(B) and (h)(8)(ii)(C) of this section must be conducted continuously.

(C) The manufacturer may disable continuous primary exhaust gas sensor monitoring when a primary exhaust gas sensor malfunction cannot be distinguished from other effects (e.g., disable out-of-range low monitoring during fuel cut conditions). To do so, the manufacturer must demonstrate via data or engineering analyses that a properly functioning sensor cannot be distinguished from a malfunctioning sensor and that the disablement interval is limited only to that necessary for avoiding false detection.

(vi) *Secondary exhaust gas sensor monitoring conditions.*

(A) The manufacturer must define monitoring conditions for malfunctions identified in paragraphs (h)(8)(iii)(A) through (h)(8)(iii)(C) of this section in accordance with paragraphs (c) and (d) of this section.

(B) Except as provided for in paragraph (h)(8)(vi)(C) of this section, monitoring for malfunctions identified in paragraphs (h)(8)(iii)(D) and (h)(8)(iii)(E) of this section must be conducted continuously.

(C) The manufacturer may disable continuous secondary exhaust gas sensor monitoring when a secondary exhaust gas sensor malfunction cannot be distinguished from other effects (e.g., disable out-of-range low monitoring during fuel cut conditions). To do so, the manufacturer must demonstrate via data or engineering analyses that a properly functioning sensor cannot be distinguished from a malfunctioning sensor and that the disablement interval is limited only to that necessary for avoiding false detection.

(vii) *Exhaust gas sensor heater monitoring conditions.*

(A) The manufacturer must define monitoring conditions for malfunctions identified in paragraph (h)(8)(iv)(A) of this section in accordance with paragraphs (c) and (d) of this section.

(B) Monitoring for malfunctions identified in paragraph (h)(8)(iv)(B) of this section must be conducted continuously.

(viii) *Exhaust gas sensor MIL activation and DTC storage.* The MIL must activate and DTCs must be stored according to the provisions of paragraph (b) of this section.

(9) *Variable valve timing (VVT) system monitoring.*

(i) *General.* The OBD system must monitor the VVT system on engines so equipped for target error and slow response malfunctions. The individual electronic components (e.g., actuators, valves, sensors) that are used in the VVT system must be monitored in accordance with the comprehensive components requirements in paragraph (i)(3).

(ii) *VVT system malfunction criteria.*

(A) *VVT system target error.* The OBD system must detect a malfunction prior to any failure or deterioration in the capability of the VVT system to achieve the commanded valve timing and/or control within a crank angle and/or lift tolerance that would cause an engine's emissions to exceed the emission thresholds for ''other monitors'' as shown in Table 2 of this paragraph (h).

(B) *VVT slow response.* The OBD system must detect a malfunction prior to any failure or deterioration in the capability of the VVT system to achieve the commanded valve timing and/or control within a manufacturer-specified time that would cause an engine's emissions to exceed the emission thresholds for ''other monitors'' as shown in Table 2 of this paragraph (h).

(C) For engines in which no failure or deterioration of the VVT system could result in an engine's emissions exceeding the applicable emissions thresholds of paragraphs (h)(9)(ii)(A) and (h)(9)(ii)(B) of this section, the OBD system must detect a malfunction of the VVT system when proper functional response of the system to computer commands does not occur.

(iii) *VVT system monitoring conditions.* Manufacturers must define the monitoring conditions for VVT system malfunctions identified in paragraph (h)(9)(ii) in accordance with paragraphs (c) and (d) of this section, with the exception that monitoring must occur every time the monitoring conditions are met during the drive cycle rather than once per drive cycle as required in paragraph (c)(2) of this section. For purposes of tracking and reporting as required in paragraph (d)(1) of this section, all monitors used to detect malfunctions identified in paragraph (h)(9)(ii) must be tracked separately but reported as a single set of values as specified in paragraph (e)(1)(iii) of this section.

(iv) *VVT MIL activation and DTC storage.* The MIL must activate and DTCs must be stored according to the provisions of paragraph (b) of this section.

(i) *OBD monitoring requirements for all engines.*

(1) *Engine cooling system monitoring.*

(i) *General.*

(A) The OBD system must monitor the thermostat on engines so equipped for proper operation.

(B) The OBD system must monitor the engine coolant temperature (ECT) sensor for electrical circuit continuity, out-of-range values, and rationality malfunctions.

(C) For engines that use a system other than the cooling system and ECT sensor (e.g., oil temperature, cylinder head temperature) to determine engine operating temperature for emission control purposes (e.g., to modify spark or fuel injection timing or quantity), the manufacturer may forego cooling system monitoring and instead monitor the components or systems used in their approach. To do so, the manufacturer must to submit data and/or engineering analyses that demonstrate that their monitoring plan is as reliable and effective as the monitoring required in this paragraph (i)(1).

(ii) *Malfunction criteria for the thermostat.*

(A) The OBD system must detect a thermostat malfunction if, within the manufacturer specified time interval following engine start, any of the following conditions occur: The coolant

temperature does not reach the highest temperature required by the OBD system to enable other diagnostics; and, the coolant temperature does not reach a warmed-up temperature within 20 degrees Fahrenheit of the manufacturer's nominal thermostat regulating temperature. For the second of these two conditions, the manufacturer may use a lower temperature for this criterion if either the manufacturer can demonstrate that the fuel, spark timing, and/or other coolant temperature-based modification to the engine control strategies would not cause an emissions increase greater than or equal to 50 percent of any of the applicable emissions standards; or, ambient air temperature is between 20 degrees Fahrenheit and 50 degrees Fahrenheit in which case, upon Administrator approval, the minimum coolant temperature required to be reached may be decreased based on the ambient air temperature.

(B) With Administrator approval, the manufacturer may use alternative malfunction criteria to those of paragraph (i)(1)(ii)(A) of this section and/or alternative monitoring conditions to those of paragraph (i)(1)(iv) of this section that are a function of temperature at engine start on engines that do not reach the temperatures specified in the malfunction criteria when the thermostat is functioning properly. To do so, the manufacturer is required to submit data and/or engineering analyses that demonstrate that a properly operating system does not reach the specified temperatures and that the possibility is minimized for cooling system malfunctions to go undetected thus disabling other OBD monitors.

(C) The manufacturer may request Administrator approval to forego monitoring of the thermostat if the manufacturer can demonstrate that a malfunctioning thermostat cannot cause a measurable increase in emissions during any reasonable driving condition nor cause any disablement of other OBD monitors.

(iii) *Malfunction criteria for the ECT sensor.*

(A) *Circuit integrity.* The OBD system must detect malfunctions of the ECT sensor related to a lack of circuit continuity or out-of-range values.

(B) *Time to reach closed-loop/feedback enable temperature.* The OBD system must detect if, within the manufacturer specified time interval following engine start, the ECT sensor does not achieve the highest stabilized minimum temperature that is needed to initiate closed-loop/feedback control of all affected emission control systems (e.g., fuel system, EGR system). The manufacturer specified time interval must be a function of the engine coolant temperature and/or intake air temperature at startup. The manufacturer time interval must be supported by data and/or engineering analyses demonstrating that it provides robust monitoring and minimizes the likelihood of other OBD monitors being disabled. The manufacturer may forego the requirements of this paragraph (i)(1)(iii)(B) provided the manufacturer does not use engine coolant temperature or the ECT sensor to enable closed-loop/feedback control of any emission control systems.

(C) *Stuck in range below the highest minimum enable temperature.* To the extent feasible when using all available information, the OBD system must detect a malfunction if the ECT sensor inappropriately indicates a temperature below the highest minimum enable temperature required by the OBD system to enable other monitors (e.g., an OBD system that requires ECT to be greater than 140 degrees Fahrenheit to enable a diagnostic must detect malfunctions that cause the ECT sensor to inappropriately indicate a temperature below 140 degrees Fahrenheit). The manufacturer may forego this requirement for temperature regions in which the monitors required under paragraphs (i)(1)(ii) or (i)(1)(iii)(B) of this section will detect ECT sensor malfunctions as defined in this paragraph (i)(1)(iii)(C).

(D) *Stuck in range above the lowest maximum enable temperature.* The OBD system must detect a malfunction if the ECT sensor inappropriately indicates a temperature above the lowest maximum enable temperature required by the OBD system to enable other monitors (e.g., an OBD system that requires an engine coolant temperature less than 90 degrees Fahrenheit at startup prior to enabling an OBD monitor must detect malfunctions that cause the ECT sensor to indicate inappropriately a temperature above 90 degrees Fahrenheit). The manufacturer may forego this requirement within temperature regions in which the monitors required under paragraphs (i)(1)(ii), (i)(1)(iii)(B), (i)(1)(iii)(C) of this section will detect ECT sensor malfunctions as defined in this paragraph (i)(1)(iii)(D) or in which the MIL will be activated according to the provisions of paragraph (b)(2)(v) of this section. The manufacturer may also forego this monitoring within temperature regions where a temperature gauge on the instrument panel indicates a temperature in the ''red zone'' (engine overheating zone) and displays the same temperature information as used by the OBD system.

(iv) *Monitoring conditions for the thermostat.*

(A) The manufacturer must define the monitoring conditions for malfunctions identified in paragraph (i)(1)(ii)(A) of this section in accordance with paragraph (c) of this section. Additionally, except as provided for in paragraphs (i)(1)(iv)(B) and (i)(1)(iv)(C) of this section, monitoring for malfunctions identified in paragraph (i)(1)(ii)(A) of this section must be conducted once per drive cycle on every drive cycle in which the ECT sensor indicates, at engine start, a temperature lower than the temperature established as the malfunction criteria in paragraph (i)(1)(ii)(A) of this section.

(B) The manufacturer may disable thermostat monitoring at ambient engine start temperatures below 20 degrees Fahrenheit.

(C) The manufacturers may request Administrator approval to suspend or disable thermostat monitoring if the engine is subjected to conditions that could lead to false diagnosis. To do so, the manufacturer must submit data and/or engineering analyses that demonstrate that the suspension or disablement is necessary. In general, the manufacturer will not be allowed to suspend or disable the thermostat monitor on engine starts where the engine coolant temperature at engine start is more than 35 degrees Fahrenheit lower than the thermostat malfunction threshold temperature determined under paragraph (i)(1)(ii)(A) of this section.

(v) *Monitoring conditions for the ECT sensor.*

(A) Except as provided for in paragraph (i)(1)(v)(D) of this section, the OBD system must monitor continuously for malfunctions identified in paragraph monitoring for malfunctions identified in paragraph (i)(1)(iii)(A) of this section (i.e., circuit integrity and out-of-range).

(B) The manufacturer must define the monitoring conditions for malfunctions identified in paragraph (i)(1)(iii)(B) of this section in accordance with paragraph (c) of this section. Additionally, except as provided for in paragraph (i)(1)(v)(D) of this section, monitoring for malfunctions identified in paragraph (i)(1)(iii)(B) of this section must be conducted once per drive cycle on every drive cycle in which the ECT sensor indicates a temperature lower than the closed-loop enable temperature at engine start (i.e., all engine start temperatures greater than the ECT sensor out-of-range low temperature and less than the closed-loop enable temperature).

(C) The manufacturer must define the monitoring conditions for malfunctions identified in paragraphs (i)(1)(iii)(C) and (i)(1)(iii)(D) of this section in accordance with paragraphs (c) and (d) of this section.

(D) The manufacturer may suspend or delay the monitor for the time to reach closed-loop enable temperature if the engine is subjected to conditions that could lead to false diagnosis (e.g., vehicle operation at idle for more than 50 to 75 percent of the warm-up time).

(E) The manufacturer may request Administrator approval to disable continuous ECT sensor monitoring when an ECT sensor malfunction cannot be distinguished from other effects. To do so, the manufacturer must submit data and/or engineering analyses that demonstrate a properly functioning sensor cannot be distinguished from a malfunctioning sensor and that the disablement interval is limited only to that necessary for avoiding false detection.

(vi) *Engine cooling system MIL activation and DTC storage.* The MIL must activate and DTCs must be stored according to the provisions of paragraph (b) of this section.

(2) *Crankcase ventilation (CV) system monitoring.*

(i) *General.* The OBD system must monitor the CV system on engines so equipped for system integrity. Engines not required to be equipped with CV systems are exempt from monitoring the CV system. For diesel engines, the manufacturer must submit a plan for Administrator approval prior to OBD certification. That plan must include descriptions of the monitoring strategy, malfunction criteria, and monitoring conditions for CV system monitoring. The plan must demonstrate that the CV system monitor is of equivalent effectiveness, to the extent feasible, to the malfunction criteria and the monitoring conditions of this paragraph (i)(2).

(ii) *Crankcase ventilation system malfunction criteria.*

(A) For the purposes of this paragraph (i)(2), ''CV system'' is defined as any form of crankcase ventilation system, regardless of whether it utilizes positive pressure. ''CV valve'' is defined as any form of valve or orifice used to restrict or control crankcase vapor flow. Further, any additional external CV system tubing or hoses used to equalize crankcase pressure or to provide a ventilation path between various areas of the engine (e.g., crankcase and valve cover) are considered part of the CV system ''between the crankcase and the CV valve'' and subject to the malfunction criteria in paragraph (i)(2)(ii)(B) of this section.

(B) Except as provided for in paragraphs (i)(2)(ii)(C) through (i)(2)(ii)(E) of this section, the OBD system must detect a malfunction of the CV system when a disconnection of the system occurs between either the crankcase and the CV valve, or between the CV valve and the intake manifold.

(C) The manufacturer may forego monitoring for a disconnection between the crankcase and the CV valve provided the CV system is designed such that the CV valve is fastened directly to the crankcase such that it is significantly more difficult to remove the CV valve from the crankcase than to disconnect the line between the CV valve and the intake manifold (taking aging effects into consideration). To do so, the manufacturer must be able to provide data and/or an engineering evaluation demonstrating that the CV system is so designed.

(D) The manufacturer may forego monitoring for a disconnection between the crankcase and the CV valve provided the CV system is designed such that it uses tubing connections between the CV valve and the crankcase that are: resistant to deterioration or accidental disconnection; significantly more difficult to disconnect than is the line between the CV valve and the intake manifold; and, not subject to disconnection per the manufacturer's repair procedures for any non-CV system repair. To do so, the manufacturer must be able to provide data and/or engineering evaluation demonstrating that the CV system is so designed.

(E) The manufacturer may forego monitoring for a disconnection between the CV valve and the intake manifold provided the CV system is designed such that any disconnection either causes the engine to stall immediately during idle operation, or is unlikely to occur due to a CV system design that is integral to the induction system (e.g., machined passages rather than tubing or hoses). To do so, the manufacturer must be able to provide data and/or an engineering evaluation demonstrating that the CV system is so designed.

(iii) *Crankcase ventilation system monitoring conditions.* The manufacturer must define the monitoring conditions for malfunctions identified in paragraph (i)(2) of this section in accordance with paragraphs (c) and (d) of this section.

(iv) *Crankcase ventilation system MIL activation and DTC storage.* The MIL must activate and DTCs must be stored according to the provisions of paragraph (b) of this section. The stored DTC need not identify specifically the CV system (e.g., a DTC for idle speed control or fuel system monitoring can be stored) if the manufacturer can demonstrate that additional monitoring hardware is necessary to make such an identification and provided the manufacturer's diagnostic and repair procedures for the detected malfunction include directions to check the integrity of the CV system.

(3) *Comprehensive component monitoring.*

(i) *General.* Except as provided for in paragraph (i)(4) of this section, the OBD system must detect a malfunction of any electronic engine component or system not otherwise described in paragraphs (g), (h), (i)(1), and (i)(2) of this section that either provides input to (directly or indirectly, such components may include the crank angle sensor, knock sensor, throttle position sensor, cam position sensor, intake air temperature sensor, boost pressure sensor, manifold pressure sensor, mass air flow sensor, exhaust temperature sensor, exhaust pressure sensor, fuel pressure sensor, fuel composition sensor of a flexible fuel vehicle, etc.) or receives commands from (such components or systems may include the idle speed control system, glow plug system, variable length intake manifold runner systems, supercharger or turbocharger electronic components, heated fuel preparation systems, the wait-to-start lamp on diesel applications, the MIL, etc.) the onboard computer(s) and meets either of the criteria described in paragraphs (i)(3)(i)(A) and/or (i)(3)(i)(B) of this section. Note that, for the purposes of this paragraph (i)(3), ''electronic engine component or system'' does not include components that are driven by the engine and are not related to the control of the fueling, air handling, or emissions of the engine (e.g., PTO components, air conditioning system components, and power steering components).

(A) It can cause emissions to exceed applicable emission standards. To preclude monitoring, the manufacturer must be able to provide emission data showing that the component or system, when malfunctioning and installed on a suitable test engine, does not cause emissions to exceed the emission standards.

(B) It is used as part of the monitoring strategy for any other monitored system or component.

(ii) *Comprehensive component malfunction criteria for input components.*

(A) The OBD system must detect malfunctions of input components caused by a lack of circuit continuity and out-of-range values. In addition, where feasible, rationality checks must

also be done and shall verify that a sensor output is neither inappropriately high nor inappropriately low (i.e., ''two-sided'' monitoring).

(B) To the extent feasible, the OBD system must separately detect and store different DTCs that distinguish rationality malfunctions from lack of circuit continuity and out-of-range malfunctions. For lack of circuit continuity and out-of-range malfunctions, the OBD system must, to the extent feasible, separately detect and store different DTCs for each distinct malfunction (e.g., out-of-range low, out-of-range high, open circuit). The OBD system is not required to store separate DTCs for lack of circuit continuity malfunctions that cannot be distinguished from other out-of-range circuit malfunctions.

(C) For input components that are used to activate alternative strategies that can affect emissions (e.g., AECDs, engine shutdown systems), the OBD system must conduct rationality checks to detect malfunctions that cause the system to activate erroneously or deactivate the alternative strategy. To the extent feasible when using all available information, the rationality check must detect a malfunction if the input component inappropriately indicates a value that activates or deactivates the alternative strategy. For example, for an alternative strategy that activates when the intake air temperature is greater than 120 degrees Fahrenheit, the OBD system must detect malfunctions that cause the intake air temperature sensor to indicate inappropriately a temperature above 120 degrees Fahrenheit.

(D) For engines that require precise alignment between the camshaft and the crankshaft, the OBD system must monitor the crankshaft position sensor(s) and camshaft position sensor(s) to verify proper alignment between the camshaft and crankshaft in addition to monitoring the sensors for circuit continuity and proper rationality. Proper alignment monitoring between a camshaft and a crankshaft is required only in cases where both are equipped with position sensors. For engines equipped with VVT systems and a timing belt or chain, the OBD system must detect a malfunction if the alignment between the camshaft and crankshaft is off by one or more cam/crank sprocket cogs (e.g., the timing belt/chain has slipped by one or more teeth/cogs). If a manufacturer demonstrates that a single tooth/cog misalignment cannot cause a measurable increase in emissions during any reasonable driving condition, the OBD system must detect a malfunction when the minimum number of teeth/cogs misalignment has occurred that does cause a measurable emission increase.

(iii) *Comprehensive component malfunction criteria for output components/systems.*

(A) The OBD system must detect a malfunction of an output component/system when proper functional response does not occur in response to computer commands. If such a functional check is not feasible, the OBD system must detect malfunctions of output components/systems caused by a lack of circuit continuity or circuit malfunction (e.g., short to ground or high voltage). For output component lack of circuit continuity malfunctions and circuit malfunctions, the OBD system is not required to store different DTCs for each distinct malfunction (e.g., open circuit, shorted low). Manufacturers are not required to activate an output component/system when it would not normally be active for the sole purpose of performing a functional check of it as required in this paragraph (i)(3).

(B) For gasoline engines, the idle control system must be monitored for proper functional response to computer commands. For gasoline engines using monitoring strategies based on deviation from target idle speed, a malfunction must be detected when either of the following conditions occurs: The idle speed control system cannot achieve the target idle speed within 200 revolutions per minute (rpm) above the target speed or 100 rpm below the target speed; or, the idle speed control system cannot achieve the target idle speed within the smallest engine speed tolerance range required by the OBD system to enable any other monitors. Regarding the former of these conditions, the manufacturer may use larger engine speed tolerances. To do so, the manufacturer must be able to provide data and/or engineering analyses that demonstrate that the tolerances can be exceeded without a malfunction being present.

(C) For diesel engines, the idle control system must be monitored for proper functional response to computer commands. For diesel engines, a malfunction must be detected when either of the following conditions occurs: the idle fuel control system cannot achieve the target idle speed or fuel injection quantity within +/−50 percent of the manufacturer-specified fuel quantity and engine speed tolerances; or, the idle fuel control system cannot achieve the target idle speed or fueling quantity within the smallest engine speed or fueling quantity tolerance range required by the OBD system to enable any other monitors.

(D) For model years 2010 through 2012, glow plugs must be monitored for circuit continuity malfunctions. For model years 2010 and later, intake air heater systems and, for model years 2013 and later, glow plugs must be monitored for proper functional response to computer commands and for circuit continuity malfunctions. The glow plug/intake air heater circuit(s) must be monitored for proper current and voltage drop. The manufacturer may use other monitoring strategies but must be able to provide data and/or engineering analyses that demonstrate reliable and timely detection of malfunctions. The OBD system must also detect a malfunction when a single glow plug no longer operates within the manufacturer's specified limits for normal operation. If a manufacturer can demonstrate that a single glow plug malfunction cannot cause a measurable increase in emissions during any reasonable driving condition, the OBD system must instead detect a malfunction when the number of glow plugs needed to cause an emission increase is malfunctioning. To the extent feasible, the stored DTC must identify the specific malfunctioning glow plug(s).

(E) The wait-to-start lamp circuit and the MIL circuit must be monitored for malfunctions that cause either lamp to fail to activate when commanded to do so (e.g., burned out bulb). This monitoring of the wait-to-start lamp circuit and the MIL circuit is not required for wait-to-start lamps and MILs using light-emitting diodes (LEDs).

(iv) *Monitoring conditions for input components.*

(A) The OBD system must monitor input components continuously for out-of-range values and circuit continuity. The manufacturer may disable continuous monitoring for circuit continuity and out-of-range values when a malfunction cannot be distinguished from other effects. To do so, the manufacturer must be able to provide data and/or engineering analyses that demonstrate that a properly functioning input component cannot be distinguished from a malfunctioning input component and that the disablement interval is limited only to that necessary for avoiding false malfunction detection.

(B) For input component rationality checks (where applicable), the manufacturer must define the monitoring conditions for detecting malfunctions in accordance with paragraphs (c) and (d) of this section, with the exception that rationality

checks must occur every time the monitoring conditions are met during the drive cycle rather than once per drive cycle as required in paragraph (c)(2) of this section.

(v) *Monitoring conditions for output components/systems.*

(A) The OBD system must monitor output components/systems continuously for circuit continuity and circuit malfunctions. The manufacturer may disable continuous monitoring for circuit continuity and circuit malfunctions when a malfunction cannot be distinguished from other effects. To do so, the manufacturer must be able to provide data and/or engineering analyses that demonstrate that a properly functioning output component/system cannot be distinguished from a malfunctioning one and that the disablement interval is limited only to that necessary for avoiding false malfunction detection.

(B) For output component/system functional checks, the manufacturer must define the monitoring conditions for detecting malfunctions in accordance with paragraphs (c) and (d) of this section. Specifically for the idle control system, the manufacturer must define the monitoring conditions for detecting malfunctions in accordance with paragraphs (c) and (d) of this section, with the exception that functional checks must occur every time the monitoring conditions are met during the drive cycle rather than once per drive cycle as required in paragraph (c)(2) of this section.

(vi) *Comprehensive component MIL activation and DTC storage.*

(A) Except as provided for in paragraphs (i)(3)(vi)(B) and (i)(3)(vi)(C) of this section, the MIL must activate and DTCs must be stored according to the provisions of paragraph (b) of this section.

(B) The MIL need not be activated in conjunction with storing a MIL-on DTC for any comprehensive component if: the component or system, when malfunctioning, could not cause engine emissions to increase by 15 percent or more of the applicable FTP standard during any reasonable driving condition; or, the component or system is not used as part of the monitoring strategy for any other system or component that is required to be monitored.

(C) The MIL need not be activated if a malfunction has been detected in the MIL circuit that prevents the MIL from activating (e.g., burned out bulb or light-emitting diode, LED). Nonetheless, the electronic MIL status (see paragraph (k)(4)(ii) of this section) must be reported as MIL commanded-on and a MIL-on DTC must be stored.

(4) *Other emission control system monitoring.*

(i) *General.* For other emission control systems that are either not addressed in paragraphs (g) through (i)(3) of this section (e.g., hydrocarbon traps, homogeneous charge compression ignition control systems), or addressed in paragraph (i)(3) of this section but not corrected or compensated for by an adaptive control system (e.g., swirl control valves), the manufacturer must submit a plan for Administrator approval of the monitoring strategy, malfunction criteria, and monitoring conditions prior to introduction on a production engine. The plan must demonstrate the effectiveness of the monitoring strategy, the malfunction criteria used, the monitoring conditions required by the monitor, and, if applicable, the determination that the requirements of paragraph (i)(4)(ii) of this section are satisfied.

(ii) For engines that use emission control systems that alter intake air flow or cylinder charge characteristics by actuating valve(s), flap(s), etc., in the intake air delivery system (e.g., swirl control valve systems), the manufacturer, in addition to meeting the requirements of paragraph (i)(4)(i) of this section, may elect to have the OBD system monitor the shaft to which all valves in one intake bank are physically attached rather than performing a functional check of the intake air flow, cylinder charge, or individual valve(s)/flap(s). For non-metal shafts or segmented shafts, the monitor must verify all shaft segments for proper functional response (e.g., by verifying that the segment or portion of the shaft farthest from the actuator functions properly). For systems that have more than one shaft to operate valves in multiple intake banks, the manufacturer is not required to add more than one set of detection hardware (e.g., sensor, switch) per intake bank to meet this requirement.

(5) *Exceptions to OBD monitoring requirements.*

(i) The Administrator may revise the PM filtering performance malfunction criteria for DPFs to exclude detection of specific failure modes such as partially melted substrates, if the most reliable monitoring method developed requires it.

(ii) The manufacturer may disable an OBD system monitor at ambient engine start temperatures below 20 degrees Fahrenheit (low ambient temperature conditions may be determined based on intake air or engine coolant temperature at engine start) or at elevations higher than 8,000 feet above sea level. To do so, the manufacturer must submit data and/or engineering analyses that demonstrate that monitoring is unreliable during the disable conditions. A manufacturer may request that an OBD system monitor be disabled at other ambient engine start temperatures by submitting data and/or engineering analyses demonstrating that misdiagnosis would occur at the given ambient temperatures due to their effect on the component itself (e.g., component freezing).

(iii) The manufacturer may disable an OBD system monitor when the fuel level is 15 percent or less of the nominal fuel tank capacity for those monitors that can be affected by low fuel level or running out of fuel (e.g., misfire detection). To do so, the manufacturer must submit data and/or engineering analyses that demonstrate that monitoring at the given fuel levels is unreliable, and that the OBD system is still able to detect a malfunction if the component(s) used to determine fuel level indicates erroneously a fuel level that causes the disablement.

(iv) The manufacturer may disable OBD monitors that can be affected by engine battery or system voltage levels.

(A) For an OBD monitor affected by low vehicle battery or system voltages, manufacturers may disable monitoring when the battery or system voltage is below 11.0 Volts. The manufacturer may use a voltage threshold higher than 11.0 Volts to disable monitors but must submit data and/or engineering analyses that demonstrate that monitoring at those voltages is unreliable and that either operation of a vehicle below the disablement criteria for extended periods of time is unlikely or the OBD system monitors the battery or system voltage and will detect a malfunction at the voltage used to disable other monitors.

(B) For an OBD monitor affected by high engine battery or system voltages, the manufacturer may disable monitoring when the battery or system voltage exceeds a manufacturer-defined voltage. To do so, the manufacturer must submit data and/or engineering analyses that demonstrate that monitoring above the manufacturer-defined voltage is unreliable and that either the electrical charging system/alternator warning light will be activated (or voltage gauge would be in the ''red zone'') or the OBD system monitors the battery or system voltage and will detect a malfunction at the voltage used to disable other monitors.

(v) The manufacturer may also disable affected OBD monitors in systems designed to accommodate the

installation of power take off (PTO) units provided monitors are disabled only while the PTO unit is active and the OBD readiness status (see paragraph (k)(4)(i) of this section) is cleared by the onboard computer (i.e., all monitors set to indicate ''not complete'' or ''not ready'') while the PTO unit is activated. If monitors are so disabled and when the disablement ends, the readiness status may be restored to its state prior to PTO activation.

(6) *Feedback control system monitoring.* If the engine is equipped with feedback control of any of the systems covered in paragraphs (g), (h) and (i) of this section, then the OBD system must detect as malfunctions the conditions specified in this paragraph (i)(6) for each of the individual feedback controls.

(i) The OBD system must detect when the system fails to begin feedback control within a manufacturer specified time interval.

(ii) When any malfunction or deterioration causes open loop or limp-home operation.

(iii) When feedback control has used up all of the adjustment allowed by the manufacturer.

(iv) A manufacturer may temporarily disable monitoring for malfunctions specified in paragraph (i)(6)(iii) of this section during conditions that the specific monitor cannot distinguish robustly between a malfunctioning system and a properly operating system. To do so, the manufacturer is required to submit data and/or engineering analyses demonstrating that the individual feedback control system, when operating as designed on an engine with all emission controls working properly, routinely operates during these conditions while having used up all of the adjustment allowed by the manufacturer. In lieu of detecting, with a system specific monitor, the malfunctions specified in paragraphs (i)(6)(i) and (i)(6)(ii) of this section the OBD system may monitor the individual parameters or components that are used as inputs for individual feedback control systems provided that the monitors detect all malfunctions that meet the criteria of paragraphs (i)(6)(i) and (i)(6)(ii) of this section.

(j) *Production evaluation testing.*

(1) *Verification of Standardization Requirements.*

(i) For model years 2013 and later, the manufacturer must perform testing to verify that production vehicles meet the requirements of paragraphs (k)(3) and (k)(4) of this section relevant to the proper communication of required emissions-related messages to a SAE J1978 or SAE J1939 (both as specified in paragraph (k)(1) of this section) scan tool.

(ii) *Selection of Test Vehicles.*

(A) The manufacturer must perform this testing every model year on ten unique production vehicles (i.e., engine rating and chassis application combination) per engine family. If there are less than ten unique production vehicles for a certain engine family, the manufacturer must test each unique production vehicle in that engine family. The manufacturer must perform this testing within either three months of the start of engine production or one month of the start of vehicle production, whichever is later. The manufacturer may request approval to group multiple production vehicles together and test one representative vehicle per group. To do so, the software and hardware designed to comply with the standardization requirements of paragraph (k)(1) of this section (e.g., communication protocol message timing, number of supported data stream parameters, engine and vehicle communication network architecture) in the representative vehicle must be identical to all others in the group and any differences in the production vehicles cannot be relevant with respect to meeting the criteria of paragraph (j)(1)(iv) of this section.

(B) For 2016 and subsequent model years, the required number of vehicles to be tested shall be reduced to five per engine family provided zero vehicles fail the testing required by paragraph (j)(1) of this section for two consecutive years.

(C) For 2019 and subsequent model years, the required number of vehicles to be tested shall be reduced to three per engine family provided zero vehicles fail the testing required by paragraph (j)(1) of this section for three consecutive years.

(D) The requirement for submittal of data from one or more of the production vehicles shall be waived if data have been submitted previously for all of the production vehicles. The manufacturer may request approval to carry over data collected in previous model years. To do so, the software and hardware designed to comply with the standardization requirements of paragraph (k)(1) of this section must be identical to the previous model year and there must not have been other hardware or software changes that affect compliance with the standardization requirements.

(iii) *Test equipment.* For the testing required by paragraph (j)(1) of this section, the manufacturer shall use an off-board device to conduct the testing. The manufacturer must be able to show that the off-board device is able to verify that the vehicles tested using the device are able to perform all of the required functions in paragraph (j)(1)(iv) of this section with any other off-board device designed and built in accordance with the SAE J1978 or SAE J1939 (both as specified in paragraph (k)(1) of this section) generic scan tool specifications.

(iv) *Required testing.* The testing must verify that communication can be established properly between all emission-related on-board computers and a SAE J1978 or SAE J1939 (both as specified in paragraph (k)(1) of this section) scan tool designed to adhere strictly to the communication protocols allowed in paragraph (k)(3) of this section. The testing must also verify that all emission-related information is communicated properly between all emission-related on-board computers and a SAE J1978 or SAE J1939 (both as specified in paragraph (k)(1) of this section) scan tool in accordance with the requirements of paragraph (k)(1) of this section and the applicable ISO and SAE specifications including specifications for physical layer, network layer, message structure, and message content. The testing must also verify that the onboard computer(s) can properly respond to a SAE J1978 or SAE J1939 (both as specified in paragraph (k)(1) of this section) scan tool request to clear emissions-related DTCs and reset the ready status in accordance with paragraph (k)(4)(ix) of this section. The testing must further verify that the following information can be properly communicated to a SAE J1978 or SAE J1939 (both as specified in paragraph (k)(1) of this section) scan tool:

(A) The current ready status from all onboard computers required to support ready status in accordance with SAE J1978 or SAE J1939–73 (both as specified in paragraph (k)(1) of this section) and paragraph (k)(4)(i) of this section in the key-on, engine-off position and while the engine is running.

(B) The MIL command status while a deactivated MIL is commanded and while an activated MIL is commanded in accordance with SAE J1979 or SAE J1939 (both as specified in paragraph (k)(1) of this section) and paragraph (k)(4)(ii) of this section in the key-on, engine-off position and while the engine is running, and in accordance with SAE J1979 or SAE J1939 (both as specified in paragraph (k)(1) of this section) and paragraphs (b)(1)(ii) of this section during the MIL functional check, if applicable, and, if applicable, (k)(4)(i)(C) of this section during the MIL ready status check while the engine is off.

(C) All data stream parameters required in paragraph (k)(4)(ii) of this section in accordance with SAE J1979 or SAE J1939 (both as specified in paragraph (k)(1) of this section) including, if applicable, the proper identification of each data stream parameter as supported in SAE J1979 (e.g., Mode/Service $01, PID $00).

(D) The CAL ID, CVN, and VIN as required by paragraphs (k)(4)(vi), (k)(4)(vii), and (k)(4)(viii) of this section and in accordance with SAE J1979 or SAE J1939 (both as specified in paragraph (k)(1) of this section).

(E) An emissions-related DTC (permanent, pending, MIL-on, previous-MIL-on) in accordance with SAE J1979 or SAE J1939–73 (both as specified in paragraph (k)(1) of this section) including the correct indication of the number of stored DTCs (e.g., Mode/Service $01, PID $01, Data A for SAE J1979 (as specified in paragraph (k)(1) of this section)) and paragraph (k)(4)(iv) of this section.

(v) *Reporting of results.* The manufacturer must submit to the Administrator the following, based on the results of the testing required by paragraph (j)(1)(iv) of this section:

(A) If a variant meets all the requirements of paragraph (j)(1)(iv) of this section, a statement specifying that the variant passed all the tests. Upon request from the Administrator, the detailed results of any such testing may have to be submitted.

(B) If any variant does not meet the requirements paragraph (j)(1)(iv) of this section, a written report detailing the problem(s) identified and the manufacturer's proposed corrective action (if any) to remedy the problem(s). This report must be submitted within one month of testing the specific variant. The Administrator will consider the proposed remedy and, if in disagreement, will work with the manufacturer to propose an alternative remedy. Factors to be considered by the Administrator in considering the proposed remedy will include the severity of the problem(s), the ability of service technicians to access the required diagnostic information, the impact on equipment and tool manufacturers, and the amount of time prior to implementation of the proposed corrective action.

(vi) Alternative testing protocols. Manufacturers may request approval to use other testing protocols. To do so, the manufacturer must demonstrate that the alternative testing methods and equipment will provide an equivalent level of verification of compliance with the standardization requirements as is required by paragraph (j)(1) of this section.

(2) *Verification of monitoring requirements.*

(i) Within either the first six months of the start of engine production or the first three months of the start of vehicle production, whichever is later, the manufacturer must conduct a complete evaluation of the OBD system of one or more production vehicles (test vehicles) and submit the results of the evaluation to the Administrator.

(ii) *Selection of test vehicles.*

(A) For each engine selected for monitoring system demonstration in paragraph (l) of this section, the manufacturer must evaluate one production vehicle equipped with an engine from the same engine family and rating as the demonstration engine. The vehicle selection must be approved by the Administrator.

(B) If the manufacturer is required to test more than one test vehicle, the manufacturer may test an engine in lieu of a vehicle for all but one of the required test vehicles.

(C) The requirement for submittal of data from one or more of the test vehicles may be waived if data have been submitted previously for all of the engine ratings and variants.

(iii) *Evaluation requirements.*

(A) The evaluation must demonstrate the ability of the OBD system on the selected test vehicle to detect a malfunction, activate the MIL, and, where applicable, store an appropriate DTC readable by a scan tool when a malfunction is present and the monitoring conditions have been satisfied for each individual monitor required by this section. For model years 2013 and later, the evaluation must demonstrate the ability of the OBD system on the selected test vehicle to detect a malfunction, activate the MIL, and, where applicable, store an appropriate DTC readable by a SAE J1978 or SAE J1939 (both as specified in paragraph (k)(1) of this section) scan tool when a malfunction is present and the monitoring conditions have been satisfied for each individual monitor required by this section.

(B) The evaluation must verify that the malfunction of any component used to enable another OBD monitor but that does not itself result in MIL activation (e.g., fuel level sensor) will not inhibit the ability of other OBD monitors to detect malfunctions properly.

(C) The evaluation must verify that the software used to track the numerator and denominator for the purpose of determining in-use monitoring frequency increments as required by paragraph (d)(2) of this section.

(D) Malfunctions may be implanted mechanically or simulated electronically, but internal onboard computer hardware or software changes shall not be used to simulate malfunctions. For monitors that are required to indicate a malfunction before emissions exceed an emission threshold, manufacturers are not required to use malfunctioning components/systems set exactly at their malfunction criteria limits. Emission testing is not required to confirm that the malfunction is detected before the appropriate emission thresholds are exceeded.

(E) The manufacturer must submit a proposed test plan for approval prior to performing evaluation testing. The test plan must identify the method used to induce a malfunction for each monitor.

(F) If the demonstration of a specific monitor cannot be reasonably performed without causing physical damage to the test vehicle (e.g., onboard computer internal circuit malfunctions), the manufacturer may omit the specific demonstration.

(G) For evaluation of test vehicles selected in accordance with paragraph (j)(2)(ii) of this section, the manufacturer is not required to demonstrate monitors that were demonstrated prior to certification as required in paragraph (l) of this section.

(iv) The manufacturer must submit a report of the results of all testing conducted as required by paragraph (j)(2) of this section. The report must identify the method used to induce a malfunction in each monitor, the MIL activation status, and the DTC(s) stored.

(3) *Verification of in-use monitoring performance ratios.*

(i) The manufacturer must collect and report in-use monitoring performance data representative of production vehicles (i.e., engine rating and chassis application combination). The manufacturer must collect and report the data to the Administrator within 12 months after the first production vehicle was first introduced into commerce.

(ii) The manufacturer must separate production vehicles into the monitoring performance groups and submit data that represents each of these groups. The groups shall be based on the following criteria:

(A) Emission control system architecture. All engines that use the same or similar emissions control system architecture (e.g., EGR with DPF and SCR; EGR with DPF and NO_X adsorber; EGR with DPF-only) and associated monitoring system would be in the same emission architecture category.

(B) Vehicle application type. Within an emission architecture category, engines shall be separated into one of three vehicle application types: Engines intended primarily for line-haul chassis applications, engines intended primarily for urban delivery chassis applications, and all other engines.

(iii) The manufacturer may use an alternative grouping method to collect representative data. To do so, the manufacturer must show that the alternative groups include production vehicles using similar emission controls, OBD strategies, monitoring condition calibrations, and vehicle application driving/usage patterns such that they are expected to have similar in-use monitoring performance. The manufacturer will still be required to submit one set of data for each of the alternative groups.

(iv) For each monitoring performance group, the data must include all of the in-use performance tracking data (i.e., all numerators, denominators, the general denominator, and the ignition cycle counter), the date the data were collected, the odometer reading, the VIN, and the calibration ID. For model years 2013 and later, for each monitoring performance group, the data must include all of the in-use performance tracking data reported through SAE J1979 or SAE J1939 (both as specified in paragraph (k)(1) of this section; i.e., all numerators, denominators, the general denominator, and the ignition cycle counter), the date the data were collected, the odometer reading, the VIN, and the calibration ID.

(v) The manufacturer must submit a plan to the Administrator that details the types of production vehicles in each monitoring performance group, the number of vehicles per group to be sampled, the sampling method, the timeline to collect the data, and the reporting format. The plan must provide for effective collection of data from, at least, 15 vehicles per monitoring performance group and provide for data that represent a broad range of temperature conditions. The plan shall not, by design, exclude or include specific vehicles in an attempt to collect data only from vehicles expected to have the highest in-use performance ratios.

(vi) The 12 month deadline for reporting may be extended to 18 months if the manufacturer can show that the delay is justified. In such a case, an interim report of progress to date must be submitted within the 12 month deadline.

(k) *Standardization requirements.*

(1) *Reference materials.* The following documents are incorporated by reference, see § 86.1. Anyone may inspect copies at the U.S. EPA or at the National Archives and Records Administration (NARA). For information on the availability of this material at U.S. EPA, NARA, or the standard making bodies directly, refer to § 86.1.

(i) SAE J1930, Revised April 2002.

(ii) SAE J1939, Revised October 2007.

(iii) SAE J1939–13, Revised March 2004, for model years 2013 and later.

(iv) SAE J1939–73, Revised September 2006.

(v) SAE J1962, Revised April 2002, for model years 2013 and later.

(vi) SAE J1978, Revised April 2002.

(vii) SAE J1979, Revised May 2007.

(viii) SAE J2012, Revised April 2002.

(ix) SAE J2403, Revised August 2007.

(x) ISO 15765–4:2005(E), January 15, 2005.

(2) *Diagnostic connector.* For model years 2010 through 2012, the manufacturer defined data link connector must be accessible to a trained service technician. For model years 2013 and later, a standard data link connector conforming to SAE J1962 (as specified in paragraph (k)(1) of this section) or SAE J1939–13 (as specified in paragraph (k)(1) of this section) specifications (except as provided for in paragraph (k)(2)(iii) if this section) must be included in each vehicle.

(i) For model years 2013 and later, the connector must be located in the driver's side foot-well region of the vehicle interior in the area bound by the driver's side of the vehicle and the driver's side edge of the center console (or the vehicle centerline if the vehicle does not have a center console) and at a location no higher than the bottom of the steering wheel when in the lowest adjustable position. The connector shall not be located on or in the center console (i.e., neither on the horizontal faces near the floor-mounted gear selector, parking brake lever, or cup-holders nor on the vertical faces near the car stereo, climate system, or navigation system controls). The location of the connector shall be capable of being easily identified and accessed (e.g., to connect an off-board tool). For vehicles equipped with a driver's side door, the connector must be identified and accessed easily by someone standing (or ''crouched'') on the ground outside the driver's side of the vehicle with the driver's side door open. The Administrator may approve an alternative location upon request from the manufacturer. In all cases, the installation position of the connector must be both identified and accessed easily by someone standing outside the vehicle and protected from accidental damage during normal vehicle use.

(ii) For model years 2013 and later, if the connector is covered, the cover must be removable by hand without the use of any tools and be labeled ''OBD'' to aid technicians in identifying the location of the connector. Access to the diagnostic connector shall not require opening or the removal of any storage accessory (e.g., ashtray, coinbox). The label must clearly identify that the connector is located behind the cover and is consistent with language and/or symbols commonly used in the automobile and/or heavy truck industry.

(iii) For model years 2013 and later, if the ISO 15765–4:2005(E) (as specified in paragraph (k)(1) of this section) communication protocol is used for the required OBD standardized functions, the connector must meet the ''Type A'' specifications of SAE J1962 (as specified in paragraph (k)(1) of this section). Any pins in the connector that provide electrical power must be properly fused to protect the integrity and usefulness of the connector for diagnostic purposes and shall not exceed 20.0 Volts DC regardless of the nominal vehicle system or battery voltage (e.g., 12V, 24V, 42V).

(iv) For model years 2013 and later, if the SAE J1939 (as specified in paragraph (k)(1) of this section) protocol is used for the required OBD standardized functions, the connector must meet the specifications of SAE J1939–13 (as specified in paragraph (k)(1) of this section). Any pins in the connector that provide electrical power must be properly fused to protect the integrity and usefulness of the connector for diagnostic purposes.

(v) For model years 2013 and later, the manufacturer may equip engines/vehicles with additional diagnostic connectors for manufacturer-specific purposes (i.e., purposes other than the required OBD functions). However, if the additional connector conforms to the ''Type A'' specifications of SAE J1962 (as specified in paragraph (k)(1) of this section) or the specifications of SAE J1939–13 (as specified in paragraph (k)(1) of this section) and is located in the vehicle interior near the required connector as described in this paragraph (k)(2), the connector(s) must be labeled clearly to identify which connector is used to access the standardized OBD information required by paragraph (k) of this section.

(3) *Communications to a scan tool.* For model years 2013 and later, all OBD control modules (e.g., engine, auxiliary emission control module) on a single vehicle must use the same protocol for communication of required emission-related messages from on-board to off-

board network communications to a scan tool meeting SAE J1978 (as specified in paragraph (k)(1) of this section) specifications or designed to communicate with an SAE J1939 (as specified in paragraph (k)(1) of this section) network. Engine manufacturers shall not alter normal operation of the engine emission control system due to the presence of off-board test equipment accessing information required by this paragraph (k). The OBD system must use one of the following standardized protocols:

(i) ISO 15765–4:2005(E) (as specified in paragraph (k)(1) of this section). All required emission-related messages using this protocol must use a 500 kbps baud rate.

(ii) SAE J1939 (as specified in paragraph (k)(1) of this section). This protocol may only be used on vehicles with diesel engines.

(4) *Required emission related functions.* The following functions must be implemented and must be accessible by, at a minimum, a manufacturer scan tool. For model years 2013 and later, the following standardized functions must be implemented in accordance with the specifications in SAE J1979 (as specified in paragraph (k)(1) of this section) or SAE J1939 (as specified in paragraph (k)(1) of this section) to allow for access to the required information by a scan tool meeting SAE J1978 (as specified in paragraph (k)(1) of this section) specifications or designed to communicate with an SAE J1939 (as specified in paragraph (k)(1) of this section) network:

(i) *Ready status.* The OBD system must indicate, in accordance with SAE J1979 or SAE J1939–73 (both as specified in paragraph (k)(1) of this section) specifications for model years 2013 and later, ''complete'' or ''not complete'' for each of the installed monitored components and systems identified in paragraphs (g), (h) with the exception of (h)(4), and (i)(3) of this section. All components or systems identified in paragraphs (h)(1), (h)(2), or (i)(3) of this section that are monitored continuously must always indicate ''complete.'' Components or systems that are not subject to being monitored continuously must immediately indicate ''complete'' upon the respective monitor(s) being executed fully and determining that the component or system is not malfunctioning. A component or system must also indicate ''complete'' if, after the requisite number of decisions necessary for determining MIL status has been executed fully, the monitor indicates a malfunction of the component or system. The status for each of the monitored components or systems must indicate ''not complete'' whenever diagnostic memory has been cleared or erased by a means other than that allowed in paragraph (b) of this section. Normal vehicle shut down (i.e., key-off/engine-off) shall not cause the status to indicate ''not complete.''

(A) The manufacturer may request that the ready status for a monitor be set to indicate ''complete'' without the monitor having completed if monitoring is disabled for a multiple number of drive cycles due to the continued presence of extreme operating conditions (e.g., cold ambient temperatures, high altitudes). Any such request must specify the conditions for monitoring system disablement and the number of drive cycles that would pass without monitor completion before ready status would be indicated as ''complete.''

(B) For the evaporative system monitor, the ready status must be set in accordance with this paragraph (k)(4)(i) when both the functional check of the purge valve and, if applicable, the leak detection monitor of the hole size specified in paragraph (h)(7)(ii)(B) of this section indicate that they are complete.

(C) If the manufacturer elects to indicate ready status through the MIL in the key-on/engine-off position as provided for in paragraph (b)(1)(iii) of this section, the ready status must be indicated in the following manner: If the ready status for all monitored components or systems is ''complete,'' the MIL shall remain continuously activated in the key-on/engine-off position for at least 10–20 seconds. If the ready status for one or more of the monitored components or systems is ''not complete,'' after at least 5 seconds of operation in the key-on/engine-off position with the MIL activated continuously, the MIL shall blink once per second for 5–10 seconds. The data stream value for MIL status as required in paragraph (k)(4)(ii) of this section must indicate ''commanded off'' during this sequence unless the MIL has also been ''commanded on'' for a detected malfunction.

(ii) *Data stream.* For model years 2010 through 2012, the following signals must be made available on demand through the data link connector. For model years 2013 and later, the following signals must be made available on demand through the standardized data link connector in accordance with SAE J1979 or SAE J1939 (both as specified in paragraph (k)(1) of this section) specifications. The actual signal value must always be used instead of a limp home value. Data link signals may report an error state or other predefined status indicator if they are defined for those signals in the SAE J1979 or SAE J1939 (both as specified in paragraph (k)(1) of this section) specifications.

(A) *For gasoline engines.*

(*1*) Calculated load value, engine coolant temperature, engine speed, vehicle speed, and time elapsed since engine start.

(*2*) Absolute load, fuel level (if used to enable or disable any other monitors), barometric pressure (directly measured or estimated), engine control module system voltage, and commanded equivalence ratio.

(*3*) Number of stored MIL-on DTCs, catalyst temperature (if directly measured or estimated for purposes of enabling the catalyst monitor(s)), monitor status (i.e., disabled for the rest of this drive cycle, complete this drive cycle, or not complete this drive cycle) since last engine shut-off for each monitor used for ready status, distance traveled (or engine run time for engines not using vehicle speed information) while MIL activated, distance traveled (or engine run time for engines not using vehicle speed information) since DTC memory last erased, and number of warm-up cycles since DTC memory last erased, OBD requirements to which the engine is certified (e.g., California OBD, EPA OBD, European OBD, non-OBD) and MIL status (i.e., commanded-on or commanded-off).

(B) *For diesel engines.*

(*1*) Calculated load (engine torque as a percentage of maximum torque available at the current engine speed), driver's demand engine torque (as a percentage of maximum engine torque), actual engine torque (as a percentage of maximum engine torque), reference engine maximum torque, reference maximum engine torque as a function of engine speed (suspect parameter numbers (SPN) 539 through 543 defined by SAE J1939 (as specified in paragraph (k)(1) of this section) within parameter group number (PGN) 65251 for engine configuration), engine coolant temperature, engine oil temperature (if used for emission control or any OBD monitors), engine speed, and time elapsed since engine start.

(*2*) Fuel level (if used to enable or disable any other monitors), vehicle speed (if used for emission control or any OBD monitors), barometric pressure (directly measured or estimated), and engine control module system voltage.

(*3*) Number of stored MIL-on DTCs, monitor status (i.e., disabled for the rest of this drive cycle, complete this drive cycle, or not complete this drive cycle) since last engine shut-off for each

monitor used for ready status, distance traveled (or engine run time for engines not using vehicle speed information) while MIL activated, distance traveled (or engine run time for engines not using vehicle speed information) since DTC memory last erased, number of warm-up cycles since DTC memory last erased, OBD requirements to which the engine is certified (e.g., California OBD, EPA OBD, European OBD, non-OBD), and MIL status (i.e., commanded-on or commanded-off).

(*4*) NO_X NTE control area status (i.e., inside control area, outside control area, inside manufacturer-specific NO_X NTE carve-out area, or deficiency active area) and PM NTE control area status (i.e., inside control area, outside control area, inside manufacturer-specific PM NTE carve-out area, or deficiency active area).

(*5*) For purposes of the calculated load and torque parameters in paragraph (k)(4)(ii)(B)(*1*) of this section, manufacturers must report the most accurate values that are calculated within the applicable electronic control unit (e.g., the engine control module). Most accurate, in this context, must be of sufficient accuracy, resolution, and filtering to be used for the purposes of in-use emission testing with the engine still in a vehicle (e.g., using portable emission measurement equipment).

(C) *For all engines so equipped.*

(*1*) Absolute throttle position, relative throttle position, fuel control system status (e.g., open loop, closed loop), fuel trim, fuel pressure, ignition timing advance, fuel injection timing, intake air/manifold temperature, engine intercooler temperature, manifold absolute pressure, air flow rate from mass air flow sensor, secondary air status (upstream, downstream, or atmosphere), ambient air temperature, commanded purge valve duty cycle/position, commanded EGR valve duty cycle/position, actual EGR valve duty cycle/position, EGR error between actual and commanded, PTO status (active or not active), redundant absolute throttle position (for electronic throttle or other systems that utilize two or more sensors), absolute pedal position, redundant absolute pedal position, commanded throttle motor position, fuel rate, boost pressure, commanded/target boost pressure, turbo inlet air temperature, fuel rail pressure, commanded fuel rail pressure, DPF inlet pressure, DPF inlet temperature, DPF outlet pressure, DPF outlet temperature, DPF delta pressure, exhaust pressure sensor output, exhaust gas temperature sensor output, injection control pressure, commanded injection control pressure, turbocharger/turbine speed, variable geometry turbo position, commanded variable geometry turbo position, turbocharger compressor inlet temperature, turbocharger compressor inlet pressure, turbocharger turbine inlet temperature, turbocharger turbine outlet temperature, waste gate valve position, and glow plug lamp status.

(*2*) Oxygen sensor output, air/fuel ratio sensor output, NO_X sensor output, and evaporative system vapor pressure.

(iii) *Freeze frame.*

(A) For model years 2010 through 2012, ''Freeze frame'' information required to be stored pursuant to paragraphs (b)(2)(iv), (h)(1)(iv)(D), and (h)(2)(vi) of this section must be made available on demand through the data link connector. For model years 2013 and later, ''Freeze frame'' information required to be stored pursuant to paragraphs (b)(2)(iv), (h)(1)(iv)(D), and (h)(2)(vi) of this section must be made available on demand through the standardized data link connector in accordance with SAE J1979 or SAE J1939–73 (both as specified in paragraph (k)(1) of this section) specifications.

(B) ''Freeze frame'' conditions must include the DTC that caused the data to be stored along with all of the signals required in paragraphs (k)(4)(ii)(A)*(1)* and (k)(4)(ii)(B)*(1)* of this section. Freeze frame conditions must also include all of the signals required on the engine in paragraphs (k)(4)(ii)(A)*(2)* and (k)(4)(ii)(B)*(2)* of this section, and paragraph (k)(4)(ii)(C)*(1)* of this section that are used for diagnostic or control purposes in the specific monitor or emission-critical powertrain control unit that stored the DTC.

(C) Only one frame of data is required to be recorded. For model years 2010 through 2012, the manufacturer may choose to store additional frames provided that at least the required frame can be read by, at a minimum, a manufacturer scan tool. For model years 2013 and later, the manufacturer may choose to store additional frames provided that at least the required frame can be read by a scan tool meeting SAE J1978 (as specified in paragraph (k)(1) of this section) specifications or designed to communicate with an SAE J1939 (as specified in paragraph (k)(1) of this section) network.

(iv) *Diagnostic trouble codes.*

(A) For model years 2010 through 2012, For all monitored components and systems, any stored pending, MIL-on, and previous-MIL-on DTCs must be made available through the diagnostic connector. For model years 2013 and later, all monitored components and systems, any stored pending, MIL-on, and previous-MIL-on DTCs must be made available through the diagnostic connector in a standardized format in accordance with SAE J1939 (as specified in paragraph (k)(1) of this section) or ISO 15765–4:2005(E) (as specified in paragraph (k)(1) of this section) specifications; standardized DTCs conforming to the applicable standardized specifications must be employed.

(B) The stored DTC must, to the extent possible, pinpoint the probable cause of the malfunction or potential malfunction. To the extent feasible, the manufacturer must use separate DTCs for every monitor where the monitor and repair procedure or probable cause of the malfunction is different. In general, rationality and functional checks must use different DTCs than the respective circuit integrity checks. Additionally, to the extent possible, input component circuit integrity checks must use different DTCs for distinct malfunctions (e.g., out-of-range low, out-of-range high, open circuit).

(C) The manufacturer must use appropriate standard-defined DTCs whenever possible. With Administrator approval, the manufacturer may use manufacturer-defined DTCs in accordance with the applicable standard's specifications. To do so, the manufacturer must be able to show a lack of available standard-defined DTCs, uniqueness of the monitor or monitored component, expected future usage of the monitor or component, and estimated usefulness in providing additional diagnostic and repair information to service technicians. Manufacturer-defined DTCs must be used in a consistent manner (i.e., the same DTC shall not be used to represent two different failure modes) across a manufacturer's entire product line.

(D) For model years 2010 through 2012, a pending or MIL-on DTC (as required in paragraphs (g) through (i) of this section) must be stored and available to, at a minimum, a manufacturer scan tool within 10 seconds after a monitor has determined that a malfunction or potential malfunction has occurred. A permanent DTC must be stored and available to, at a minimum, a manufacturer scan tool no later than the end of an ignition cycle in which the corresponding MIL-on DTC that caused MIL activation has been stored. For model years 2013 and later, a pending or MIL-on DTC (as required in paragraphs (g) through (i) of this section) must be stored and available to an SAE J1978 (as specified in paragraph (k)(1) of this section) or SAE J1939 (as specified in paragraph (k)(1) of this section) scan tool within 10 seconds after a monitor has determined that a malfunction or potential

malfunction has occurred. A permanent DTC must be stored and available to an SAE J1978 (as specified in paragraph (k)(1) of this section) or SAE J1939 (as specified in paragraph (k)(1) of this section) scan tool no later than the end of an ignition cycle in which the corresponding MIL-on DTC that caused MIL activation has been stored.

(E) For model years 2010 through 2012, pending DTCs for all components and systems (including those monitored continuously and non-continuously) must be made available through the diagnostic connector. For model years 2013 and later, pending DTCs for all components and systems (including those monitored continuously and non-continuously) must be made available through the diagnostic connector in accordance with the applicable standard's specifications. For all model years, a manufacturer using alternative statistical protocols for MIL activation as allowed in paragraph (b)(2)(iii) of this section must submit the details of their protocol for setting pending DTCs. The protocol must be, overall, equivalent to the requirements of this paragraph (k)(4)(iv)(E) and provide service technicians with a quick and accurate indication of a potential malfunction.

(F) For model years 2010 through 2012, permanent DTC for all components and systems must be made available through the diagnostic connector in a format that distinguishes permanent DTCs from pending DTCs, MIL-on DTCs, and previous-MIL-on DTCs. A MIL-on DTC must be stored as a permanent DTC no later than the end of the ignition cycle and subsequently at all times that the MIL-on DTC is commanding the MIL on. For model years 2013 and later, permanent DTC for all components and systems must be made available through the diagnostic connector in a standardized format that distinguishes permanent DTCs from pending DTCs, MIL-on DTCs, and previous-MIL-on DTCs. A MIL-on DTC must be stored as a permanent DTC no later than the end of the ignition cycle and subsequently at all times that the MIL-on DTC is commanding the MIL on. For all model years, permanent DTCs must be stored in non-volatile random access memory (NVRAM) and shall not be erasable by any scan tool command or by disconnecting power to the on-board computer. Permanent DTCs must be erasable if the engine control module is reprogrammed and the ready status described in paragraph (k)(4)(i) of this section for all monitored components and systems are set to ''not complete.'' The OBD system must have the ability to store a minimum of four current MIL-on DTCs as permanent DTCs in NVRAM. If the number of MIL-on DTCs currently commanding activation of the MIL exceeds the maximum number of permanent DTCs that can be stored, the OBD system must store the earliest detected MIL-on DTC as permanent DTC. If additional MIL-on DTCs are stored when the maximum number of permanent DTCs is already stored in NVRAM, the OBD system shall not replace any existing permanent DTC with the additional MIL-on DTCs.

(v) *Test results.*

(A) For model years 2010 through 2012 and except as provided for in paragraph (k)(4)(v)(G) of this section, for all monitored components and systems identified in paragraphs (g) and (h) of this section, results of the most recent monitoring of the components and systems and the test limits established for monitoring the respective components and systems must be stored and available through the data link. For model years 2013 and later and except as provided for in paragraph (k)(4)(v)(G) of this section, for all monitored components and systems identified in paragraphs (g) and (h) of this section, results of the most recent monitoring of the components and systems and the test limits established for monitoring the respective components and systems must be stored and available through the data link in accordance with the standardized format specified in SAE J1979 (as specified in paragraph (k)(1) of this section) for engines using the ISO 15765–4:2005(E) (as specified in paragraph (k)(1) of this section) protocol or SAE J1939 (as specified in paragraph (k)(1) of this section).

(B) The test results must be reported such that properly functioning components and systems (e.g., ''passing'' systems) do not store test values outside of the established test limits. Test limits must include both minimum and maximum acceptable values and must be defined so that a test result equal to either test limit is a ''passing'' value, not a ''failing'' value.

(C) For model years 2013 and later, the test results must be standardized such that the name of the monitored component (e.g., catalyst bank 1) can be identified by a generic scan tool and the test results and limits can be scaled and reported by a generic scan tool with the appropriate engineering units.

(D) The test results must be stored until updated by a more recent valid test result or the DTC memory of the OBD system computer is cleared. Upon DTC memory being cleared, test results reported for monitors that have not yet completed with valid test results since the last time the fault memory was cleared must report values of zero for the test result and test limits.

(E) All test results and test limits must always be reported and the test results must be stored until updated by a more recent valid test result or the DTC memory of the OBD system computer is cleared.

(F) The OBD system must store and report unique test results for each separate monitor.

(G) The requirements of this paragraph (k)(4)(v) do not apply to continuous fuel system monitoring, cold start emission reduction strategy monitoring, and continuous circuit monitoring.

(vi) *Software calibration identification (CAL ID).* On all engines, a single software calibration identification number (CAL ID) for each monitor or emission critical control unit(s) must be made available through, for model years 2010 through 2012, the data link connector or, for model years 2013 and later, the standardized data link connector in accordance with the SAE J1979 or SAE J1939 (both as specified in paragraph (k)(1) of this section) specifications. A unique CAL ID must be used for every emission-related calibration and/or software set having at least one bit of different data from any other emission-related calibration and/or software set. Control units coded with multiple emission or diagnostic calibrations and/or software sets must indicate a unique CAL ID for each variant in a manner that enables an off-board device to determine which variant is being used by the engine. Control units that use a strategy that will result in MIL activation if the incorrect variant is used (e.g., control units that contain variants for manual and automatic transmissions but will activate the MIL if the selected variant does not match the type of transmission mated to the engine) are not required to use unique CAL IDs. Manufacturers may request Administrator approval to respond with more than one CAL ID per diagnostic or emission critical control unit. Administrator approval of the request shall be based on the method used by the manufacturer to ensure each control unit will respond to a scan tool with the CAL IDs in order of highest to lowest priority with regards to areas of the software most critical to emission and OBD system performance.

(vii) *Software calibration verification number (CVN).*

(A) All engines must use an algorithm to calculate a single calibration verification number (CVN) that verifies the on-board computer software integrity for each monitor or emission critical control unit that is electronically

reprogrammable. The CVN must be made available through, for model years 2010 through 2012, the data link connector or, for model years 2013 and later, the standardized data link connector in accordance with the SAE J1979 or SAE J1939 (both as specified in paragraph (k)(1) of this section) specifications. The CVN must indicate whether the emission-related software and/or calibration data are valid and applicable for the given vehicle and CAL ID. For systems having more than one CAL ID as allowed under paragraph (k)(4)(vi) of this section, one CVN must be made available for each CAL ID and must be output to a scan tool in the same order as the corresponding CAL IDs. For 2010 through 2012, manufacturers may use a default value for the CVN if their emissions critical powertrain control modules are not programmable in the field. For all years, manufacturers may use a default value for the CVN if their emissions critical powertrain control modules are one-time programmable or masked read-only memory. Any default CVN shall be 00000000 for systems designed in accordance with the SAE J1979 (as specified in paragraph (k)(1) of this section) specifications, and FFFFFFFFh for systems designed in accordance with the SAE J1939 (as specified in paragraph (k)(1) of this section) specifications.

(B) The CVN algorithm used to calculate the CVN must be of sufficient complexity that the same CVN is difficult to achieve with modified calibration values.

(C) The CVN must be calculated at least once per ignition cycle and stored until the CVN is subsequently updated. Except for immediately after a reprogramming event or a non-volatile memory clear or for the first 30 seconds of engine operation after a volatile memory clear or battery disconnect, the stored value must be made available through, for model years 2010 through 2012, the data link connector to, at a minimum, a manufacturer scan tool or, for model years 2013 and later, the data link connector to a generic scan tool in accordance with SAE J1979 or SAE J1939 (both as specified in paragraph (k)(1) of this section) specifications. For model years 2010 through 2012, the stored CVN value shall not be erased when DTC memory is erased or during normal vehicle shut down (i.e., key-off/engine-off). For model years 2013 and later, the stored CVN value shall not be erased when DTC memory is erased by a generic scan tool in accordance with SAE J1979 or SAE J1939 (both as specified in paragraph (k)(1) of this section) specifications or during normal vehicle shut down (i.e., key-off/engine-off).

(D) For model years 2013 and later, the CVN and CAL ID combination information must be available for all engines/vehicles in a standardized electronic format that allows for off-board verification that the CVN is valid and appropriate for a specific vehicle and CAL ID.

(viii) *Vehicle identification number (VIN).*

(A) For model years 2010 through 2012, all vehicles must have the vehicle identification number (VIN) available through the data link connector to, at a minimum, a manufacturer scan tool Only one electronic control unit per vehicle may report the VIN to a scan tool. For model years 2013 and later, all vehicles must have the vehicle identification number (VIN) available in a standardized format through the standardized data link connector in accordance with SAE J1979 or SAE J1939 (both as specified in paragraph (k)(1) of this section) specifications. Only one electronic control unit per vehicle may report the VIN to an SAE J1978 or SAE J1939 (both as specified in paragraph (k)(1) of this section) scan tool.

(B) If the VIN is reprogrammable, all emission-related diagnostic information identified in paragraph (k)(4)(ix)(A) of this section must be erased in conjunction with reprogramming of the VIN.

(ix) *Erasure of diagnostic information.*

(A) For purposes of this paragraph (k)(4)(ix), ''emission-related diagnostic information'' includes all of the following: ready status as required by paragraph (k)(4)(i) of this section; data stream information as required by paragraph (k)(4)(ii) of this section including the number of stored MIL-on DTCs, distance traveled while MIL activated, number of warm-up cycles since DTC memory last erased, and distance traveled since DTC memory last erased; freeze frame information as required by paragraph (k)(4)(iii) of this section; pending, MIL-on, and previous-MIL-on DTCs as required by paragraph (k)(4)(iv) of this section; and, test results as required by paragraph (k)(4)(v) of this section.

(B) For all engines, the emission-related diagnostic information must be erased if commanded by any scan tool and may be erased if the power to the on-board computer is disconnected. If any of the emission-related diagnostic information is commanded to be erased by any scan tool, all emission-related diagnostic information must be erased from all diagnostic or emission critical control units. The OBD system shall not allow a scan tool to erase a subset of the emission-related diagnostic information (e.g., the OBD system shall not allow a scan tool to erase only one of three stored DTCs or only information from one control unit without erasing information from the other control unit(s)).

(5) *In-use performance ratio tracking requirements.*

(i) For each monitor required in paragraphs (g) through (i) of this section to separately report an in-use performance ratio, manufacturers must implement software algorithms to, for model years 2010 through 2012, report a numerator and denominator or, for model years 2013 and later, report a numerator and denominator in the standardized format specified in this paragraph (k)(5) in accordance with the SAE J1979 or SAE J1939 (both as specified in paragraph (k)(1) of this section) specifications.

(ii) For the numerator, denominator, general denominator, and ignition cycle counters required by paragraph (e) of this section, the following numerical value specifications apply:

(A) Each number shall have a minimum value of zero and a maximum value of 65,535 with a resolution of one.

(B) Each number shall be reset to zero only when a non-volatile random access memory (NVRAM) reset occurs (e.g., reprogramming event) or, if the numbers are stored in keep-alive memory (KAM), when KAM is lost due to an interruption in electrical power to the control unit (e.g., battery disconnect). Numbers shall not be reset to zero under any other circumstances including when a scan tool command to clear DTCs or reset KAM is received.

(C) To avoid overflow problems, if either the numerator or denominator for a specific component reaches the maximum value of 65,535 ±2, both numbers shall be divided by two before either is incremented again.

(D) To avoid overflow problems, if the ignition cycle counter reaches the maximum value of 65,535 ±2, the ignition cycle counter shall rollover and increment to zero on the next ignition cycle.

(E) To avoid overflow problems, if the general denominator reaches the maximum value of 65,535 ±2, the general denominator shall rollover and increment to zero on the next drive cycle that meets the general denominator definition.

(F) If a vehicle is not equipped with a component (e.g., oxygen sensor bank 2, secondary air system), the corresponding numerator and denominator for that specific

component shall always be reported as zero.

(iii) For the ratio required by paragraph (e) of this section, the following numerical value specifications apply:

(A) The ratio shall have a minimum value of zero and a maximum value of 7.99527 with a resolution of 0.000122.

(B) The ratio for a specific component shall be considered to be zero whenever the corresponding numerator is equal to zero and the corresponding denominator is not zero.

(C) The ratio for a specific component shall be considered to be the maximum value of 7.99527 if the corresponding denominator is zero or if the actual value of the numerator divided by the denominator exceeds the maximum value of 7.99527.

(6) *Engine run time tracking requirements.*

(i) For all gasoline and diesel engines, the manufacturer must implement software algorithms to, for model years 2010 through 2012, track and report individually or, for model years 2013 and later, track and report individually in a standardized format the amount of time the engine has been operated in the following conditions:

(A) Total engine run time.

(B) Total idle run time (with ''idle'' defined as accelerator pedal released by the driver, engine speed less than or equal to 200 rpm above normal warmed-up idle (as determined in the drive position for vehicles equipped with an automatic transmission) or vehicle speed less than or equal to one mile per hour, and power take-off not active).

(C) Total run time with power take off active.

(ii) For each counter specified in paragraph (k)(6)(i) of this section, the following numerical value specifications apply:

(A) Each number shall be a four-byte value with a minimum value of zero, a resolution of one second per bit, and an accuracy of +/− ten seconds per drive cycle.

(B) Each number shall be reset to zero only when a non-volatile memory reset occurs (e.g., reprogramming event). Numbers shall not be reset to zero under any other circumstances including when a scan tool (generic or enhanced) command to clear fault codes or reset KAM is received.

(C) To avoid overflow problems, if any of the individual counters reach the maximum value, all counters shall be divided by two before any are incremented again.

(D) For model years 2010 through 2012, the counters shall be made available to, at a minimum, a manufacturer scan tool and may be rescaled when transmitted from a resolution of one second per bit to no more than three minutes per bit. For model years 2013 and later, the counters shall be made available to a generic scan tool in accordance with the SAE J1979 or SAE J1939 (both as specified in paragraph (k)(1) of this section) specifications and may be rescaled when transmitted, if required by the SAE specifications, from a resolution of one second per bit to no more than three minutes per bit.

(7) For 2019 and subsequent model year alternative-fueled engines derived from a diesel-cycle engine, a manufacturer may meet the standardization requirements of paragraph (k) of this section that are applicable to diesel engines rather than the requirements applicable to gasoline engines.

(l) *Monitoring system demonstration requirements for certification.*

(1) *General.*

(i) The manufacturer must submit emissions test data from one or more durability demonstration test engines (test engines).

(ii) The Administrator may approve other demonstration protocols if the manufacturer can provide comparable assurance that the malfunction criteria are chosen based on meeting the malfunction criteria requirements and that the timeliness of malfunction detection is within the constraints of the applicable monitoring requirements.

(iii) For flexible fuel engines capable of operating on more than one fuel or fuel combinations, the manufacturer must submit a plan for providing emission test data. The plan must demonstrate that testing will represent properly the expected in-use fuel or fuel combinations.

(2) *Selection of test engines.*

(i) Prior to submitting any applications for certification for a model year, the manufacturer must notify the Administrator regarding the planned engine families and engine ratings within each family for that model year. The Administrator will select the engine family(ies) and the specific engine rating within the engine family(ies) that the manufacturer shall use as demonstration test engines. The selection of test vehicles for production evaluation testing as specified in paragraph (j)(2) of this section may take place during this selection process.

(ii) *For model years 2010 through 2012.* The manufacturer must provide emissions test data from the OBD parent rating as defined in paragraph (o)(1) of this section.

(iii) *For model years 2013 and later.*

(A) A manufacturer certifying one to five engine families in a given model year must provide emissions test data for a single test engine from one engine rating. A manufacturer certifying six to ten engine families in a given model year must provide emissions test data for a single test engine from two different engine ratings. A manufacturer certifying eleven or more engine families in a given model year must provide emissions test data for a single test engine from three different engine ratings. A manufacturer may forego submittal of test data for one or more of these test engines if data have been submitted previously for all of the engine ratings and/or if all requirements for certification carry-over from one model year to the next are satisfied.

(B) For a given model year, a manufacturer may elect to provide emissions data for test engines from more engine ratings than required by paragraph (l)(2)(iii)(A) of this section. For each additional engine rating tested in that given model year, the number of engine ratings required for testing in one future model year will be reduced by one.

(iv) For the test engine, the manufacturer must use an engine (excluding aftertreatment devices) aged for a minimum of 125 hours fitted with exhaust aftertreatment emission controls aged to be representative of useful life aging. In the event that an accelerated aging procedure is used, the manufacturer is required to submit a description of the accelerated aging process and/or supporting data or use the accelerated aging procedure used for emission certification deterioration factor generation. The process and/or data must demonstrate that deterioration of the exhaust aftertreatment emission controls is stabilized sufficiently such that it represents emission control performance at the end of the useful life.

(3) *Required testing.* Except as otherwise described in this paragraph (l)(3), the manufacturer must perform single malfunction testing based on the applicable test with the components/systems set at their malfunction criteria limits as determined by the manufacturer for meeting the emissions thresholds required in paragraphs (g), (h), and (i) of this section.

(i) *Required testing for diesel-fueled/compression ignition engines.*

(A) *Fuel system.* The manufacturer must perform a separate test for each malfunction limit established by the manufacturer for the fuel system parameters (e.g., fuel pressure, injection timing) specified in paragraphs (g)(1)(ii)(A) through (g)(1)(ii)(C) and/or

(g)(1)(ii)(D) of this section, if applicable, of this section. When performing a test for a specific parameter, the fuel system must be operating at the malfunction criteria limit for the applicable parameter only. All other parameters must be operating with normal characteristics. In conducting the fuel system demonstration tests, the manufacturer may use computer modifications to cause the fuel system to operate at the malfunction limit if the manufacturer can demonstrate that the computer modifications produce test results equivalent to an induced hardware malfunction.

(B) *Engine misfire.* For model years 2013 and later, the manufacturer must perform a test at the malfunction limit established by the manufacturer for the monitoring required by paragraph (g)(2)(ii)(B) of this section.

(C) *EGR system.* The manufacturer must perform a separate test for each malfunction limit established by the manufacturer for the EGR system parameters (e.g., low flow, high flow, slow response) specified in paragraphs (g)(3)(ii)(A) through (g)(3)(ii)(C) and in (g)(3)(ii)(E) of this section. In conducting the EGR system slow response demonstration tests, the manufacturer may use computer modifications to cause the EGR system to operate at the malfunction limit if the manufacturer can demonstrate that the computer modifications produce test results equivalent to an induced hardware malfunction.

(D) *Turbo boost control system.* The manufacturer must perform a separate test for each malfunction limit established by the manufacturer for the turbo boost control system parameters (e.g., underboost, overboost, response) specified in paragraphs (g)(4)(ii)(A) through (g)(4)(ii)(C) and in (g)(4)(ii)(E) of this section.

(E) *NMHC catalyst.* The manufacturer must perform a separate test for each monitored NMHC catalyst(s). The catalyst(s) being evaluated must be deteriorated to the applicable malfunction limit established by the manufacturer for the monitoring required by paragraph (g)(5)(ii)(A) of this section and using methods established by the manufacturer in accordance with paragraph (l)(7) of this section. For each monitored NMHC catalyst(s), the manufacturer must also demonstrate that the OBD system will detect a catalyst malfunction with the catalyst at its maximum level of deterioration (i.e., the substrate(s) completely removed from the catalyst container or ''empty'' can). Emissions data are not required for the empty can demonstration.

(F) *NO_X catalyst.* The manufacturer must perform a separate test for each monitored NO_X catalyst(s) (e.g., SCR catalyst). The catalyst(s) being evaluated must be deteriorated to the applicable malfunction criteria established by the manufacturer for the monitoring required by paragraphs (g)(6)(ii)(A) and (g)(6)(ii)(B) of this section and using methods established by the manufacturer in accordance with paragraph (l)(7) of this section. For each monitored NO_X catalyst(s), the manufacturer must also demonstrate that the OBD system will detect a catalyst malfunction with the catalyst at its maximum level of deterioration (i.e., the substrate(s) completely removed from the catalyst container or ''empty'' can). Emissions data are not required for the empty can demonstration.

(G) *NO_X adsorber.* The manufacturer must perform a test using a NO_X adsorber(s) deteriorated to the applicable malfunction limit established by the manufacturer for the monitoring required by paragraph (g)(7)(ii)(A) of this section. The manufacturer must also demonstrate that the OBD system will detect a NO_X adsorber malfunction with the NO_X adsorber at its maximum level of deterioration (i.e., the substrate(s) completely removed from the container or ''empty'' can). Emissions data are not required for the empty can demonstration.

(H) *Diesel particulate filter.* The manufacturer must perform a separate test using a DPF deteriorated to the applicable malfunction limits established by the manufacturer for the monitoring required by paragraph (g)(8)(ii)(A) and (g)(8)(ii)(B) of this section. For systems using the optional DPF monitoring provision of paragraph (g)(8)(ii)(A) of this section, the manufacturer must perform a separate test using a DPF modified in a manner approved by the Administrator (e.g., drilling of wallflow channel end plugs, drilling of through holes, etc.) and testing at each of the nine test points specified in paragraph (g)(8)(ii)(A) of this section. The manufacturer must also demonstrate that the OBD system will detect a DPF malfunction with the DPF at its maximum level of deterioration (i.e., the filter(s) completely removed from the filter container or ''empty'' can). Emissions data are not required for the empty can demonstration.

(I) *Exhaust gas sensor.* The manufacturer must perform a separate test for each malfunction limit established by the manufacturer for the monitoring required in paragraphs (g)(9)(ii)(A), (g)(9)(iii)(A), and (g)(9)(iv)(A) of this section. When performing a test, all exhaust gas sensors used for the same purpose (e.g., for the same feedback control loop, for the same control feature on parallel exhaust banks) must be operating at the malfunction criteria limit for the applicable parameter only. All other exhaust gas sensor parameters must be operating with normal characteristics.

(J) *VVT system.* The manufacturer must perform a separate test for each malfunction limit established by the manufacturer for the monitoring required in paragraphs (g)(10)(ii)(A) and (g)(10)(ii)(B) of this section. In conducting the VVT system demonstration tests, the manufacturer may use computer modifications to cause the VVT system to operate at the malfunction limit if the manufacturer can demonstrate that the computer modifications produce test results equivalent to an induced hardware malfunction.

(K) For each of the testing requirements of this paragraph (l)(3)(i) of this section, if the manufacturer has established that only a functional check is required because no failure or deterioration of the specific tested system could result in an engine's emissions exceeding the applicable emissions thresholds, the manufacturer is not required to perform a demonstration test; however, the manufacturer is required to provide the data and/or engineering analysis used to determine that only a functional test of the system(s) is required.

(ii) *Required testing for gasoline-fueled/spark-ignition engines.*

(A) *Fuel system.* For engines with adaptive feedback based on the primary fuel control sensor(s), the manufacturer must perform a test with the adaptive feedback based on the primary fuel control sensor(s) at the rich limit(s) and a test at the lean limit(s) established by the manufacturer as required by paragraph (h)(1)(ii)(A) of this section to detect a malfunction before emissions exceed applicable emissions thresholds. For engines with feedback based on a secondary fuel control sensor(s) and subject to the malfunction criteria in paragraph (h)(1)(ii)(A) of this section, the manufacturer must perform a test with the feedback based on the secondary fuel control sensor(s) at the rich limit(s) and a test at the lean limit(s) established by the manufacturer as required by paragraph (h)(1)(ii)(A) of this section to detect a malfunction before emissions exceed the applicable emissions thresholds. For other fuel metering or control systems, the manufacturer must perform a test at the criteria limit(s). For purposes of fuel system testing as required by this

paragraph (l)(3)(ii)(A), the malfunction(s) induced may result in a uniform distribution of fuel and air among the cylinders. Non uniform distribution of fuel and air used to induce a malfunction shall not cause misfire. In conducting the fuel system demonstration tests, the manufacturer may use computer modifications to cause the fuel system to operate at the malfunction limit. To do so, the manufacturer must be able to demonstrate that the computer modifications produce test results equivalent to an induced hardware malfunction.

(B) *Misfire.* The manufacturer must perform a test at the malfunction criteria limit specified in paragraph (h)(2)(ii)(B) of this section.

(C) *EGR system.* The manufacturer must perform a test at each flow limit calibrated to the malfunction criteria specified in paragraphs (h)(3)(ii)(A) and (h)(3)(ii)(B) of this section.

(D) *Cold start emission reduction strategy.* The manufacturer must perform a test at the malfunction criteria for each component monitored according to paragraph (h)(4)(ii)(A) of this section.

(E) *Secondary air system.* The manufacturer must perform a test at each flow limit calibrated to the malfunction criteria specified in paragraphs (h)(5)(ii)(A) and (h)(5)(ii)(B) of this section.

(F) *Catalyst.* The manufacturer must perform a test using a catalyst system deteriorated to the malfunction criteria specified in paragraph (h)(6)(ii) of this section using methods established by the manufacturer in accordance with paragraph (l)(7)(ii) of this section. The manufacturer must also demonstrate that the OBD system will detect a catalyst system malfunction with the catalyst system at its maximum level of deterioration (i.e., the substrate(s) completely removed from the catalyst container or ''empty'' can). Emission data are not required for the empty can demonstration.

(G) *Exhaust gas sensor.* The manufacturer must perform a test with all primary exhaust gas sensors used for fuel control simultaneously possessing a response rate deteriorated to the malfunction criteria limit specified in paragraph (h)(8)(ii)(A) of this section. The manufacturer must also perform a test for any other primary or secondary exhaust gas sensor parameter under parargraphs (h)(8)(ii)(A) and (h)(8)(iii)(A) of this section that can cause engine emissions to exceed the applicable emissions thresholds (e.g., shift in air/fuel ratio at which oxygen sensor switches, decreased amplitude). When performing additional test(s), all primary and secondary (if applicable) exhaust gas sensors used for emission control must be operating at the malfunction criteria limit for the applicable parameter only. All other primary and secondary exhaust gas sensor parameters must be operating with normal characteristics.

(H) *VVT system.* The manufacturer must perform a test at each target error limit and slow response limit calibrated to the malfunction criteria specified in paragraphs (h)(9)(ii)(A) and (h)(9)(ii)(B) of this section. In conducting the VVT system demonstration tests, the manufacturer may use computer modifications to cause the VVT system to operate at the malfunction limit. To do so, the manufacturer must be able to demonstrate that the computer modifications produce test results equivalent to an induced hardware malfunction.

(I) For each of the testing requirements of this paragraph (l)(3)(ii), if the manufacturer has established that only a functional check is required because no failure or deterioration of the specific tested system could cause an engine's emissions to exceed the applicable emissions thresholds, the manufacturer is not required to perform a demonstration test; however the manufacturer is required to provide the data and/or engineering analyses used to determine that only a functional test of the system(s) is required.

(iii) *Required testing for all engines.*

(A) Other emission control systems. The manufacturer must conduct demonstration tests for all other emission control components (e.g., hydrocarbon traps, adsorbers) designed and calibrated to a malfunction limit based on an emissions threshold based on the requirements of paragraph (i)(4) of this section.

(B) For each of the testing requirements of paragraph (l)(3)(iii)(A) of this section, if the manufacturer has established that only a functional check is required because no failure or deterioration of the specific tested system could result in an engine's emissions exceeding the applicable emissions thresholds, the manufacturer is not required to perform a demonstration test; however, the manufacturer is required to provide the data and/or engineering analysis used to determine that only a functional test of the system(s) is required.

(iv) The manufacturer may electronically simulate deteriorated components but shall not make any engine control unit modifications when performing demonstration tests unless approved by the Administrator. All equipment necessary to duplicate the demonstration test must be made available to the Administrator upon request.

(4) *Testing protocol.*

(i) *Preconditioning.* The manufacturer must use an applicable cycle for preconditioning test engines prior to conducting each of the emission tests required by paragraph (l)(3) of this section. The manufacturer may perform a single additional preconditioning cycle, identical to the initial one, after a 20-minute hot soak but must demonstrate that such an additional cycle is necessary to stabilize the emissions control system. A practice of requiring a cold soak prior to conducting preconditioning cycles is not permitted.

(ii) *Test sequence.*

(A) The manufacturer must set individually each system or component on the test engine at the malfunction criteria limit prior to conducting the applicable preconditioning cycle(s). If a second preconditioning cycle is permitted in accordance with paragraph (l)(4)(i) of this section, the manufacturer may adjust the system or component to be tested before conducting the second preconditioning cycle. The manufacturer shall not replace, modify, or adjust the system or component after the last preconditioning cycle has been completed.

(B) After preconditioning, the test engine must be operated over the applicable cycle to allow for the initial detection of the tested system or component malfunction. This test cycle may be omitted from the testing protocol if it is unnecessary. If required by the monitoring strategy being tested, a cold soak may be performed prior to conducting this test cycle.

(C) The test engine must then be operated over the applicable exhaust emissions test.

(iii) A manufacturer required to test more than one test engine according to paragraph (l)(2)(iii) of this section may use internal calibration sign-off test procedures (e.g., forced cool downs, less frequently calibrated emission analyzers) instead of official test procedures to obtain the emission test data required by this paragraph (l) of this section for all but one of the required test engines. The manufacturer may elect this option if the data from the alternative test procedure are representative of official emissions test results. A manufacturer using this option is still responsible for meeting the malfunction criteria specified in paragraphs (g) through (i) of this section if and when emissions tests are

performed in accordance with official test procedures.

(iv) The manufacturer may request approval to use an alternative testing protocol for demonstration of MIL activation if the engine dynamometer emission test cycle does not allow all of a given monitor's enable conditions to be satisfied. The manufacturer may request the use of an alternative engine dynamometer test cycle or the use of chassis testing to demonstrate proper MIL activation. To do so, the manufacturer must demonstrate the technical necessity for using an alternative test cycle and the degree to which the alternative test cycle demonstrates that in-use operation with the malfunctioning component will result in proper MIL activation.

(5) *Evaluation protocol.* Full OBD engine ratings, as defined by paragraph (o)(1) of this section, shall be evaluated according to the following protocol:

(i) For all tests conducted as required by paragraph (l) of this section, the MIL must activate before the end of the first engine start portion of the applicable test.

(ii) If the MIL activates prior to emissions exceeding the applicable malfunction criteria limits specified in paragraphs (g) through (i), no further demonstration is required. With respect to the misfire monitor demonstration test, if the manufacturer has elected to use the minimum misfire malfunction criteria of one percent as allowed in paragraphs (g)(2)(ii)(B), if applicable, and (h)(2)(ii)(B) of this section, no further demonstration is required provided the MIL activates with engine misfire occurring at the malfunction criteria limit.

(iii) If the MIL does not activate when the system or component is set at its malfunction criteria limit(s), the criteria limit(s) or the OBD system is not acceptable.

(A) Except for testing of the catalyst or DPF system, if the MIL first activates after emissions exceed the applicable malfunction criteria specified in paragraphs (g) through (i) of this section, the test engine shall be retested with the tested system or component adjusted so that the MIL will activate before emissions exceed the applicable malfunction criteria specified in paragraphs (g) through (i) of this section. If the component cannot be so adjusted because an alternative fuel or emission control strategy is used when a malfunction is detected (e.g., open loop fuel control used after an oxygen sensor malfunction is detected), the test engine shall be retested with the component adjusted to the worst acceptable limit (i.e., the applicable OBD monitor indicates that the component is performing at or slightly better than the malfunction criteria limit). When tested with the component so adjusted, the MIL must not activate during the test and the engine emissions must be below the applicable malfunction criteria specified in paragraphs (g) through (i) of this section.

(B) In testing the catalyst or DPF system, if the MIL first activates after emissions exceed the applicable emissions threshold(s) specified in paragraphs (g) and (h), the tested engine shall be retested with a less deteriorated catalyst or DPF system (i.e., more of the applicable engine out pollutants are converted or trapped). For the OBD system to be approved, testing shall be continued until the MIL activates with emissions below the applicable thresholds of paragraphs (g) and (h) of this section, or the MIL activates with emissions within a range no more than 20 percent below the applicable emissions thresholds and 10 percent or less above those emissions thresholds.

(iv) If an OBD system is determined to be unacceptable by the criteria of this paragraph (l)(5) of this section, the manufacturer may recalibrate and retest the system on the same test engine. In such a case, the manufacturer must confirm, by retesting, that all systems and components that were tested prior to the recalibration and are affected by it still function properly with the recalibrated OBD system.

(6) *Confirmatory testing.*

(i) The Administrator may perform confirmatory testing to verify the emission test data submitted by the manufacturer as required by this paragraph (l) of this section comply with its requirements and the malfunction criteria set forth in paragraphs (g) through (i) of this section. Such confirmatory testing is limited to the test engine(s) required by paragraph (l)(2) of this section.

(ii) To conduct this confirmatory testing, the Administrator may install appropriately deteriorated or malfunctioning components (or simulate them) in an otherwise properly functioning test engine of an engine rating represented by the demonstration test engine in order to test any of the components or systems required to be tested by paragraph (l) of this section. The manufacturer shall make available, if requested, an engine and all test equipment (e.g., malfunction simulators, deteriorated components) necessary to duplicate the manufacturer's testing. Such a request from the Administrator shall occur within six months of reviewing and approving the demonstration test engine data submitted by the manufacturer for the specific engine rating.

(7) *Catalyst aging.*

(i) *Diesel catalysts.* For purposes of determining the catalyst malfunction limits for the monitoring required by paragraphs (g)(5)(ii)(A), (g)(5)(ii)(B), and (g)(6)(ii)(A) of this section, where those catalysts are monitored individually, the manufacturer must use a catalyst deteriorated to the malfunction criteria using methods established by the manufacturer to represent real world catalyst deterioration under normal and malfunctioning engine operating conditions. For purposes of determining the catalyst malfunction limits for the monitoring required by paragraphs (g)(5)(ii)(A), (g)(5)(ii)(B), and (g)(6)(ii)(A) of this section, where those catalysts are monitored in combination with other catalysts, the manufacturer must submit their catalyst system aging and monitoring plan to the Administrator as part of their certification documentation package. The plan must include the description, emission control purpose, and location of each component, the monitoring strategy for each component and/or combination of components, and the method for determining the applicable malfunction criteria including the deterioration/aging process.

(ii) *Gasoline catalysts.* For the purposes of determining the catalyst system malfunction criteria in paragraph (h)(6)(ii) of this section, the manufacturer must use a catalyst system deteriorated to the malfunction criteria using methods established by the manufacturer to represent real world catalyst deterioration under normal and malfunctioning operating conditions. The malfunction criteria must be established by using a catalyst system with all monitored and unmonitored (downstream of the sensor utilized for catalyst monitoring) catalysts simultaneously deteriorated to the malfunction criteria except for those engines that use fuel shutoff to prevent over-fueling during engine misfire conditions. For such engines, the malfunction criteria must be established by using a catalyst system with all monitored catalysts simultaneously deteriorated to the malfunction criteria while unmonitored catalysts shall be deteriorated to the end of the engine's useful life.

(m) *Certification documentation requirements.*

(1) When submitting an application for certification of an engine, the manufacturer must submit the following documentation. If any of the items listed here are standardized for all of the manufacturer's engines, the

manufacturer may, for each model year, submit one set of documents covering the standardized items for all of its engines.

(i) For the required documentation that is not standardized across all engines, the manufacturer may be allowed to submit documentation for certification from one engine that is representative of other engines. All such engines shall be considered to be part of an OBD certification documentation group. To represent the OBD group, the chosen engine must be certified to the most stringent emissions standards and OBD monitoring requirements and cover all of the emissions control devices for the engines in the group and covered by the submitted documentation. Such OBD groups must be approved in advance of certification.

(ii) Upon approval, one or more of the documentation requirements of this paragraph (m) of this section may be waived or modified if the information required is redundant or unnecessarily burdensome to generate.

(iii) To the extent possible, the certification documentation must use SAE J1930 (as specified in paragraph (k)(1) of this section) or SAE J2403 (as specified in paragraph (k)(1) of this section) terms, abbreviations, and acronyms as specified in paragraph (k)(1) of this section.

(2) Unless otherwise specified, the following information must be submitted as part of the certification application and prior to receiving a certificate.

(i) A description of the functional operation of the OBD system including a complete written description for each monitoring strategy that outlines every step in the decision-making process of the monitor. Algorithms, diagrams, samples of data, and/or other graphical representations of the monitoring strategy shall be included where necessary to adequately describe the information.

(ii) A table including the following information for each monitored component or system (either computer-sensed or computer-controlled) of the emissions control system:

(A) Corresponding diagnostic trouble code.

(B) Monitoring method or procedure for malfunction detection.

(C) Primary malfunction detection parameter and its type of output signal.

(D) Malfunction criteria limits used to evaluate output signal of primary parameter.

(E) Other monitored secondary parameters and conditions (in engineering units) necessary for malfunction detection.

(F) Monitoring time length and frequency of monitoring events.

(G) Criteria for storing a diagnostic trouble code.

(H) Criteria for activating a malfunction indicator light.

(I) Criteria used for determining out-of-range values and input component rationality checks.

(iii) Whenever possible, the table required by paragraph (m)(2)(ii) of this section shall use the following engineering units:

(A) Degrees Celsius for all temperature criteria.

(B) KiloPascals (KPa) for all pressure criteria related to manifold or atmospheric pressure.

(C) Grams (g) for all intake air mass criteria.

(D) Pascals (Pa) for all pressure criteria related to evaporative system vapor pressure.

(E) Miles per hour (mph) for all vehicle speed criteria.

(F) Relative percent (%) for all relative throttle position criteria (as defined in SAE J1979 or SAE J1939 (both as specified in paragraph (k)(1) of this section)).

(G) Voltage (V) for all absolute throttle position criteria (as defined in SAE J1979 or SAE J1939 (both as specified in paragraph (k)(1) of this section)).

(H) Per crankshaft revolution (/rev) for all changes per ignition event based criteria (e.g., g/rev instead of g/stroke or g/firing).

(I) Per second (/sec) for all changes per time based criteria (e.g., g/sec).

(J) Percent of nominal tank volume (%) for all fuel tank level criteria.

(iv) A logic flowchart describing the step-by-step evaluation of the enable criteria and malfunction criteria for each monitored emission related component or system.

(v) Emissions test data, a description of the testing sequence (e.g., the number and types of preconditioning cycles), approximate time (in seconds) of MIL activation during the test, diagnostic trouble code(s) and freeze frame information stored at the time of detection, corresponding test results (e.g. SAE J1979 (as specified in paragraph (k)(1) of this section) Mode/Service $06, SAE J1939 (as specified in paragraph (k)(1) of this section) Diagnostic Message 8 (DM8)) stored during the test, and a description of the modified or deteriorated components used for malfunction simulation with respect to the demonstration tests specified in paragraph (l) of this section. The freeze frame data are not required for engines termed ''Extrapolated OBD'' engines.

(vi) For gasoline engines, data supporting the misfire monitor, including:

(A) The established percentage of misfire that can be tolerated without damaging the catalyst over the full range of engine speed and load conditions.

(B) Data demonstrating the probability of detection of misfire events by the misfire monitoring system over the full engine speed and load operating range for the following misfire patterns: random cylinders misfiring at the malfunction criteria established in paragraph (h)(2)(ii)(B) of this section, one cylinder continuously misfiring, and paired cylinders continuously misfiring.

(C) Data identifying all disablement of misfire monitoring that occurs during the FTP. For every disablement that occurs during the cycles, the data shall identify: when the disablement occurred relative to the driver's trace, the number of engine revolutions during which each disablement was present, and which disable condition documented in the certification application caused the disablement.

(D) Manufacturers are not required to use the durability demonstration engine to collect the misfire data required by paragraph (m)(2)(vi) of this section.

(vii) Data supporting the limit for the time between engine starting and attaining the designated heating temperature for after-start heated catalyst systems.

(viii) Data supporting the criteria used to detect a malfunction of the fuel system, EGR system, boost pressure control system, catalyst, NO_X adsorber, DPF, cold start emission reduction strategy, secondary air, evaporative system, VVT system, exhaust gas sensors, and other emission controls that causes emissions to exceed the applicable malfunction criteria specified in paragraphs (g) through (i) of this section. For diesel engine monitors required by paragraphs (g) and (i) of this section that are required to indicate a malfunction before emissions exceed an emission threshold based on any applicable standard (e.g., 2.5 times any of the applicable standards), the test cycle and standard determined by the manufacturer to be the most stringent for each applicable monitor in accordance with paragraph (f)(1) of this section.

(ix) A list of all electronic powertrain input and output signals (including those not monitored by the OBD system) that identifies which signals are monitored by the OBD system. For input and output signals that are monitored as comprehensive components, the listing shall also identify the specific

diagnostic trouble code for each malfunction criteria (e.g., out-of-range low, out-of-range high, open circuit, rationality low, rationality high).

(x) A written description of all parameters and conditions necessary to begin closed-loop/feedback control of emission control systems (e.g., fuel system, boost pressure, EGR flow, SCR reductant delivery, DPF regeneration, fuel system pressure).

(xi) A written identification of the communication protocol utilized by each engine for communication with a scan tool (model years 2010 through 2012) or an SAE J1978 or SAE J1939 (both as specified in paragraph (k)(1) of this section) scan tool (model years 2013 and later).

(xii) For model years 2013 and later, a pictorial representation or written description of the diagnostic connector location including any covers or labels.

(xiii) A written description of the method used by the manufacturer to meet the requirements of paragraph (i)(2) of this section (crankcase ventilation system monitoring) including diagrams or pictures of valve and/or hose connections.

(xiv) Build specifications provided to engine purchasers or chassis manufacturers detailing all specifications or limitations imposed on the engine purchaser relevant to OBD requirements or emissions compliance (e.g., cooling system heat rejection rates, allowable MIL locations, connector location specifications). A description of the method or copies of agreements used to ensure engine purchasers or chassis manufacturers will comply with the OBD and emissions relevant build specifications (e.g., signed agreements, required audit/evaluation procedures).

(xv) Any other information determined by the Administrator to be necessary to demonstrate compliance with the requirements of this section.

(3) In addition to the documentation required by paragraphs (m)(1) and (m)(2) of this section, a manufacturer making use of paragraph (a)(5) of this section must submit the following information with their application for certification.

(i) A detailed description of how the OBD system meets the intent of § 86.010–18.

(ii) A detailed description of why the manufacturer has chosen not to design the OBD system to meet the requirements of § 86.010–18 and has instead designed the OBD system to meet the applicable California OBD requirements.

(iii) A detailed description of any deficiencies granted by the California staff and any concerns raised by California staff. A copy of a California Executive Order alone will not be considered acceptable toward meeting this requirement. This description shall also include, to the extent feasible, a plan with timelines for resolving deficiencies and/or concerns.

(n) *Deficiencies.*

(1) Upon application by the manufacturer, the Administrator may accept an OBD system as compliant even though specific requirements are not fully met. Such compliances without meeting specific requirements, or deficiencies, will be granted only if compliance is infeasible or unreasonable considering such factors as, but not limited to: Technical feasibility of the given monitor and lead time and production cycles including phase-in or phase-out of engines or vehicle designs and programmed upgrades of computers. Unmet requirements shall not be carried over from the previous model year except where unreasonable hardware or software modifications are necessary to correct the deficiency, and the manufacturer has demonstrated an acceptable level of effort toward compliance as determined by the Administrator. Furthermore, EPA will not accept any deficiency requests that include the complete lack of a major diagnostic monitor (''major'' diagnostic monitors being those for exhaust aftertreatment devices, oxygen sensor, air-fuel ratio sensor, NO_X sensor, engine misfire, evaporative leaks, and diesel EGR, if equipped), with the possible exception of the special provisions for alternative fueled engines. For alternative fueled heavy-duty engines (e.g., natural gas, liquefied petroleum gas, methanol, ethanol), manufacturers may request the Administrator to waive specific monitoring requirements of this section for which monitoring may not be reliable with respect to the use of the alternative fuel. At a minimum, alternative fuel engines must be equipped with an OBD system meeting OBD requirements to the extent feasible as approved by the Administrator.

(2) In the event the manufacturer seeks to carry-over a deficiency from a past model year to the current model year, the manufacturer must re-apply for approval to do so. In considering the request to carry-over a deficiency, the Administrator shall consider the manufacturer's progress towards correcting the deficiency. The Administrator may not allow manufacturers to carry over monitoring system deficiencies for more than two model years unless it can be demonstrated that substantial engine hardware modifications and additional lead time beyond two years are necessary to correct the deficiency.

(3) A deficiency shall not be granted retroactively (i.e., after the engine has been certified).

(o) *Implementation schedule.* Except as specifically provided for in this paragraph (o) for small volume manufacturers and alternative fueled engines, the requirements of this section must be met according to the following provisions:

(1) *For model years 2010 through 2012.*

(i) *Full OBD.* The manufacturer must implement an OBD system meeting the applicable requirements of § 86.010–18 on one engine rating within one engine family of the manufacturer's product line. This ''Full OBD'' rating will be known as the ''OBD parent'' rating. The OBD parent rating must be chosen, unless otherwise approved by the Administrator, as the rating having the highest weighted projected U.S. sales within the engine family having the highest weighted projected U.S. sales, with U.S. sales being weighted by the useful life of the engine rating.

(ii) *Extrapolated OBD.* For all other engine ratings within the engine family from which the OBD parent rating has been selected, the manufacturer must implement an OBD system meeting the applicable requirements of § 86.010–18 except that the OBD system is not required to detect a malfunction prior to exceeding the emission thresholds shown in Table 1 of paragraph (g) and Table 2 of paragraph (h) of this section. These ''Extrapolated OBD'' engines will be know as the ''OBD child'' ratings. On these OBD child ratings, rather than detecting a malfunction prior to exceeding the emission thresholds, the manufacturer must submit a plan for Administrator review and approval that details the engineering evaluation the manufacturer will use to establish the malfunction criteria for the OBD child ratings. The plan must demonstrate both the use of good engineering judgment in establishing the malfunction criteria, and robust detection of malfunctions, including consideration of differences of base engine, calibration, emission control components, and emission control strategies.

(iii) Engine families other than those from which the parent and child ratings have been selected, are not subject to the requirements of this section.

(iv) Small volume manufacturers, as defined in § 86.094–14(b)(1) and (2) and as determined using 2010 model year sales, are exempt from the requirements of this § 86.010–18, unless model year 2011 or model year 2012 sales exceed 20,000 units.

(v) Engines certified as alternative fueled engines are exempt from the requirements of this § 86.010–18.

(2) *For model years 2013 through 2015.*

(i) *OBD groups.* The manufacturer shall define one or more OBD groups to cover all engine ratings in all engine families. The manufacturer must submit a grouping plan for Administrator review and approval detailing the OBD groups and the engine families and engine ratings within each group for a given model year.

(ii) *Full OBD.*

(A) For all model year 2010 through 2012 ''Full OBD'' and ''Extrapolated OBD'' engine ratings, the manufacturer must implement an OBD system meeting the applicable requirements of this section.

(B) On one engine rating within each of the manufacturer's OBD groups, the manufacturer must implement an OBD system meeting the applicable requirements of this section. These ''Full OBD'' ratings will be known as the ''OBD parent'' ratings. The OBD parent rating for each OBD group shall be chosen, unless otherwise approved by the Administrator, as the rating having the highest weighted projected U.S. sales within the OBD group, with U.S. sales being weighted by the useful life of the engine rating.

(iii) *Extrapolated OBD.* For all other engine ratings within each OBD group, the manufacturer must implement an OBD system meeting the requirements of this section except that the OBD system is not required to detect a malfunction prior to exceeding the emission thresholds shown in Table 1 of paragraph (g) and Table 2 of paragraph (h) of this section. These extrapolated OBD engines will be know as the ''OBD child'' ratings. On these OBD child ratings, rather than detecting a malfunction prior to exceeding the emission thresholds, the manufacturer must submit a plan for Administrator review and approval that details the engineering evaluation the manufacturer will use to establish the malfunction criteria for the OBD child ratings. The plan must demonstrate both the use of good engineering judgment in establishing the malfunction criteria, and robust detection of malfunctions, including consideration of differences of base engine, calibration, emission control components, and emission control strategies.

(iv) Engines certified as alternative fueled engines shall meet, to the extent feasible, the requirements specified in paragraph (i)(3) of this § 86.010–18. Additionally, such engines shall monitor the NO_X aftertreatment system on engines so equipped and detect a malfunction if:

(A) The NO_X aftertreatment system has no detectable amount of NO_X aftertreatement capability (i.e., NO_X catalyst conversion or NO_X adsorption).

(B) The NO_X aftertreatment substrate is completely destroyed, removed, or missing.

(C) The NO_X aftertreatment assembly is replaced with a straight pipe.

(3) *For model years 2016 through 2018.*

(i) *OBD groups.* The manufacturer shall define one or more OBD groups to cover all engine ratings in all engine families. The manufacturer must submit a grouping plan for Administrator review and approval detailing the OBD groups and the engine families and engine ratings within each group for a given model year.

(ii) *Full OBD.* The manufacturer must implement an OBD system meeting the applicable requirements of this section on all engine ratings in all engine families.

(iii) Engines certified as alternative fueled engines shall meet, to the extent feasible, the requirements specified in paragraph (i)(3) of this § 86.010–18. Additionally, such engines shall monitor the NO_X aftertreatment system on engines so equipped and detect a malfunction if:

(A) The NO_X aftertreatment system has no detectable amount of NO_X aftertreatement capability (i.e., NO_X catalyst conversion or NO_X adsorption).

(B) The NO_X aftertreatment substrate is completely destroyed, removed, or missing.

(C) The NO_X aftertreatment assembly is replaced with a straight pipe.

(4) *For model years 2019 and later.*

(i) The manufacturer must implement an OBD system meeting the applicable requirements of § 86.010–18 on all engines.

(p) *In-use compliance standards.* For monitors required to indicate a malfunction before emissions exceed a certain emission threshold (e.g., 2.5 times any of the applicable standards):

(1) *For model years 2010 through* 2012.

(i) On the full OBD rating (i.e., the parent rating) as defined in paragraph (o)(1) of this section, separate in-use emissions thresholds shall apply. These thresholds are determined by doubling the applicable thresholds as shown in Table 1 of paragraph (g) and Table 2 of paragraph (h) of this section. The resultant thresholds apply only in-use and do not apply for certification or selective enforcement auditing.

(ii) The extrapolated OBD ratings (i.e., the child ratings) as defined in paragraph (o)(1) of this section shall not be evaluated against emissions levels for purposes of OBD compliance in-use.

(iii) Only the test cycle and standard determined and identified by the manufacturer at the time of certification in accordance with paragraph (f) of this section as the most stringent shall be used for the purpose of determining OBD system noncompliance in-use.

(iv) An OBD system shall not be considered noncompliant solely due to a failure or deterioration mode of a monitored component or system that could not have been reasonably foreseen to occur by the manufacturer.

(2) *For model years 2013 through 2015.*

(i) On the full OBD ratings as defined in paragraph (o)(2) of this section, separate in-use emissions thresholds shall apply. These thresholds are determined by doubling the applicable thresholds as shown in Table 1 of paragraph (g) and Table 2 of paragraph (h) of this section. The resultant thresholds apply only in-use and do not apply for certification or selective enforcement auditing.

(ii) The extrapolated OBD ratings as defined in paragraph (o)(2) of this section shall not be evaluated against emissions levels for purposes of OBD compliance in-use.

(iii) Only the test cycle and standard determined and identified by the manufacturer at the time of certification in accordance with paragraph (f) of this section as the most stringent shall be used for the purpose of determining OBD system noncompliance in-use.

(iv) For monitors subject to meeting the minimum in-use monitor performance ratio of 0.100 in paragraph (d)(1)(ii), the OBD system shall not be considered noncompliant unless a representative sample indicates the in-use ratio is below 0.050.

(v) An OBD system shall not be considered noncompliant solely due to a failure or deterioration mode of a monitored component or system that could not have been reasonably foreseen to occur by the manufacturer.

(3) *For model years 2016 through 2018.*

(i) On the engine ratings tested according to (l)(2)(iii) of this section, the certification emissions thresholds shall apply in-use.

(ii) On the manufacturer's remaining engine ratings, separate in-use emissions thresholds shall apply. These thresholds are determined by doubling the applicable thresholds as shown in Table 1 of paragraph (g) and Table 2 of paragraph (h) of this section. The resultant thresholds apply only in-use

and do not apply for certification or selective enforcement auditing.

(iii) An OBD system shall not be considered noncompliant solely due to a failure or deterioration mode of a monitored component or system that could not have been reasonably foreseen to occur by the manufacturer.

(4) *For model years 2019 and later.*

(i) On all engine ratings, the certification emissions thresholds shall apply in-use.

(ii) An OBD system shall not be considered noncompliant solely due to a failure or deterioration mode of a monitored component or system that could not have been reasonably foreseen to occur by the manufacturer.

■ 7. Section 86.010–38 is added to subpart A to read as follows:

§ 86.010–38 Maintenance instructions.

(a) The manufacturer shall furnish or cause to be furnished to the purchaser of each new motor vehicle (or motor vehicle engine) subject to the standards prescribed in § 86.099–8, § 86.004–9, § 86.004–10, or § 86.004–11, as applicable, written instructions for the proper maintenance and use of the vehicle (or engine), by the purchaser consistent with the provisions of § 86.004–25, which establishes what scheduled maintenance the Administrator approves as being reasonable and necessary.

(1) The maintenance instructions required by this section shall be in clear, and to the extent practicable, nontechnical language.

(2) The maintenance instructions required by this section shall contain a general description of the documentation which the manufacturer will require from the ultimate purchaser or any subsequent purchaser as evidence of compliance with the instructions.

(b) Instructions provided to purchasers under paragraph (a) of this section shall specify the performance of all scheduled maintenance performed by the manufacturer on certification durability vehicles and, in cases where the manufacturer performs less maintenance on certification durability vehicles than the allowed limit, may specify the performance of any scheduled maintenance allowed under § 86.004–25.

(c) Scheduled emission-related maintenance in addition to that performed under § 86.004–25(b) may only be recommended to offset the effects of abnormal in-use operating conditions, except as provided in paragraph (d) of this section. The manufacturer shall be required to demonstrate, subject to the approval of the Administrator, that such maintenance is reasonable and technologically necessary to assure the proper functioning of the emission control system. Such additional recommended maintenance shall be clearly differentiated, in a form approved by the Administrator, from that approved under § 86.004–25(b).

(d) Inspections of emission-related parts or systems with instructions to replace, repair, clean, or adjust the parts or systems if necessary, are not considered to be items of scheduled maintenance which insure the proper functioning of the emission control system. Such inspections, and any recommended maintenance beyond that approved by the Administrator as reasonable and necessary under paragraphs (a), (b), and (c) of this section, may be included in the written instructions furnished to vehicle owners under paragraph (a) of this section: Provided, That such instructions clearly state, in a form approved by the Administrator, that the owner need not perform such inspections or recommended maintenance in order to maintain the emissions defect and emissions performance warranty or manufacturer recall liability.

(e) The manufacturer may choose to include in such instructions an explanation of any distinction between the useful life specified on the label, and the emissions defect and emissions performance warranty period. The explanation must clearly state that the useful life period specified on the label represents the average period of use up to retirement or rebuild for the engine family represented by the engine used in the vehicle. An explanation of how the actual useful lives of engines used in various applications are expected to differ from the average useful life may be included. The explanation(s) shall be in clear, non-technical language that is understandable to the ultimate purchaser.

(f) If approved by the Administrator, the instructions provided to purchasers under paragraph (a) of this section shall indicate what adjustments or modifications, if any, are necessary to allow the vehicle to meet applicable emission standards at elevations above 4,000 feet, or at elevations of 4,000 feet or less.

(g) Emission control diagnostic service information:

(1) Manufacturers are subject to the provisions of this paragraph (g) beginning in the 1996 model year for manufacturers of light-duty vehicles and light-duty trucks, and beginning in the 2005 model year for manufacturers of heavy-duty vehicles and heavy-duty engines weighing 14,000 pounds gross vehicle weight (GVW) and less that are subject to the OBD requirements of this part.

(2) *General requirements.*

(i) Manufacturers shall furnish or cause to be furnished to any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines, or the Administrator upon request, any and all information needed to make use of the on-board diagnostic system and such other information, including instructions for making emission-related diagnoses and repairs, including but not limited to service manuals, technical service bulletins, recall service information, bi-directional control information, and training information, unless such information is protected by section 208(c) of the Act as a trade secret. No such information may be withheld under section 208(c) of the Act if that information is provided (directly or indirectly) by the manufacturer to franchised dealers or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines.

(ii) *Definitions.* The following definitions apply for this paragraph (g):

(A) Aftermarket service provider means any individual or business engaged in the diagnosis, service, and repair of a motor vehicle or engine, who is not directly affiliated with a manufacturer or manufacturer-franchised dealership.

(B) Bi-directional control means the capability of a diagnostic tool to send messages on the data bus that temporarily overrides the module's control over a sensor or actuator and gives control to the diagnostic tool operator. Bi-directional controls do not create permanent changes to engine or component calibrations.

(C) Data stream information means information (i.e., messages and parameters) originated within the vehicle by a module or intelligent sensors (i.e., a sensor that contains and is controlled by its own module) and transmitted between a network of modules and/or intelligent sensors connected in parallel with either one or more communication wires. The information is broadcast over the communication wires for use by the OBD system to gather information on emissions-related components or systems and from other vehicle modules that may impact emissions, including but not limited to systems such as chassis or transmission. For the purposes of this section, data stream information does not include engine calibration-related information, or any

data stream information from systems or modules that do not impact emissions.

(D) Emissions-related information means any information related to the diagnosis, service, and repair of emissions-related components. Emissions-related information includes, but is not limited to, information regarding any system, component or part of a vehicle that controls emissions and any system, component and/or part associated with the powertrain system, including, but not limited to:

(*1*) The engine, the fuel system and ignition system,

(*2*) Information for any system, component or part that is likely to impact emissions, such as transmission systems, and any other information specified by the Administrator to be relevant to the diagnosis and repair of an emissions-related problem; and

(*3*) Any other information specified by the Administrator to be relevant for the diagnosis and repair of an emissions-related failure found through the inspection and maintenance program after such finding has been communicated to the affected manufacturer(s).

(E) Emissions-related training information means any information-related training or instruction for the purpose of the diagnosis, service, and repair of emissions-related components.

(F) Enhanced service and repair information means information which is specific for an original equipment manufacturer's brand of tools and equipment. This includes computer or anti-theft system initialization information necessary for the completion of any emissions-related repair on motor vehicles that employ integral vehicle security systems.

(G) Equipment and tool company means a registered automotive equipment or software company either public or private that is engaged in, or plans to engage in, the manufacture of automotive scan tool reprogramming equipment or software.

(H) Generic service and repair information means information which is not specific for an original equipment manufacturer's brand of tools and equipment.

(I) Indirect information means any information that is not specifically contained in the service literature, but is contained in items such as tools or equipment provided to franchised dealers (or others). This includes computer or anti-theft system initialization information necessary for the completion of any emissions-related repair on motor vehicles that employ integral vehicle security systems.

(J) Intermediary means any individual or entity, other than an original equipment manufacturer, which provides service or equipment to aftermarket service providers.

(K) Manufacturer-franchised dealership means any service provider with which a manufacturer has a direct business relationship.

(L) Third-party information provider means any individual or entity, other than an original equipment manufacturer, who consolidates manufacturer service information and makes this information available to aftermarket service providers.

(M) Third-party training provider means any individual or entity, other than an original equipment manufacturer who develops and/or delivers instructional and educational material for automotive training courses.

(3) *Information dissemination.* By December 24, 2003, each manufacturer was required to provide or cause to be provided to the persons specified in paragraph (g)(2)(i) of this section and to any other interested parties a manufacturer-specific World Wide Web site containing the information specified in paragraph (g)(2)(i) of this section for 1996 and later model year vehicles which have been offered for sale; this requirement does not apply to indirect information, including the information specified in paragraphs (g)(12) through (g)(16) of this section. Upon request and approval of the Administrator, manufacturers who can demonstrate significant hardship in complying with this provision by December 26, 2003, may request an additional six months lead time to meet this requirement. Each manufacturer Web site shall:

(i) Provide access in full-text to all of the information specified in paragraph (g)(5) of this section.

(ii) Be updated at the same time as manufacturer-franchised dealership World Wide Web sites;

(iii) Provide users with a description of the minimum computer hardware and software needed by the user to access that manufacturer's information (e.g., computer processor speed and operating system software). This description shall appear when users first log-on to the home page of the manufacturer Web site.

(iv) Provide Short-Term (24 to 72 hours), Mid-Term (30 day period), and Long-Term (365 day period) Web site subscription options to any person specified in paragraph (g)(2)(i) of this section whereby the user will be able to access the site, search for the information, and purchase, view and print the information at a fair and reasonable cost as specified in paragraph (g)(7) of this section for each of the subscription options. In addition, for each of the subscription options, manufacturers are required to make their entire site accessible for the respective period of time and price. In other words, a manufacturer may not limit any or all of the subscription options to just one make or one model.

(v) Allow the user to search the manufacturer Web site by various topics including but not limited to model, model year, key words or phrases, etc., while allowing ready identification of the latest vehicle calibration. Manufacturers who do not use model year to classify their vehicles in their service information may use an alternate vehicle delineation such as body series. Any manufacturer utilizing this flexibility shall create a cross-reference to the corresponding model year and provide this cross-reference on the manufacturer Web site home page.

(vi) Provide accessibility using common, readily available software and shall not require the use of software, hardware, viewers, or browsers that are not readily available to the general public. Manufacturers shall also provide hyperlinks to any plug-ins, viewers or browsers (e.g., Adobe Acrobat or Netscape) needed to access the manufacturer Web site.

(vii) Allow simple hyper-linking to the manufacturer Web site from government Web sites and automotive-related Web sites.

(viii) Allow access to the manufacturer Web site with no limits on the modem speed by which aftermarket service providers or other interested parties can connect to the manufacturer Web site.

(ix) Possess sufficient server capacity to allow ready access by all users and have sufficient capacity to assure that all users may obtain needed information without undue delay.

(x) Correct or delete broken Web links on a weekly basis.

(xi) Allow for Web site navigation that does not require a user to return to the manufacturer home page or a search engine in order to access a different portion of the site.

(xii) Allow users to print out any and all of the materials required to be made available on the manufacturer Web site including the ability to print it at the user's location.

(4) *Small volume provisions for information dissemination.*

(i) Manufacturers with annual sales of less than 5,000 vehicles had until June 28, 2004 to launch their individual Web sites as required by paragraph (g)(3) of this section.

(ii) Manufacturers with annual sales of less than 1,000 vehicles may, in lieu of meeting the requirement of paragraph (g)(3) of this section, request the Administrator to approve an alternative method by which the required emissions-related information can be obtained by the persons specified in paragraph (g)(2)(i) of this section.

(5) *Required information.* All information relevant to the diagnosis and completion of emissions-related repairs shall be posted on manufacturer Web sites. This excludes indirect information specified in paragraphs (g)(6) and (g)(12) through (g)(16) of this section. To the extent that this information does not already exist in some form for their manufacturer franchised dealerships, manufacturers are required to develop and make available the information required by this section to both their manufacturer franchised dealerships and the aftermarket. The required information includes, but is not limited to:

(i) Manuals, including subsystem and component manuals developed by a manufacturer's third party supplier that are made available to manufacturer franchised dealerships, technical service bulletins (TSBs), recall service information, diagrams, charts, and training materials. Manuals and other such service information from third party suppliers are not required to be made available in full-text on manufacturer Web sites as described in paragraph (g)(3) of this section. Rather, manufacturers must make available on the manufacturer Web site as required by paragraph (g)(3) of this section an index of the relevant information and instructions on how to order such third party information. In the alternative, a manufacturer can create a link from its Web site to the Web site(s) of the third party supplier.

(ii) OBD system information which includes, but is not limited to, the following:

(A) A general description of the operation of each monitor, including a description of the parameter that is being monitored;

(B) A listing of all typical OBD diagnostic trouble codes associated with each monitor;

(C) A description of the typical enabling conditions (either generic or monitor-specific) for each monitor (if equipped) to execute during vehicle operation, including, but not limited to, minimum and maximum intake air and engine coolant temperature, vehicle speed range, and time after engine startup. In addition, manufacturers shall list all monitor-specific OBD drive cycle information for all major OBD monitors as equipped including, but not limited to, catalyst, catalyst heater, oxygen sensor, oxygen sensor heater, evaporative system, exhaust gas re-circulation (EGR), secondary air, and air conditioning system. Additionally, for diesel vehicles under 14,000 pounds. GVWR which also perform misfire, fuel system and comprehensive component monitoring under specific driving conditions (i.e., non-continuous monitoring; as opposed to spark ignition engines that monitor these systems under all conditions or continuous monitoring), the manufacturer shall make available monitor-specific drive cycles. Any manufacturer who develops generic drive cycles, either in addition to, or instead of, monitor-specific drive cycles shall also make these available in full-text on manufacturer Web sites;

(D) A listing of each monitor sequence, execution frequency and typical duration;

(E) A listing of typical malfunction thresholds for each monitor;

(F) For OBD parameters for specific vehicles that deviate from the typical parameters, the OBD description shall indicate the deviation and provide a separate listing of the typical values for those vehicles;

(G) Identification and scaling information necessary to interpret and understand data available to a generic scan tool through ''mode 6,'' pursuant to SAE J1979 (as specified in paragraph (g)(17) of this section).

(H) Algorithms, look-up tables, or any values associated with look-up tables are not required to be made available.

(iii) Any information regarding any system, component, or part of a vehicle monitored by the OBD system that could in a failure mode cause the OBD system to illuminate the malfunction indicator light (MIL);

(iv) Any information on other systems that can effect the emission system within a multiplexed system (including how information is sent between emission-related system modules and other modules on a multiplexed bus);

(v) Manufacturer-specific emissions-related diagnostic trouble codes (DTCs) and any related service bulletins, trouble shooting guides, and/or repair procedures associated with these manufacturer-specific DTCs; and

(vi) Information regarding how to obtain the information needed to perform reinitialization of any vehicle computer or anti-theft system following an emissions-related repair.

(6) *Anti-theft system initialization information.* Computer or anti-theft system initialization information and/or related tools necessary for the proper installation of on-board computers or necessary for the completion of any emissions-related repair on motor vehicles that employ integral vehicle security systems or the repair or replacement of any other emission-related part shall be made available at a fair and reasonable cost to the persons specified in paragraph (g)(2)(i) of this section.

(i) Except as provided under paragraph (g)(6)(ii) of this section, manufacturers must make this information available to persons specified in paragraph (g)(2)(i) of this section, such that such persons will not need any special tools or manufacturer-specific scan tools to perform the initialization. Manufacturers may make such information available through, for example, generic aftermarket tools, a pass-through device, or inexpensive manufacturer-specific cables.

(ii) A manufacturer may request Administrator approval for an alternative means to re-initialize vehicles for some or all model year vehicles through the 2007 model year by September 26, 2003. The Administrator shall approve the request only after the following conditions have been met:

(A) The manufacturer must demonstrate that the availability of such information to aftermarket service providers would significantly increase the risk of vehicle theft.

(B) The manufacturer must make available a reasonable alternative means to install or repair computers, or to otherwise repair or replace an emission-related part.

(C) Any alternative means proposed by a manufacturer cannot require aftermarket technicians to use a manufacturer franchised dealership to obtain information or special tools to re-initialize the anti-theft system. All information must come directly from the manufacturer or a single manufacturer-specified designee.

(D) Any alternative means proposed by a manufacturer must be available to aftermarket technicians at a fair and reasonable price.

(E) Any alternative must be available to aftermarket technicians within twenty-four hours of the initial request.

(F) Any alternative must not require the purchase of a special tool or tools, including manufacturer-specific tools, to complete this repair. Alternatives may include lease of such tools, but only for appropriately minimal cost.

(G) In lieu of leasing their manufacturer-specific tool to meet this requirement, a manufacturer may also release the necessary information to equipment and tool manufacturers for incorporation into aftermarket scan tools. Any manufacturer choosing this

option must release the information to equipment and tool manufacturers within 60 days of Administrator approval. Manufacturers may also comply with this requirement using SAE J2534 (as specified in paragraph (g)(17) of this section) for some or all model years through model year 2007.

(7) *Cost of required information.*

(i) All information required to be made available by this section shall be made available at a fair and reasonable price. In determining whether a price is fair and reasonable, consideration may be given to relevant factors, including, but not limited to, the following:

(A) The net cost to the manufacturer-franchised dealerships for similar information obtained from manufacturers, less any discounts, rebates, or other incentive programs.

(B) The cost to the manufacturer for preparing and distributing the information, excluding any research and development costs incurred in designing and implementing, upgrading or altering the onboard computer and its software or any other vehicle part or component. Amortized capital costs for the preparation and distribution of the information may be included.

(C) The price charged by other manufacturers for similar information.

(D) The price charged by manufacturers for similar information prior to the launch of manufacturer Web sites.

(E) The ability of aftermarket technicians or shops to afford the information.

(F) The means by which the information is distributed;

(G) The extent to which the information is used, which includes the number of users, and frequency, duration, and volume of use.

(H) Inflation.

(ii) By August 25, 2003, each manufacturer was required to submit to the Administrator a request for approval of their pricing structure for their Web sites and amounts to be charged for the information required to be made available under paragraphs (g)(3) and (g)(5) of this section. Subsequent to the approval of the manufacturer Web site pricing structure, manufacturers shall notify the Administrator upon the increase in price of any one or all of the subscription options of 20 percent or more above the previously-approved price, taking inflation into account.

(A) The manufacturer shall submit a request to the Administrator that sets forth a detailed description of the pricing structure and amounts, and support for the position that the pricing structure and amounts are fair and reasonable by addressing, at a minimum, each of the factors specified in paragraph (g)(7)(i) of this section.

(B) The Administrator will act upon the request within 180 days following receipt of a complete request or following receipt of any additional information requested by the Administrator.

(C) The Administrator may decide not to approve, or to withdraw approval for a manufacturer's pricing structure and amounts based on a conclusion that this pricing structure and/or amounts are not, or are no longer, fair and reasonable, by sending written notice to the manufacturer explaining the basis for this decision.

(D) In the case of a decision by the Administrator not to approve or to withdraw approval, the manufacturer shall within three months following notice of this decision, obtain Administrator approval for a revised pricing structure and amounts by following the approval process described in this paragraph (g)(7)(ii).

(8) *Unavailable information.* Any information which is not provided at a fair and reasonable price shall be considered unavailable, in violation of these regulations and section 202(m)(5) of the Clean Air Act.

(9) *Third-party information providers.* By December 24, 2003, manufacturers shall, for model year 2004 and later vehicles and engines, make available to third-party information providers as defined in paragraph (g)(2)(ii) of this section with whom they engage in licensing or business arrangements;

(i) The required emissions-related information as specified in paragraph (g)(5) of this section either:

(A) Directly in electronic format such as diskette or CD–ROM using non-proprietary software, in English; or

(B) Indirectly via a Web site other than that required by paragraph (g)(3) of this section;

(ii) For any manufacturer who utilizes an automated process in their manufacturer-specific scan tool for diagnostic fault trees, the data schema, detail specifications, including category types/codes and vehicle codes, and data format/content structure of the diagnostic trouble trees.

(iii) Manufacturers can satisfy the requirement of paragraph (g)(9)(ii) of this section by making available diagnostic trouble trees on their manufacturer Web sites in full-text.

(iv) Manufacturers are not responsible for the accuracy of the information distributed by third parties. However, where manufacturers charge information intermediaries for information, whether through licensing agreements or other arrangements, manufacturers are responsible for inaccuracies contained in the information they provide to third-party information providers.

(10) *Required emissions-related training information.* By December 24, 2003, for emissions-related training information, manufacturers were required to:

(i) Video tape or otherwise duplicate and make available for sale on manufacturer Web sites within 30 days after transmission any emissions-related training courses provided to manufacturer franchised dealerships via the Internet or satellite transmission;

(ii) Provide on the manufacturer Web site an index of all emissions-related training information available for purchase by aftermarket service providers for 1994 and newer vehicles. For model years subsequent to 2003, the required information must be made available for purchase within 3 months of model introduction and then must be made available at the same time it is made available to manufacturer franchised dealerships, whichever is earlier. The index shall describe the title of the course or instructional session, the cost of the video tape or duplicate, and information on how to order the item(s) from the manufacturer Web site. All of the items available must be shipped within 24 hours of the order being placed and are to be made available at a fair and reasonable price as described in paragraph (g)(7) of this section. Manufacturers unable to meet the 24 hour shipping requirement under circumstances where orders exceed supply and additional time is needed by the distributor to reproduce the item being ordered, may exceed the 24 hour shipping requirement, but in no instance can take longer than 14 days to ship the item.

(iii) Provide access to third-party training providers as defined in paragraph (g)(2)(ii) of this section all emission-related training courses transmitted via satellite or Internet offered to their manufacturer franchised dealerships. Manufacturers may not charge unreasonable up-front fees to third-party training providers for this access, but may require a royalty, percentage, or other arranged fee based on per-use enrollment/subscription basis. Manufacturers may take reasonable steps to protect any copyrighted information and are not required to provide this information to parties that do not agree to such steps.

(11) *Timeliness and maintenance of information dissemination.*

(i) General Requirements. Subsequent to the initial launch of the manufacturer's Web site, manufacturers

must make the information required under paragraph (g)(5) of this section available on their Web site within six months of model introduction, or at the same time it is made available to manufacturer franchised dealerships, whichever is earlier. After this six-month period, the information must be available and updated on the manufacturer Web site at the same time that the updated information is made available to manufacturer franchised dealerships, except as otherwise specified in this section.

(ii) *Archived information.* Beginning with the 1996 model year, manufacturers must maintain the required information on their Web sites in full-text as defined in paragraph (g)(5) of this section for a minimum of 15 years after model introduction. Subsequent to this fifteen year period, manufacturers may archive the information in the manufacturer's format of choice and provide an index of the archived information on the manufacturer Web site and how it can be obtained by interested parties. Manufacturers shall index their available information with a title that adequately describes the contents of the document to which it refers. Manufacturers may allow for the ordering of information directly from their Web site, or from a Web site hyperlinked to the manufacturer Web site. In the alternative, manufacturers shall list a phone number and address where aftermarket service providers can call or write to obtain the desired information. Manufacturers must also provide the price of each item listed, as well as the price of items ordered on a subscription basis. To the extent that any additional information is added or changed for these model years, manufacturers shall update the index as appropriate. Manufacturers will be responsible for ensuring that all information, including information that is distributed through information distributors, is provided within one regular business day of receiving the order. Items that are less than 20 pages (e.g. technical service bulletins) shall be faxed, if requested, to the requestor and manufacturers are required to deliver the information overnight if requested and paid for by the ordering party. Archived information must be made available on demand and at a fair and reasonable price.

(12) *Reprogramming information.*

(i) For model years 1996 and later, manufacturers shall make available to the persons specified in paragraph (g)(2)(i) of this section all emissions-related recalibration or reprogramming events (including driveability reprogramming events that may affect emissions) in the format of its choice at the same time they are made available to manufacturer franchised dealerships. This requirement takes effect on September 25, 2003, and within 3 months of model introduction for all new model years.

(ii) For model years 1996 and later manufacturers shall provide persons specified in paragraph (g)(2)(i) of this section with an efficient and cost-effective method for identifying whether the calibrations on vehicles are the latest to be issued. This requirement takes effect on September 25, 2003, and within 3 months of model introduction for all new model years.

(iii) For all 2004 and later OBD vehicles equipped with reprogramming capability, manufacturers shall comply with SAE J2534 (as specified in paragraph (g)(17) of this section). Any manufacturer who cannot comply with SAE J2534 in model year 2004 may request one year additional lead time from the Administrator.

(iv) For model years 2004 and later, manufacturers shall make available to aftermarket service providers the necessary manufacturer-specific software applications and calibrations needed to initiate pass-through reprogramming. This software shall be able to run on a standard personal computer that utilizes standard operating systems as specified in SAE J2534 (as specified in paragraph (g)(17) of this section).

(v) For model years prior to 2004, manufacturers may use SAE J2534 (as specified in paragraph (g)(17) of this section) as described above, provided they make available to the aftermarket any additional required hardware (i.e. cables). Manufacturers may not require the purchase or use of a manufacturer-specific scan tool to receive or use this additional hardware. Manufacturers must also make available the necessary manufacturer-specific software applications and calibrations needed to initiate pass-through reprogramming. Manufacturers must also make available to equipment and tool companies any information needed to develop aftermarket equivalents of the manufacturer-specific hardware.

(vi) Manufacturers may take any reasonable business precautions necessary to protect proprietary business information and are not required to provide this information to any party that does not agree to these reasonable business precautions. The requirement to make hardware available and to release the information to equipment and tool companies takes effect on September 25, 2003, and within 3 months of model introduction for all new model years.

(vii) Manufacturers who cannot comply with paragraphs (g)(12)(v) and (g)(12)(vi) of this section shall make available to equipment and tool companies by September 25, 2003 the following information necessary for reprogramming the Electronic Control Unit (ECU):

(A) The physical hardware requirements for reprogramming events or tools (e.g. system voltage requirements, cable terminals/pins, connections such as RS232 or USB, wires, etc.).

(B) ECU data communication (e.g. serial data protocols, transmission speed or baud rate, bit timing requirements, etc.).

(C) Information on the application physical interface (API) or layers (descriptions for procedures such as connection, initialization, performing and verifying programming/download, and termination).

(D) Vehicle application information or any other related service information such as special pins and voltages for reprogramming events or additional vehicle connectors that require enablement and specifications for the enablement.

(E) Information that describes what interfaces or combinations of interfaces are used to deliver calibrations from database media (e.g. PC using CDROM to the reprogramming device e.g. scan tool or black box).

(viii) A manufacturer can propose an alternative to the requirements of paragraph (g)(12)(vii) of this section for how aftermarket service providers can reprogram an ECU. The Administrator will approve this alternative if the manufacturer demonstrates all of the following:

(A) That it cannot comply with paragraph (g)(12)(v) of this section for the vehicles subject to the alternative plan;

(B) That a very small percentage of its vehicles in model years prior to 2004 cannot be reprogrammed with the provisions described in paragraph (g)(12)(v) of this section, or that releasing the information to tool companies would likely not result in this information being incorporated into aftermarket tools; and

(C) That aftermarket service providers will be able to reprogram promptly at a reasonable cost.

(ix) In meeting the requirements of paragraphs (g)(12)(v) through (g)(12)(vii) of this section, manufacturers may take any reasonable business precautions necessary to protect proprietary business information and are not

required to provide this information to any party that does not agree to these reasonable business precautions.

(13) *Generic and enhanced information for scan tools.* By September 25, 2003, manufacturers shall make available to equipment and tool companies all generic and enhanced service information including bi-directional control and data stream information as defined in paragraph (g)(2)(ii) of this section. This requirement applies for 1996 and later model year vehicles.

(i) The information required by paragraph (g)(13) of this section shall be provided electronically using common document formats to equipment and tool companies with whom they have appropriate licensing, contractual, and/or confidentiality arrangements. To the extent that a central repository for this information (e.g. the TEK–NET library developed by the Equipment and Tool Institute) is used to warehouse this information, the Administrator shall have free unrestricted access. In addition, information required in paragraph (g)(13) of this section shall be made available to equipment and tool companies who are not otherwise members of any central repository and shall have access if the non-members have arranged for the appropriate licensing, contractual and/or confidentiality arrangements with the manufacturer and/or a central repository.

(ii) In addition to the generic and enhanced information defined in paragraph (g)(2)(ii) of this section, manufacturers shall also make available the following information necessary for developing generic diagnostic scan tools:

(A) The physical hardware requirements for data communication (e.g. system voltage requirements, cable terminals/pins, connections such as RS232 or USB, wires, etc.),

(B) ECU data communication (e.g. serial data protocols, transmission speed or baud rate, bit timing requirements, etc.),

(C) Information on the application physical interface (API) or layers. (i.e., processing algorithms or software design descriptions for procedures such as connection, initialization, and termination),

(D) Vehicle application information or any other related service information such as special pins and voltages or additional vehicle connectors that require enablement and specifications for the enablement.

(iii) Any manufacturer who utilizes an automated process in its manufacturer-specific scan tool for diagnostic fault trees shall make available to equipment and tool companies the data schema, detail specifications, including category types/codes and vehicle codes, and data format/content structure of the diagnostic trouble trees.

(iv) Manufacturers can satisfy the requirement of paragraph (g)(13)(iii) of this section by making available diagnostic trouble trees on their manufacturer Web sites in full-text.

(14) *Availability of manufacturer-specific scan tools.* Manufacturers shall make available for sale to the persons specified in paragraph (g)(2)(i) of this section their own manufacturer-specific diagnostic tools at a fair and reasonable cost. These tools shall also be made available in a timely fashion either through the manufacturer Web site or through a manufacturer-designated intermediary. Manufacturers who develop different versions of one or more of their diagnostic tools that are used in whole or in part for emission-related diagnosis and repair shall insure that all emission-related diagnosis and repair information is available for sale to the aftermarket at a fair and reasonable cost. Manufacturers shall provide technical support to aftermarket service providers for the tools described in this section, either themselves or through a third party of its choice. Factors for determining fair and reasonable cost include, but are not limited to:

(i) The net cost to the manufacturer's franchised dealerships for similar tools obtained from manufacturers, less any discounts, rebates, or other incentive programs;

(ii) The cost to the manufacturer for preparing and distributing the tools, excluding any research and development costs;

(iii) The price charged by other manufacturers of similar sizes for similar tools;

(iv) The capabilities and functionality of the manufacturer tool;

(v) The means by which the tools are distributed;

(vi) Inflation.

(vii) The ability of aftermarket technicians and shops to afford the tools.

(15) *Changing content of manufacturer-specific scan tools.* Manufacturers who opt to remove non-emissions related content from their manufacturer-specific scan tools and sell them to the persons specified in paragraph (g)(2)(i) of this section shall adjust the cost of the tool accordingly lower to reflect the decreased value of the scan tool. All emissions-related content that remains in the manufacturer-specific tool shall be identical to the information that is contained in the complete version of the manufacturer-specific tool. Any manufacturer who wishes to implement this option must request approval from the Administrator prior to the introduction of the tool into commerce.

(16) *Special tools.*

(i) Manufacturers who have developed special tools to extinguish the malfunction indicator light (MIL) for Model Years 1994 through 2003 shall make available the necessary information to equipment and tool companies to design a comparable generic tool. This information was required to be made available to equipment and tool companies no later than September 25, 2003.

(ii) Manufacturers are prohibited from requiring special tools to extinguish the malfunction indicator light (MIL) beginning with Model Year 2004.

(17) *Reference materials.* Manufacturers shall conform with the following Society of Automotive Engineers (SAE) standards. These documents are incorporated by reference, see § 86.1. Anyone may inspect copies at the U.S. EPA or at the National Archives and Records Administration (NARA). For information on the availability of this material at U.S. EPA, NARA, or the standard making body directly, refer to § 86.1.

(i) SAE J1930, Revised May 1998. For Web-based delivery of service information, manufacturers shall comply with this industry standard. This recommended practice standardizes various terms, abbreviations, and acronyms associated with on-board diagnostics. Manufacturers shall comply with SAE J1930 beginning with Model Year 2004.

(ii) SAE J1979, Revised September 1997. For identification and scaling information necessary to interpret and understand data available to a generic scan tool through ''mode 6,'' manufacturers shall comply with this industry standard. This recommended practice describes the implementation of the diagnostic test modes for emissions-related test data. Manufacturers shall comply with this industry standard beginning with Model Year 2004.

(iii) SAE J2284–3, May 2001. For allowing ECU and equipment and tool manufacturers to satisfy the needs of multiple end users with minimum modification to a basic ECU design, manufacturers shall comply with this industry standard which establishes standard ECU physical layer, data link layer, and media design criteria. Manufacturers may comply with SAE J2284–3 beginning with model year

2003 and shall comply with SAE J2284–3 beginning with model year 2008.

(iv) SAE J2534, February 2002. For pass-through reprogramming capabilities, manufacturers shall comply with this industry standard which provides technical specifications and information that manufacturers must supply to equipment and tool companies to develop aftermarket pass-through reprogramming tools. Manufacturers shall comply with SAE J2534 beginning with model year 2004.

(18) *Reporting requirements.* Manufacturers shall provide to the Administrator reports on an annual basis within 30 days of the end of the calendar year and upon request of the Administrator, that describe the performance of their individual Web sites. These annual reports shall be submitted to the Administrator electronically utilizing non-proprietary software in the format as agreed to by the Administrator and the manufacturers. Manufacturers may request Administrator approval to report on parameters other than those described below if the manufacturer can demonstrate that those alternate parameters will provide sufficient and similar information for the Administrator to effectively evaluate the manufacturer Web site. These annual reports shall include, at a minimum, monthly measurements of the following parameters:

(i) Total successful requests (measured in number of files including graphic interchange formats (GIFs) and joint photographic expert group (JPEG) images, i.e., electronic images such as wiring or other diagrams or pictures). This is defined as the total successful request counts of all the files which have been requested, including pages, graphics, etc.

(ii) Total failed requests (measured in number of files). This is defined as the total failed request counts of all the files which were requested but failed because they could not be found or were read-protected. This includes pages, graphics, etc.

(iii) Average data transferred per day (measured by bytes). This is defined as average amount of data transferred per day from one place to another.

(iv) Daily Summary (measured in number of files/pages by day of week). This is defined as the total number of requests each day of the week, over the time period given at the beginning of the report.

(v) Daily report (measured in number of files/pages by the day of the month). This is defined as how many requests there were in each day of a specific month.

(vi) Browser Summary (measured in number of files/pages by browser type, i.e., Netscape, Internet Explorer). This is defined as the versions of a browser by vendor.

(vii) Any other information deemed necessary by the Administrator to determine the adequacy of a manufacturer Web site.

(19) *Prohibited acts, liability and remedies.*

(i) It is a prohibited act for any person to fail to promptly provide or cause a failure to promptly provide information as required by this paragraph (g), or to otherwise fail to comply or cause a failure to comply with any provision of this paragraph (g).

(ii) Any person who fails or causes the failure to comply with any provision of this paragraph (g) is liable for a violation of that provision. A corporation is presumed liable for any violations of this subpart that are committed by any of its subsidiaries, affiliates or parents that are substantially owned by it or substantially under its control.

(iii) Any person who violates a provision of this paragraph (g) shall be subject to a civil penalty of not more than $32,500 per day for each violation. This maximum penalty is shown for calendar year 2004. Maximum penalty limits for later years may be set higher based on the Consumer Price Index, as specified in 40 CFR part 19. In addition, such person shall be liable for all other remedies set forth in Title II of the Clean Air Act, remedies pertaining to provisions of Title II of the Clean Air Act, or other applicable provisions of law.

(h) The manufacturer shall furnish or cause to be furnished to the purchaser of each new motor engine subject to the standards prescribed in § 86.004–10 or § 86.004–11, as applicable, the following:

(1) Instructions for all maintenance needed after the end of the useful life of the engine for critical emissions-related components as provided in § 86.004–25(b), including recommended practices for diagnosis, cleaning, adjustment, repair, and replacement of the component (or a statement that such component is maintenance free for the life of the engine) and instructions for accessing and responding to any emissions-related diagnostic codes that may be stored in on-board monitoring systems;

(2) A copy of the engine rebuild provisions contained in § 86.004–40.

(i) For each new diesel-fueled engine subject to the standards prescribed in § 86.007–11, as applicable, the manufacturer shall furnish or cause to be furnished to the ultimate purchaser a statement that ''This engine must be operated only with ultra low-sulfur diesel fuel (meeting EPA specifications for highway diesel fuel, including a 15 ppm sulfur cap).''

(j) Emission control diagnostic service information for heavy-duty engines used in vehicles over 14,000 pounds gross vehicle weight (GVW)

(1) Manufacturers of heavy-duty engines used in applications weighing more than 14,000 pounds gross vehicle weight (GVW) that are subject to the applicable OBD requirements of this subpart A are subject to the provisions of this paragraph (j) beginning in the 2010 model year. The provisions of this paragraph (j) apply only to those heavy-duty engines subject to the applicable OBD requirements.

(2) Upon Administrator approval, manufacturers of vehicles may alternatively comply with all service information and tool provisions found in § 86.1808–01 that are applicable to 2001 and subsequent model year vehicles weighing less than 14,000 pounds gross vehicle weight (GVW). Upon Administrator approval, manufacturers that produce engines for use in vehicles between 8,500 and 14,000 pounds may, for those engines, alternatively comply with all service information and tool provisions in § 86.010–38(j) that are applicable to 2010 and subsequent model year vehicles over 14,000 pounds. Implementation dates must comply with the service information provision dates applicable to engines in vehicles between 8,500 and 14,000 pounds.

(3) *General Requirements*

(i) Manufacturers shall furnish or cause to be furnished to any person engaged in the repairing or servicing of heavy-duty engines, or the Administrator upon request, any and all information needed to make use of the on-board diagnostic system and such other information, including instructions for making emission-related diagnosis and repairs, including but not limited to service manuals, technical service bulletins, recall service information, bi-directional control information, and training information, unless such information is protected by section 208(c) as a trade secret. Manufacturers may take steps to restrict warranty and customer assurance plan information used only for the purpose of providing such manufacturer covered repairs to only those repair locations authorized by the manufacturer. No such information may be withheld under section 208(c) of the Act if that information is provided (directly or indirectly) by the manufacturer to franchised dealers, authorized service

networks, or other persons engaged in the repair, diagnosing, or servicing of heavy-duty engines.

(ii) *Definitions.* The following definitions apply for this paragraph (j):

(A) *Aftermarket service provider* means any individual or business engaged in the diagnosis, service, and repair of a heavy-duty engine, who is not directly affiliated with a manufacturer or manufacturer franchised dealership, or authorized service network.

(B) *Authorized service network* means a group of independent service and repair facilities that are recognized by engine manufacturers as being capable of performing repairs to factory specification, including warranty repair work.

(C) *Bi-directional control* means the capability of a diagnostic tool to send messages on the data bus that temporarily overrides the module's control over a sensor or actuator and gives control to the diagnostic tool operator. Bi-directional controls do not create permanent changes to engine or component calibrations.

(D) *Data stream information* means information (i.e., messages and parameters) originated within the engine by a module or intelligent sensors (i.e., a sensor that contains and is controlled by its own module) and transmitted between a network of modules and/or intelligent sensors connected in parallel with either one or more communication wires. The information is broadcast over the communication wires for use by the OBD system to gather information on emissions-related components or systems and from other engine modules that may impact emissions. For the purposes of this section, data stream information does not include engine calibration related information, or any data stream information from systems or modules that do not impact emissions.

(E) *Emissions-related information* means any information related to the diagnosis, service, and repair of emissions-related components. Emissions-related information includes, but is not limited to, information regarding any system, component or part of an engine that controls emissions and that is part of the diagnostic strategy for an OBD monitor, but not limited to: The engine, the fuel system and ignition system; information for any system, component or part that is likely to impact emissions, and any other information specified by the Administrator to be relevant to the diagnosis and repair of an emissions-related problem; any other information specified by the Administrator to be relevant for the diagnosis and repair of an emissions-related failure found through an evaluation of vehicles in-use and after such finding has been communicated to the affected manufacturer(s).

(F) *Emissions-related training information* means any information related training or instruction for the purpose of the diagnosis, service, and repair of emissions-related components.

(G) *Enhanced service and repair information* means information which is specific for an original equipment manufacturer's brand of tools and equipment. This includes computer or anti-theft system initialization information necessary for the completion of any emissions-related repair on engines that employ integral security systems.

(H) *Equipment and Tool Company* means a registered equipment or software company either public or private that is engaged in, or plans to engage in, the manufacture of scan tool reprogramming equipment or software.

(I) *Generic service and repair information* means information which is not specific for an original equipment manufacturer's brand of tools and equipment.

(J) *Indirect information* means any information that is not specifically contained in the service literature, but is contained in items such as tools or equipment provided to franchised dealers or authorized service networks (or others). This includes computer or anti-theft system initialization information necessary for the completion of any emissions-related repair on engines that employ integral security systems.

(K) *Intermediary* means any individual or entity, other than an original equipment manufacturer, which provides service or equipment to aftermarket service providers.

(L) *Manufacturer franchised dealership* means any service provider with which a manufacturer has a direct business relationship.

(M) *Recalibration* means the process of downloading to an engine's on-board computer emissions-related revisions of on-board computer application software and calibration parameters with default configurations. Recalibration is not dependent on the use of the vehicle identification number (VIN) in determining vehicle configuration.

(N) *Reconfiguration* means the process of enabling or adjusting engine features or engine parameters associated with such features to adapt a heavy-duty engine to a particular vehicle and/or application.

(O) *Third party information provider* means any individual or entity, other than an original equipment manufacturer, who consolidates manufacturer service information and makes this information available to aftermarket service providers.

(P) *Third party training provider* means any individual or entity, other than an original equipment manufacturer who develops and/or delivers instructional and educational material for training courses.

(4) *Information dissemination.* By July 1, 2010 each manufacturer shall provide or cause to be provided to the persons specified in paragraph (j)(3)(i) of this section and to any other interested parties a manufacturer-specific World Wide Web site containing the information specified in paragraph (j)(3)(i) of this section for 2010 and later model year engines which have been certified to the OBD requirements specified in § 86.010–18 and are offered for sale; this requirement does not apply to indirect information, including the information specified in paragraphs (j)(13) through (j)(17) of this section. Upon request and approval of the Administrator, manufacturers who can demonstrate significant hardship in complying with this provision by August 27, 2009, may request an additional six months lead time to meet this requirement. Each manufacturer Web site shall:

(i) Provide access in full-text to all of the information specified in paragraph (j)(6) of this section.

(ii) Be updated at the same time as manufacturer franchised dealership or authorized service network World Wide Web sites.

(iii) Provide users with a description of the minimum computer hardware and software needed by the user to access that manufacturer's information (e.g., computer processor speed and operating system software). This description shall appear when users first log-on to the home page of the manufacturer's Web site.

(iv) Upon Administrator approval, implement a range of time periods for online access to any person specified in paragraph (j)(3)(i) of this section whereby the user will be able to access the site, search for the information, and purchase, view and print the information at a fair and reasonable cost as specified in paragraph (j)(8) of this section for each of the options. In addition, for each of the range of time periods, manufacturers are required to make their entire site accessible for the respective period of time and price. In other words, a manufacturer may not

limit Web site access to just one make or one model.

(v) Allow the user to search the manufacturer Web site by various topics including but not limited to model, model year, key words or phrases, etc., while allowing ready identification of the latest calibration. Manufacturers who do not use model year to classify their engines in their service information may use an alternate delineation such as body series. Any manufacturer utilizing this flexibility shall create a cross-reference to the corresponding model year and provide this cross-reference on the manufacturer Web site home page.

(vi) Provide accessibility using common, readily available software and shall not require the use of software, hardware, viewers, or browsers that are not readily available to the general public. Manufacturers shall also provide hyperlinks to any plug-ins, viewers or browsers (e.g. Adobe Acrobat or Netscape) needed to access the manufacturer Web site.

(vii) Allow simple hyper-linking to the manufacturer Web site from Government Web sites and automotive-related Web sites.

(viii) Possess sufficient server capacity to allow ready access by all users and has sufficient capacity to assure that all users may obtain needed information without undue delay.

(ix) Correct or delete any reported broken Web links on a weekly basis.

(x) Allow for Web site navigation that does not require a user to return to the manufacturer home page or a search engine in order to access a different portion of the site.

(xi) Allow users to print out any and all of the materials required to be made available on the manufacturers Web site that can be reasonably printed on a standard printer, including the ability to print it at the user's location.

(5) *Small volume provisions for information dissemination.*

(i) Manufacturers with total annual sales of less than 5,000 engines shall have until July 1, 2011 to launch their individual Web sites as required by paragraph (j)(4) of this section.

(ii) Manufacturers with total annual sales of less than 1,000 engines may, in lieu of meeting the requirement of paragraph (j)(4) of this section, request the Administrator to approve an alternative method by which the required emissions-related information can be obtained by the persons specified in paragraph (j)(3)(i) of this section.

(6) *Required information.* All information relevant to the diagnosis and completion of emissions-related repairs shall be posted on manufacturer Web sites. This excludes indirect information specified in paragraphs (j)(7) and (j)(13) through (j)(17) of this section. To the extent that this information does not already exist in some form for their manufacturer franchised dealerships or authorized service networks, manufacturers are required to develop and make available the information required by this section to both their manufacturer franchised dealerships or authorized service networks and the aftermarket. The required information includes, but is not limited to:

(i) Manuals, including subsystem and component manuals developed by a manufacturer's third party supplier that are made available to manufacturer franchised dealerships or authorized service networks, technical service bulletins (TSBs), recall service information, diagrams, charts, and training materials. Informal recall service information such as engineering notes and/or sketches are not required to be made available as long as this information is not made available to manufacturer franchised dealerships or authorized service networks in the form of manuals. Manuals and other such service information from third party suppliers are not required to be made available in full-text on manufacturer Web sites as described in paragraph (j)(4) of this section. Rather, manufacturers must make available on the manufacturer Web site as required by paragraph (j)(4) of this section an index of the relevant information and instructions on how to order such information. In the alternate, a manufacturer can create a link from its Web site to the Web site(s) of the third party supplier.

(ii) OBD system information which includes, but is not limited to, the following:

(A) A general description of the operation of each monitor, including a description of the parameter that is being monitored;

(B) A listing of all typical OBD diagnostic trouble codes associated with each monitor;

(C) A description of the typical enabling conditions (either generic or monitor-specific) for each monitor (if equipped) to execute during engine operation, including, but not limited to, minimum and maximum intake air and engine coolant temperature, speed range, and time after engine startup. In addition, manufacturers shall list all monitor-specific OBD drive cycle information for all major OBD monitors as equipped including, but not limited to, catalyst, catalyst heater, oxygen sensor, oxygen sensor heater, evaporative system, exhaust gas re-circulation (EGR), secondary air, and air conditioning system. Additionally, for diesel engines which also perform misfire, fuel system and comprehensive component monitoring under specific driving conditions (i.e., non-continuous monitoring; as opposed to spark ignition engines that monitor these systems under all conditions or continuous monitoring), the manufacturer shall make available monitor-specific drive cycles for these monitors. Any manufacturer who develops generic drive cycles, either in addition to, or instead of, monitor-specific drive cycles shall also make these available in full-text on manufacturer Web sites;

(D) A listing of each monitor sequence, execution frequency and typical duration;

(E) A listing of typical malfunction thresholds for each monitor;

(F) For OBD parameters for specific engines that deviate from the typical parameters, the OBD description shall indicate the deviation and provide a separate listing of the typical values for those engines;

(G) Identification and scaling information necessary to interpret and understand data available through Diagnostic Message 8 pursuant to SAE J1939–73 (as specified in paragraph (j)(17) of this section), or through Service/Mode $06 pursuant to SAE J1979 (as specified in paragraph (j)(17) of this section).

(H) Algorithms, look-up tables, or any values associated with look-up tables are not required to be made available.

(iii) Any information regarding any system, component, or part of a engine monitored by the OBD system that could in a failure mode cause the OBD system to illuminate the malfunction indicator light (MIL);

(iv) Manufacturer-specific emissions-related diagnostic trouble codes (DTCs) and any related service bulletins, troubleshooting guides, and/or repair procedures associated with these manufacturer-specific DTCs; and

(v) Information regarding how to obtain the information needed to perform reinitialization of any computer or anti-theft system following an emissions-related repair.

(7) *Anti-theft System Initialization Information.* Computer or anti-theft system initialization information and/or related tools necessary for the proper installation of on-board computers or necessary for the completion of any emissions-related repair on engines that employ integral security systems or the repair or replacement of any other emission-related part shall be made available at a fair and reasonable cost to

the persons specified in paragraph (j)(3)(i) of this section.

(i) Except as provided under paragraph (j)(7)(ii) of this section, manufacturers must make this information available to persons specified in paragraph (j)(3)(i) of this section, such that such persons will not need any special tools or manufacturer-specific scan tools to perform the initialization. Manufacturers may make such information available through, for example, generic aftermarket tools, a pass-through device, or inexpensive manufacturer specific cables.

(ii) A manufacturer may request Administrator approval for an alternative means to re-initialize engines for some or all model years through the 2013 model year by July 27, 2009. The Administrator shall approve the request only after the following conditions have been met:

(A) The manufacturer must demonstrate that the availability of such information to aftermarket service providers would significantly increase the risk of theft.

(B) The manufacturer must make available a reasonable alternative means to install or repair computers, or to otherwise repair or replace an emission-related part.

(C) Any alternative means proposed by a manufacturer cannot require aftermarket technicians to use a manufacturer franchised dealership or authorized service networks to obtain information or special tools to re-initialize the anti-theft system. All information must come directly from the manufacturer or a single manufacturer-specified designee.

(D) Any alternative means proposed by a manufacturer must be available to aftermarket technicians at a fair and reasonable price.

(E) Any alternative must be available to aftermarket technicians within twenty-four hours of the initial request.

(F) Any alternative must not require the purchase of a special tool or tools, including manufacturer-specific tools, to complete this repair. Alternatives may include lease of such tools, but only for appropriately minimal cost.

(G) In lieu of leasing their manufacturer-specific tool to meet this requirement, a manufacturer may also choose to release the necessary information to equipment and tool manufacturers for incorporation into aftermarket scan tools. Any manufacturer choosing this option must release the information to equipment and tool manufacturers within 60 days of Administrator approval.

(8) *Cost of required information.*

(i) All information required to be made available by this section, shall be made available at a fair and reasonable price. In determining whether a price is fair and reasonable, consideration may be given to relevant factors, including, but not limited to, the following:

(A) The net cost to the manufacturer franchised dealerships or authorized service networks for similar information obtained from manufacturers, less any discounts, rebates, or other incentive programs;

(B) The cost to the manufacturer for preparing and distributing the information, excluding any research and development costs incurred in designing and implementing, upgrading or altering the onboard computer and its software or any other engine part or component. Amortized capital costs for the preparation and distribution of the information may be included;

(C) The price charged by other manufacturers for similar information;

(D) The price charged by manufacturers for similar information prior to the launch of manufacturer Web sites;

(E) The ability of the average aftermarket technician or shop to afford the information;

(F) The means by which the information is distributed;

(G) The extent to which the information is used, which includes the number of users, and frequency, duration, and volume of use; and

(H) Inflation.

(ii) Manufacturers must submit to EPA a request for approval of their pricing structure for their Web sites and amounts to be charged for the information required to be made available under paragraphs (j)(4) and (j)(6) of this section at least 180 days in advance of the launch of the web site. Subsequent to the approval of the manufacturer Web site pricing structure, manufacturers shall notify EPA upon the increase in price of any one or all of the subscription options of 20 percent or more above the previously approved price, taking inflation into account.

(A) The manufacturer shall submit a request to EPA that sets forth a detailed description of the pricing structure and amounts, and support for the position that the pricing structure and amounts are fair and reasonable by addressing, at a minimum, each of the factors specified in paragraph (j)(8)(i) of this section.

(B) EPA will act upon on the request within180 days following receipt of a complete request or following receipt of any additional information requested by EPA.

(C) EPA may decide not to approve, or to withdraw approval for a manufacturer's pricing structure and amounts based on a conclusion that this pricing structure and/or amounts are not, or are no longer, fair and reasonable, by sending written notice to the manufacturer explaining the basis for this decision.

(D) In the case of a decision by EPA not to approve or to withdraw approval, the manufacturer shall within three months following notice of this decision, obtain EPA approval for a revised pricing structure and amounts by following the approval process described in this paragraph.

(9) *Unavailable information.* Any information which is not provided at a fair and reasonable price shall be considered unavailable, in violation of these regulations and section 202(m)(5) of the Clean Air Act.

(10) *Third party information providers.* (i) By January 1, 2011 manufacturers shall, for model year 2010 and later engines, make available to third-party information providers as defined in paragraph (j)(3)(ii) of this section with whom they may wish to engage in licensing or business arrangements, the required emissions-related information as specified in paragraph (j)(6) of this section either:

(A) Directly in electronic format such as diskette or CD-ROM using non-proprietary software, in English; or

(B) Indirectly via a Web site other than that required by paragraph (j)(4) of this section

(ii) Manufacturers are not responsible for the accuracy of the information distributed by third parties. However, where manufacturers charge information intermediaries for information, whether through licensing agreements or other arrangements, manufacturers are responsible for inaccuracies contained in the information they provide to third party information providers.

(11) *Required emissions-related training information.* By January 1, 2011, for emissions-related training information, manufacturers shall:

(i) Video tape or otherwise duplicate and make available for sale on manufacturer Web sites within 30 days after transmission any emissions-related training courses provided to manufacturer franchised dealerships or authorized service networks via the Internet or satellite transmission. Manufacturers shall not be required to duplicate transmitted emissions-related training courses if anyone engaged in the repairing or servicing of heavy-duty engines has the opportunity to receive the Internet or satellite transmission, even if there is a cost associated with

the equipment required to receive the transmission;

(ii) Provide on the manufacturer Web site an index of all emissions-related training information available for purchase by aftermarket service providers for 2010 and newer engines. The required information must be made available for purchase within 3 months of model introduction and then must be made available at the same time it is made available to manufacturer franchised dealerships or authorized service networks, whichever is earlier. The index shall describe the title of the course or instructional session, the cost of the video tape or duplicate, and information on how to order the item(s) from the manufacturer Web site. All of the items available must be shipped within 3 business day of the order being placed and are to made available at a fair and reasonable price as described in paragraph (j)(8) of this section. Manufacturers unable to meet the 3 business day shipping requirement under circumstances where orders exceed supply and additional time is needed by the distributor to reproduce the item being ordered, may exceed the 3 business day shipping requirement, but in no instance can take longer than 14 days to ship the item.

(12) *Timeliness and maintenance of information dissemination.*

(i) Subsequent to the initial launch of the manufacturer's Web site, manufacturers must make the information required under paragraph (j)(6) of this section available on their Web site within six months of model introduction, or at the same time it is made available to manufacturer franchised dealerships or authorized service networks, whichever is earlier. After this six month period, the information must be available and updated on the manufacturer Web site at the same time that the updated information is made available to manufacturer franchised dealerships or authorized service networks, except as otherwise specified in this section.

(ii) *Archived information.* Manufacturers must maintain the required information on their Web sites in full-text as defined in paragraph (j)(6) of this section for a minimum of 15 years after model introduction. Subsequent to this fifteen year period, manufacturers may archive the information in the manufacturer's format of choice and provide an index of the archived information on the manufacturer Web site and how it can be obtained by interested parties. Manufacturers shall index their available information with a title that adequately describes the contents of the document to which it refers. Manufacturers may allow for the ordering of information directly from their Web site, or from a Web site hyperlinked to the manufacturer Web site. In the alternate, manufacturers shall list a phone number and address where aftermarket service providers can call or write to obtain the desired information. Manufacturers must also provide the price of each item listed, as well as the price of items ordered on a subscription basis. To the extent that any additional information is added or changed for these model years, manufacturers shall update the index as appropriate. Manufacturers will be responsible for ensuring that their information distributors do so within one regular business day of receiving the order. Items that are less than 20 pages (e.g. technical service bulletins) shall be faxed to the requestor and distributors are required to deliver the information overnight if requested and paid for by the ordering party. Archived information must be made available on demand and at a fair and reasonable price.

(13) *Recalibration Information.*

(i) Manufacturers shall make available to the persons specified in paragraph (j)(3)(i) of this section all emissions-related recalibration or reprogramming events (including driveability reprogramming events that may affect emissions) in the format of their choice at the same time they are made available to manufacturer franchised dealerships or authorized service networks. This requirement applies on July 1, 2013.

(ii) Manufacturers shall provide persons specified in paragraph (j)(3)(i) of this section with an efficient and cost-effective method for identifying whether the calibrations on engines are the latest to be issued. This requirement applies on July 1, 2013.

(iii) For all 2013 and later OBD engines equipped with reprogramming capability, manufacturers shall comply with either SAE J2534–1 (as specified in paragraph (j)(17) of this section), or the Technology and Maintenance Council's (TMC) Recommended Practice TMC RP 1210B (as specified in paragraph (j)(17) of this section).

(iv) For model years 2013 and later, manufacturers shall make available to aftermarket service providers the necessary manufacturer-specific software applications and calibrations needed to initiate pass-through reprogramming. This software shall be able to run on a standard personal computer that utilizes standard operating systems as specified in either SAE J2534–1 (as specified in paragraph (j)(17) of this section) or TMC RP 1210B (as specified in paragraph (j)(17) of this section).

(v) Manufacturers may take any reasonable business precautions necessary to protect proprietary business information and are not required to provide this information to any party that does not agree to these reasonable business precautions. The requirements to make hardware available and to release the information to equipment and tool companies apply on July 1, 2013, and within 3 months of model introduction for all new model years.

(14) *Generic and enhanced information for scan tools.* By July 1, 2013, manufacturers shall make available to equipment and tool companies all generic and enhanced service information including bi-directional control and data stream information as defined in paragraph (j)(3(ii) of this section. This requirement applies for 2013 and later model year engines.

(i) The information required by this paragraph (j)(14) shall be provided electronically using common document formats to equipment and tool companies with whom they have appropriate licensing, contractual, and/or confidentiality arrangements. To the extent that a central repository for this information (e.g. the TEK–NET library developed by the Equipment and Tool Institute) is used to warehouse this information, the Administrator shall have free unrestricted access. In addition, information required by this paragraph (j)(14) shall be made available to equipment and tool companies who are not otherwise members of any central repository and shall have access if the non-members have arranged for the appropriate licensing, contractual and/or confidentiality arrangements with the manufacturer and/or a central repository.

(ii) In addition to the generic and enhanced information defined in paragraph (j)(3)(ii) of this section, manufacturers shall also make available the following information necessary for developing generic diagnostic scan tools:

(A) The physical hardware requirements for data communication (e.g., system voltage requirements, cable terminals/pins, connections such as RS232 or USB, wires, etc.),

(B) Electronic Control Unit (ECU) data communication (e.g., serial data protocols, transmission speed or baud rate, bit timing requirements, etc.),

(C) Information on the application physical interface (API) or layers. (i.e., processing algorithms or software design descriptions for procedures such

as connection, initialization, and termination),

(D) Engine application information or any other related service information such as special pins and voltages or additional connectors that require enablement and specifications for the enablement.

(iii) Any manufacturer who utilizes an automated process in their manufacturer-specific scan tool for diagnostic fault trees shall make available to equipment and tool companies the data schema, detail specifications, including category types/codes and codes, and data format/content structure of the diagnostic trouble trees.

(iv) Manufacturers can satisfy the requirement of paragraph (j)(14)(iii) of this section by making available diagnostic trouble trees on their manufacturer Web sites in full-text.

(v) Manufacturers shall make all required information available to the requesting equipment and tool company within 14 days after the request to purchase has been made unless the manufacturer requests Administrator approval to refuse to disclose such information to the requesting company or requests Administrator approval for additional time to comply. After receipt of a request and consultation with the affected parties, the Administrator shall either grant or refuse the petition based on the evidence submitted during the consultation process:

(A) If the evidence demonstrates that the engine manufacturer has a reasonably based belief that the requesting equipment and tool company could not produce safe and functionally accurate tools that would not cause damage to the engine, the petition for non-disclosure will be granted. Engine manufacturers are not required to provide data stream and bi-directional control information that would permit an equipment and tool company's products to modify an EPA-certified engine or transmission configuration.

(B) If the evidence does not demonstrate that the engine manufacturer has a reasonably-based belief that the requesting equipment and tool company could not produce safe and functionally accurate tools that would not cause damage to the engine, the petition for non-disclosure will be denied and the engine manufacturer, as applicable, shall make the requested information available to the requesting equipment and tool company within 2 days of the denial.

(vi) If the manufacturer submits a request for Administrator approval for additional time, and satisfactorily demonstrates to the Administrator that the engine manufacturer is able to comply but requires additional time within which to do so, the Administrator shall grant the request and provide additional time to fully and expeditiously comply.

(vii) Manufacturers may require that tools using information covered under paragraph (j)(14) of this section comply with the Component Identifier message specified in SAE J1939–71 (as specified in paragraph (j)(17) of this section) as Parameter Group Number (PGN) 65249 (including the message parameter's make, model, and serial number) and the SAE J1939–81 (as specified in paragraph (j)(17) of this section) Address Claim PGN.

(viii) Manufacturers are not required to make available to equipment and tool companies any information related to reconfiguration capabilities or any other information that would make permanent changes to existing engine configurations.

(15) *Availability of manufacturer-specific scan tools.* (i) Manufacturers shall make available for sale to the persons specified in paragraph (j)(3)(i) of this section their own manufacturer-specific diagnostic tools at a fair and reasonable cost. These tools shall also be made available in a timely fashion either through the manufacturer Web site or through a manufacturer-designated intermediary. Upon Administrator approval, manufacturers will not be required to make available manufacturer-specific tools with reconfiguration capabilities if they can demonstrate to the satisfaction of the Administrator that these tools are not essential to the completion of an emissions-related repair, such as recalibration. As a condition of purchase, manufacturers may request that the purchaser take all necessary training offered by the engine manufacturer. Any required training materials and classes must comply with the following:

(A) Similar training must be required by the engine manufacturer for the use of the same tool by its franchised dealerships or authorized service networks;

(B) The training must be substantially similar to such training in terms of material covered and the length of training;

(C) The training must be made available within six months after a tool request has been made;

(D) The training must be made available at a fair and reasonable price.

(ii) Manufacturers shall ship purchased tools in a timely manner after a request and training, if any, has been completed. Any required training materials and classes must be made available at a fair and reasonable price. Manufacturers who develop different versions of one or more of their diagnostic tools that are used in whole or in part for emission-related diagnosis and repair shall also insure that all emission-related diagnosis and repair information is available for sale to the aftermarket at a fair and reasonable cost. Factors for determining fair and reasonable cost include, but are not limited to:

(A) The net cost to the manufacturer's franchised dealerships or authorized service network for similar tools obtained from manufacturers, less any discounts, rebates, or other incentive programs;

(B) The cost to the manufacturer for preparing and distributing the tools, excluding any research and development costs;

(C) The price charged by other manufacturers of similar sizes for similar tools;

(D) The capabilities and functionality of the manufacturer tool;

(E) The means by which the tools are distributed;

(F) Inflation;

(G) The ability of aftermarket technicians and shops to afford the tools.

Manufacturers shall provide technical support to aftermarket service providers for the tools described in this section, either themselves or through a third-party of their choice.

(16) *Changing content of manufacturer-specific scan tools.* Manufacturers who opt to remove non-emissions related content from their manufacturer-specific scan tools and sell them to the persons specified in paragraph (j)(3)(i) of this section shall adjust the cost of the tool accordingly lower to reflect the decreased value of the scan tool. All emissions-related content that remains in the manufacturer-specific tool shall be identical to the information that is contained in the complete version of the manufacturer-specific tool. Any manufacturer who wishes to implement this option must request approval from the Administrator prior to the introduction of the tool into commerce.

(17) *Reference Materials.* Manufacturers shall conform with the following industry standards. These documents are incorporated by reference in § 86.1. Anyone may inspect copies at the U.S. EPA or at the National Archives and Records Administration (NARA). For information on the availability of this material at U.S. EPA, NARA, or the standard making bodies directly, refer to § 86.1.

(i) SAE J1939–71, Revised January 2008. For providing a means for the application processes to access the OSI environment, manufacturers shall comply with this industry standard.

(ii) SAE J1939–73, Revised September 2006. For identification and scaling information necessary to interpret and understand data available through Diagnostic Message 8, manufacturers shall comply with this industry standard. In the alternate, manufacturers may comply with Service/Mode $06 pursuant to SAE J1979, Revised May 2007. These recommended practices describe the implementation of diagnostic test modes for emissions related test data. Manufacturers shall comply with either SAE J1939–73 or SAE J1979 beginning with Model Year 2013.

(iii) SAE J1939–81, Revised May 2003. For management of source addresses and the association of those address with an actual function and with the detection and reporting of network realized errors, manufacturers shall comply with this industry standard.

(iv) SAE J2403, Revised August 2007. For Web-based delivery of service information, manufacturers shall comply with this industry standard which standardizes various terms, abbreviations, and acronyms associated with on-board diagnostics. Manufacturers shall comply with SAE J2403 beginning with the Model Year 2013.

(v) TMC RP 1210B, Revised June 2007. For pass-thru reprogramming capabilities, manufacturers shall comply with Technology and Maintenance Council's (TMC) Recommended Practice TMC RP 1210B. In the alternate, manufacturers may comply with SAE J2534–1, Revised December 2004. These recommended practices provide technical specifications and information that manufacturers must supply to equipment and tool companies to develop aftermarket pass-thru reprogramming tools. Manufacturers shall comply with either TMC RP 1210B or SAE J2534–1 beginning with Model Year 2013.

(18) *Reporting Requirements.* Performance reports that adequately demonstrate that each manufacturers website meets the information requirements outlined in paragraphs (j)(6)(i) through (j)(6)(vi) of this section shall be submitted to the Administrator annually or upon request by the Administrator. These reports shall indicate the performance and effectiveness of the websites by using commonly used Internet statistics (e.g., successful requests, frequency of use, number of subscriptions purchased, etc.). Manufacturers shall provide to the Administrator reports on an annual basis within 30 days of the end of the calendar year. These annual reports shall be submitted to the Administrator electronically utilizing non-proprietary software in the format as agreed to by the Administrator and the manufacturers.

(19) *Prohibited Acts, Liability and Remedies.*

(i) It is a prohibited act for any person to fail to promptly provide or cause a failure to promptly provide information as required by this paragraph (j), or to otherwise fail to comply or cause a failure to comply with any provision of this subsection.

(ii) Any person who fails or causes the failure to comply with any provision of this paragraph (j) is liable for a violation of that provision. A corporation is presumed liable for any violations of this subpart that are committed by any of its subsidiaries, affiliates or parents that are substantially owned by it or substantially under its control.

(iii) Any person who violates a provision of this paragraph (j) shall be subject to a civil penalty of not more than $ 31,500 per day for each violation. This maximum penalty is shown for calendar year 2002. Maximum penalty limits for later years may be set higher based on the Consumer Price Index, as specified in 40 CFR part 19. In addition, such person shall be liable for all other remedies set forth in Title II of the Clean Air Act, remedies pertaining to provisions of Title II of the Clean Air Act, or other applicable provisions of law.

(iv) Manufacturers will not have any emissions warranty, in-use compliance, defect reporting or recall liability for service on a heavy-duty engine that is not undertaken by the manufacturer, for any damage caused by their own tools in the hands of independent service providers, or for the use and misuse of third party tools.

■ 8. Section 86.1806–05 is amended by revising the section heading, paragraphs (a)(3), (h) introductory text, (h)(1)(v), (h)(1)(vii), (i), and (j) and adding new paragraphs (h)(2)(iv), (n) and (o) to read as follows:

§ 86.1806–05 On-board diagnostics for vehicles less than or equal to 14,000 pounds GVWR.

(a) * * *

(3) An OBD system demonstrated to fully meet the requirements in, through model year 2006, § 86.004–17 and, for model years 2007 and later, § 86.007–17 may be used to meet the requirements of this section, provided that such an OBD system also incorporates appropriate transmission diagnostics as may be required under this section, and provided that the Administrator finds that a manufacturer's decision to use the flexibility in this paragraph (a)(3) is based on good engineering judgement.

* * * * *

(h) The following documents are incorporated by reference, see § 86.1. Anyone may inspect copies at the U.S. EPA or at the National Archives and Records Administration (NARA). For information on the availability of this material at U.S. EPA, NARA, or the standard making bodies directly, refer to § 86.1.

(1) * * *

(v) SAE J1930, Revised April 2002. All acronyms, definitions and abbreviations shall be formatted according to this industry standard. Alternatively, manufacturers may use SAE J2403, Revised August 2007.

* * * * *

(vii) As an alternative to the above standards, heavy-duty vehicles may conform to the specifications of these SAE standards: SAE J1939–11, Revised October 1999; SAE J1939–13, July 1999; SAE J1939–21, Revised April 2001; SAE J1939–31, Revised December 1997; SAE J1939–71, Revised August 2002; SAE J1939–73, Revised June 2001; SAE J1939–81, July 1997.

(2) * * *

(iv) ISO 15765–4:2005(E), January 15, 2005. Beginning with the 2008 model year and beyond, this industry standard shall be the only acceptable protocol used for standardized on-board to off-board communications for vehicles below 8500 pounds. For vehicles 8500 to 14000 pounds, either this ISO industry standard or the SAE standards listed in paragraph (h)(1)(vii) of this section shall be the only acceptable protocols used for standardized on-board to off-board communications.

(i) *Deficiencies and alternative fueled vehicles.* Upon application by the manufacturer, the Administrator may accept an OBD system as compliant even though specific requirements are not fully met. Such compliances without meeting specific requirements, or deficiencies, will be granted only if compliance would be infeasible or unreasonable considering such factors as, but not limited to: Technical feasibility of the given monitor and lead time and production cycles including phase-in or phase-out of vehicle designs and programmed upgrades of computers. Unmet requirements should not be carried over from the previous model year except where unreasonable hardware or software modifications would be necessary to correct the

deficiency, and the manufacturer has demonstrated an acceptable level of effort toward compliance as determined by the Administrator. Furthermore, EPA will not accept any deficiency requests that include the complete lack of a major diagnostic monitor (''major'' diagnostic monitors being those for exhaust aftertreatment devices, oxygen sensor, air-fuel ratio sensor, NO_X sensor, engine misfire, evaporative leaks, and diesel EGR, if equipped), with the possible exception of the special provisions for alternative fueled engines. For alternative fueled vehicles (e.g., natural gas, liquefied petroleum gas, methanol, ethanol), manufacturers may request the Administrator to waive specific monitoring requirements of this section for which monitoring may not be reliable with respect to the use of the alternative fuel. At a minimum, alternative fuel engines must be equipped with an OBD system meeting OBD requirements to the extent feasible as approved by the Administrator.

(j) *California OBDII compliance option.* Through the 2006 model year, for light-duty vehicles, light-duty trucks, and heavy-duty vehicles weighing 14,000 pounds GVWR or less, demonstration of compliance with California OBDII requirements (Title 13 California Code of Regulations § 1968.2 (13 CCR 1968.2)), as modified, approved and filed on April 21, 2003 (incorporated by reference, see § 86.1), shall satisfy the requirements of this section, except that compliance with 13 CCR 1968.2(e)(4.2.2)(C), pertaining to 0.02 inch evaporative leak detection, and 13 CCR 1968.2(d)(1.4), pertaining to tampering protection, are not required to satisfy the requirements of this section. Also, the deficiency provisions of 13 CCR 1968.2(i) do not apply. In addition, demonstration of compliance with 13 CCR 1968.2(e)(16.2.1)(C), to the extent it applies to the verification of proper alignment between the camshaft and crankshaft, applies only to vehicles equipped with variable valve timing. Beginning with the 2007 model year, for light-duty vehicles, light-duty trucks, and heavy-duty vehicles weighing 14,000 pounds GVWR or less, demonstration of compliance with California OBD II requirements (Title 13 California Code of Regulations § 1968.2 (13 CCR 1968.2)), approved on November 9, 2007 (incorporated by reference, see § 86.1), shall satisfy the requirements of this section, except that compliance with 13 CCR 1968.2(e)(4.2.2)(C), pertaining to 0.02 inch evaporative leak detection, and 13 CCR 1968.2(d)(1.4), pertaining to tampering protection, are not required to satisfy the requirements of this section. Also, the deficiency provisions of 13 CCR 1968.2(k) do not apply. In addition, demonstration of compliance with 13 CCR 1968.2(e)(15.2.1)(C), to the extent it applies to the verification of proper alignment between the camshaft and crankshaft, applies only to vehicles equipped with variable valve timing. For all model years, the deficiency provisions of paragraph (i) of this section and the evaporative leak detection requirement of paragraph (b)(4) of this section, if applicable, apply to manufacturers selecting this paragraph for demonstrating compliance.

* * * * *

(n) For 2007 and later model year diesel complete heavy-duty vehicles, in lieu of the malfunction descriptions of paragraph (b) of this section, the malfunction descriptions of this paragraph (n) shall apply. The OBD system must detect and identify malfunctions in all monitored emission-related powertrain systems or components according to the following malfunction definitions as measured and calculated in accordance with test procedures set forth in subpart B of this part (chassis-based test procedures), excluding those test procedures defined as ''Supplemental'' test procedures in § 86.004–2 and codified in §§ 86.158, 86.159, and 86.160.

(1) *Catalysts and diesel particulate filters (DPF).*

(i) If equipped, reduction catalyst deterioration or malfunction before it results in exhaust emissions exceeding, for model years 2007 through 2009, 4 times the applicable NO_X standard and, for model years 2010 through 2012, the applicable NO_X standard+0.6 g/mi and, for model years 2013 and later, the applicable NO_X standard+0.3 g/mi. Further, if equipped, oxidation catalyst (not to include the DPF), deterioration or malfunction before it results in exhaust NMHC emissions exceeding, for 2010 through 2012 model years, 2.5 times the applicable NMHC standard and, for 2013 and later model years, 2 times the applicable NMHC standard. Monitoring of oxidation catalysts is not required through the 2009 model year. These catalyst monitoring need not be done if the manufacturer can demonstrate that deterioration or malfunction of the system will not result in exceedance of the threshold. As an alternative to the oxidation catalyst monitoring requirement, the monitor can be designed to detect oxidation catalyst deterioration or malfunction before it results in an inability to achieve a temperature rise of 100 degrees C, or to reach the necessary DPF regeneration temperature, within 60 seconds of initiating an active DPF regeneration. Further, oxidation catalyst deterioration or malfunction when the DOC is unable to sustain the necessary regeneration temperature for the duration of the regeneration event. The OBD or control system must abort the regeneration if the regeneration temperature has not been reached within five minutes of initiating an active regeneration event, and if the regeneration temperature cannot be sustained for the duration of the regeneration event.

(ii) If equipped with a DPF, for all model years, catastrophic failure of the device must be detected. Any DPF whose complete failure results in exhaust emissions exceeding 1.5 times the applicable PM standard or family emissions limit (FEL) must be monitored for such catastrophic failure. This monitoring need not be done if the manufacturer can demonstrate that a catastrophic failure of the system will not result in exceedance of the threshold. Further, if equipped with a DPF, the OBD system shall detect DPF deterioration or malfunction before it results in exhaust emissions exceeding, for 2010 through 2012 model years, 4 times the applicable PM standard and, for 2013 and later model years, the applicable PM standard +0.04 g/mi.

(2) *Engine misfire.* Lack of cylinder combustion must be detected.

(3) *Exhaust gas sensors.*

(i) *Oxygen sensors and air-fuel ratio sensors downstream of aftertreatment devices.* If equipped, sensor deterioration or malfunction resulting in exhaust emissions exceeding any of the following levels: for 2007 through 2009 model years, 4 times the applicable PM standard, or 3 times the applicable NO_X standard, or 2.5 times the applicable NMHC standard and, for 2010 through 2012 model years, 4 times the applicable PM standard, or the applicable NO_X standard+0.3 g/mi, or 2.5 times the applicable NMHC standard and, for 2013 and later model years, the applicable PM standard+0.04 g/mi, or the applicable NO_X standard+0.3 g/mi, or 2 times the applicable NMHC standard.

(ii) *Oxygen sensors and air-fuel ratio sensors upstream of aftertreatment devices.* If equipped, sensor deterioration or malfunction resulting in exhaust emissions exceeding any of the following levels: for 2007 through 2009 model years, 4 times the applicable PM standard, or 3 times the applicable NO_X standard, or 2.5 times the applicable NMHC standard, or 2.5 times the applicable CO standard and, for 2010

through 2012 model years, the applicable PM standard+0.02 g/mi, or the applicable NO_X standard+0.3 g/mi, or 2.5 times the applicable NMHC standard, or 2.5 times the applicable CO standard and, for 2013 and later model years, the applicable PM standard+0.02 g/mi, or the applicable NO_X standard+0.3 g/mi, or 2 times the applicable NMHC standard, or 2 times the applicable CO standard.

(iii) *NO_X sensors.* If equipped, sensor deterioration or malfunction resulting in exhaust emissions exceeding any of the following levels: for 2007 through 2009 model years, 5 times the applicable PM standard, or 4 times the applicable NO_X standard and, for 2010 through 2012 model years, 4 times the applicable PM standard, or the applicable NO_X standard+0.6 g/mi and, for 2013 and later model years, the applicable PM standard+0.04 g/mi, or the applicable NO_X standard+0.3 g/mi.

(4) [Reserved.]

(5) *Other emission control systems and components.* Any deterioration or malfunction occurring in an engine system or component directly intended to control emissions, including but not necessarily limited to, the exhaust gas recirculation (EGR) system, if equipped, and the fuel control system, singularly resulting in exhaust emissions exceeding any of the following levels: For 2007 through 2009 model years, 4 times the applicable PM standard, or 3 times the applicable NO_X standard, or 2.5 times the applicable NMHC standard, or 2.5 times the applicable CO standard and, for 2010 through 2012 model years, 4 times the applicable PM standard, or the applicable NO_X standard+0.3 g/mi, or 2.5 times the applicable NMHC standard, or 2.5 times the applicable CO standard and, for 2013 and later model years, the applicable PM standard+0.02 g/mi, or the applicable NO_X standard+0.3 g/mi, or 2 times the applicable NMHC standard, or 2 times the applicable CO standard. A functional check, as described in paragraph (n)(6) of this section, may satisfy the requirements of this paragraph (n)(5) provided the manufacturer can demonstrate that a malfunction would not cause emissions to exceed the applicable levels. This demonstration is subject to Administrator approval. For engines equipped with crankcase ventilation (CV), monitoring of the CV system is not necessary provided the manufacturer can demonstrate to the Administrator's satisfaction that the CV system is unlikely to fail.

(6) *Other emission-related powertrain components.* Any other deterioration or malfunction occurring in an electronic emission-related powertrain system or component not otherwise described in paragraphs (n)(1) through (n)(5) of this section that either provides input to or receives commands from the on-board computer and has a measurable impact on emissions; monitoring of components required by this paragraph (n)(6) must be satisfied by employing electrical circuit continuity checks and rationality checks for computer input components (input values within manufacturer specified ranges based on other available operating parameters), and functionality checks for computer output components (proper functional response to computer commands) except that the Administrator may waive such a rationality or functionality check where the manufacturer has demonstrated infeasibility. Malfunctions are defined as a failure of the system or component to meet the electrical circuit continuity checks or the rationality or functionality checks.

(7) *Performance of OBD functions.* Any sensor or other component deterioration or malfunction which renders that sensor or component incapable of performing its function as part of the OBD system must be detected and identified on engines so equipped.

(o) For 2007 and later model year diesel complete heavy-duty vehicles, in lieu of the certification provisions of paragraph (k) of this section, the certification provisions of this paragraph (o) shall apply. For test groups required to have an OBD system, certification will not be granted if, for any test vehicle approved by the Administrator in consultation with the manufacturer, the malfunction indicator light does not illuminate under any of the following circumstances, unless the manufacturer can demonstrate that any identified OBD problems discovered during the Administrator's evaluation will be corrected on production vehicles.

(1)(i) If monitored for emissions performance—a reduction catalyst is replaced with a deteriorated or defective catalyst, or an electronic simulation of such, resulting in exhaust emissions exceeding, for 2007 through 2009 model years, 4 times the applicable NO_X standard and, for 2010 through 2012 model years, the applicable NO_X standard+0.6 g/mi and, for 2013 and later model years, the applicable NO_X standard+0.3 g/mi. Also if monitored for emissions performance-an oxidation catalyst (not to include the DPF) is replaced with a deteriorated or defective catalyst, or an electronic simulation of such, resulting in exhaust NMHC emissions exceeding, for 2010 through 2012 model years, 2.5 times the applicable NMHC standard and, for 2013 and later model years, 2 times the applicable NMHC standard. If monitored for exotherm performance for 2010 and later model years, an oxidation catalsyt is replaced with a deteriorated or defective catalyst, or an electronic simulation of such, resulting in an inability to achieve a 100 degree C temperature rise, or the necessary regeneration temperature, within 60 seconds of initiating a DPF regeneration.

(ii) If monitored for performance—a DPF is replaced with a DPF that has catastrophically failed, or an electronic simulation of such. Further, a DPF is replaced with a deteriorated or defective DPF, or an electronic simulation of such, resulting in exhaust PM emissions exceeding, for 2010 through 2012 model years, 4 times the applicable PM standard and, for 2013 and later model years, the applicable PM standard+0.04 g/mi.

(2) An engine misfire condition is induced and is not detected.

(3)(i) If so equipped, any oxygen sensor or air-fuel ratio sensor located downstream of aftertreatment devices is replaced with a deteriorated or defective sensor, or an electronic simulation of such, resulting in exhaust emissions exceeding any of the following levels: for 2007 through 2009 model years, 4 times the applicable PM standard, or 3 times the applicable NO_X standard, or 2.5 times the applicable NMHC standard and, for 2010 through 2012 model years, 4 times the applicable PM standard, or the applicable NO_X standard+0.3 g/mi, or 2.5 times the applicable NMHC standard and, for 2013 and later model years, the applicable PM standard+0.04 g/mi, or the applicable NO_X standard+0.3 g/mi, or 2 times the applicable NMHC standard.

(ii) If so equipped, any oxygen sensor or air-fuel ratio sensor located upstream of aftertreatment devices is replaced with a deteriorated or defective sensor, or an electronic simulation of such, resulting in exhaust emissions exceeding any of the following levels: for 2007 through 2009 model years, 4 times the applicable PM standard, or 3 times the applicable NO_X standard, or 2.5 times the applicable NMHC standard, or 2.5 times the applicable CO standard and, for 2010 through 2012 model years, the applicable PM standard+0.02 g/mi, or the applicable NO_X standard+0.3 g/mi, or 2.5 times the applicable NMHC standard, or 2.5 times the applicable CO standard and, for 2013 and later model years, the applicable PM standard+0.02 g/mi, or the applicable NO_X standard+0.3 g/mi, or 2 times the applicable NMHC

standard, or 2 times the applicable CO standard.

(iii) If so equipped, any NO_X sensor is replaced with a deteriorated or defective sensor, or an electronic simulation of such, resulting in exhaust emissions exceeding any of the following levels: for 2007 through 2009 model years, 5 times the applicable PM standard, or 4 times the applicable NO_X standard and, for 2010 through 2012 model years, 4 times the applicable PM standard, or the applicable NO_X standard+0.6 g/mi and, for 2013 and later model years, the applicable PM standard+0.04 g/mi, or the applicable NO_X standard+0.3 g/mi.

(4) [Reserved.]

(5) A malfunction condition is induced in any emission-related engine system or component, including but not necessarily limited to, the exhaust gas recirculation (EGR) system, if equipped, and the fuel control system, singularly resulting in exhaust emissions exceeding any of the following levels: for 2007 through 2009 model years, 4 times the applicable PM standard or 3 times the applicable NO_X standard, or 2.5 times the applicable NMHC standard, or 2.5 times the applicable CO standard and, for 2010 through 2012 model years, 4 times the applicable PM standard, or the applicable NO_X standard+0.3 g/mi, or 2.5 times the applicable NMHC standard, or 2.5 times the applicable CO standard and, for 2013 and later model years, the applicable PM standard+0.02 g/mi, or the applicable NO_X standard+0.3 g/mi, or 2 times the applicable NMHC standard, or 2 times the applicable CO standard.

(6) A malfunction condition is induced in an electronic emission-related powertrain system or component not otherwise described in this paragraph (o) that either provides input to or receives commands from the on-board computer resulting in a measurable impact on emissions.

■ 9. Section 86.1863–07 is amended by revising paragraphs (b) and (c) to read as follows.

§ 86.1863–07 Optional chassis certification for diesel vehicles.

* * * * *

(b) For OBD, diesel vehicles optionally certified under this section are subject to the OBD requirements of § 86.1806–05 and superseding sections.

(c) Diesel vehicles optionally certified under this section may be tested using the test fuels, sampling systems, or analytical systems specified for diesel engines in Subpart N of this part or in 40 CFR part 1065.

* * * * *

PART 89—CONTROL OF EMISSIONS FROM NEW AND IN-USE NONROAD COMPRESSION-IGNITION ENGINES

■ 10. The authority citation for part 89 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

■ 11. Section 89.1 is amended by revising paragraph (b)(5) to read as follows:

§ 89.1 Applicability.

* * * * *

(b) * * *

(5) *Hobby engines.* This part does not apply for engines installed in reduced-scale models of vehicles that are not capable of transporting a person.

* * * * *

PART 90—CONTROL OF EMISSIONS FROM NONROAD SPARK-IGNITION ENGINES AT OR BELOW 19 KILOWATTS

■ 12. The authority citation for part 90 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart G—[Amended]

■ 13. Section 90.611 is revised to read as follows:

§ 90.611 Importation for purposes other than resale.

The provisions of 40 CFR 1054.630 apply for importation of nonconforming engines for personal use.

PART 1027—FEES FOR ENGINE, VEHICLE, AND EQUIPMENT COMPLIANCE PROGRAMS

■ 14. The authority citation for part 1027 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

■ 15. Section 1027.105 is amended by revising the equation in paragraph (c)(1)(i) and the equation in paragraph (c)(1)(ii) to read as follows.

§ 1027.105 How much are the fees?

* * * * *

(c) * * *

(1) * * *

(i) * * *

$$\text{Certificate Fee}_{CY} = \left[\left(Op + L \cdot \frac{CPI_{CY-2}}{CPI_{2006}}\right)\right] \cdot \frac{1.169}{\left[\left(cert\#_{MY-2} + cert\#_{MY-3}\right) \cdot 0.5\right]}$$

* * * * *

(ii) * * *

$$\text{Certificate Fee}_{CY} = \left[\left((Op + L) \cdot \frac{CPI_{CY-2}}{CPI_{2002}}\right)\right] \cdot \frac{1.169}{\left[\left(cert\#_{MY-2} + cert\#_{MY-3}\right) \cdot 0.5\right]}$$

* * * * *

PART 1033—CONTROL OF EMISSIONS FROM LOCOMOTIVES

■ 16. The authority citation for part 1033 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart B—[Amended]

■ 17. Section 1033.150 is amended by revising Table 1 in paragraph (f) to read as follows.

§ 1033.150 Interim provisions.

* * * * *

(f) * * *

TABLE 1 TO § 1033.150—IN-USE ADJUSTMENTS FOR TIER 4 LOCOMOTIVES

Fraction of useful life already used	In-use adjustments (g/bhp-hr)	
	For model year 2017 and earlier Tier 4 NO_X standards	For model year 2017 and earlier Tier 4 PM standards
0 < MW-hrs ≤ 50% of UL	0.7	0.01
50 < MW-hrs ≤ 75% of UL	1.0	0.01
MW-hrs > 75% of UL	1.3	0.01

* * * * *

Subpart F—[Amended]

■ 18. Section 1033.515 is amended by revising paragraph (c)(5) to read as follows.

§ 1033.515 Discrete-mode steady-state emission tests of locomotives and locomotive engines.

* * * * *

(c) * * *

(5) Begin proportional sampling of PM emissions at the beginning of each sampling period and terminate sampling within ± 5 seconds of the specified time in each test mode. If the PM sample is not sufficiently large, take one of the following actions consistent with good engineering judgment:

(i) Extend the sampling period up to a maximum of 15 minutes.

(ii) Group the modes in the same manner as the phases of the ramped modal cycle and use three different dilution settings for the groups. Use one setting for both idle modes, one for dynamic brake through notch 5, and one for notches 6 through 8. For each group, ensure that the mode with the highest exhaust flow (typically normal idle, notch 5, and notch 8) meets the criteria for minimum dilution ratio in 40 CFR part 1065.

* * * * *

■ 19. Section 1033.520 is amended by removing Tables 1 and 2 in paragraph (e)(7), and adding a new paragraph (g) to read as follows:

§ 1033.520 Alternative ramped modal cycles.

* * * * *

(g) The following tables define applicable ramped modal cycles for line-haul and switch locomotives:

TABLE 1 TO § 1033.520—LINE-HAUL LOCOMOTIVE RAMPED MODAL CYCLE

RMC test phase	Weighting factor	RMC mode	Time in mode (seconds)	Notch setting
Pre-test idle	NA	NA	600 to 900	Lowest idle setting [1]
Phase 1 (Idle test)	0.380	A	600	Low Idle.[2]
		B	600	Normal Idle.
Phase Transition				
Phase 2	0.389	C	1000	Dynamic Brake.[3]
		1	520	Notch 1.
		2	520	Notch 2.
		3	416	Notch 3.
		4	352	Notch 4.
		5	304	Notch 5.
Phase Transition				
Phase 3	0.231	6	144	Notch 6.
		7	111	Notch 7.
		8	600	Notch 8.

[1] See paragraph (d) of this section for alternate pre-test provisions.
[2] Operate at normal idle for modes A and B if not equipped with multiple idle settings.
[3] Operate at normal idle if not equipped with a dynamic brake.

TABLE 2 TO § 1033.520—SWITCH LOCOMOTIVE RAMPED MODAL CYCLE

RMC test phase	Weighting factor	RMC mode	Time in mode (seconds)	Notch setting
Pre-test idle	NA	NA	600 to 900	Lowest idle setting [1]
Phase 1 (Idle test)	0.598	A	600	Low Idle.[2]
		B	600	Normal Idle.
Phase Transition				
Phase 2	0.377	1	868	Notch 1.
		2	861	Notch 2.
		3	406	Notch 3.
		4	252	Notch 4.
		5	252	Notch 5.
Phase Transition				
Phase 3	0.025	6	1080	Notch 6.
		7	144	Notch 7.
		8	576	Notch 8.

[1] See paragraph (d) of this section for alternate pre-test provisions.
[2] Operate at normal idle for modes A and B if not equipped with multiple idle settings.

Subpart G—[Amended]

■ 20. Section 1033.640 is amended by revising paragraph (a)(2) to read as follows.

§ 1033.640 Provisions for repowered and refurbished locomotives.

(a) * * *

(2) Refurbished locomotives are locomotives that contain more unused parts than previously used parts. As described in this section, a locomotive containing more unused parts than previously used parts may be deemed to be either remanufactured or freshly manufactured, depending on the total amount of unused parts on the locomotive. Note that § 1033.901 defines refurbishment of a pre-1973 locomotive to be an upgrade of the locomotive.

* * * * *

■ 21. Section 1033.645 is amended by revising paragraph (a) to read as follows.

§ 1033.645 Non-OEM component certification program.

* * * * *

(a) *Applicability.* This section applies only for components that are commonly replaced during remanufacturing. It does not apply for other types of components that are replaced during a locomotive's useful life, but not typically replaced during remanufacture. Certified components may be used for remanufacturing or other maintenance.

(1) The following components are eligible for approval under this section:

(i) Cylinder liners.

(ii) Pistons.

(iii) Piston rings.

(iv) Heads

(v) Fuel injectors.

(vi) Turbochargers

(vii) Aftercoolers and intercoolers.

(2) Catalysts and electronic controls are not eligible for approval under this section.

(3) We may determine that other types of components can be certified under this section, consistent with good engineering judgment.

* * * * *

PART 1042—CONTROL OF EMISSIONS FROM NEW AND IN-USE MARINE COMPRESSION-IGNITION ENGINES AND VESSELS

■ 22. The authority citation for part 1042 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart B—[Amended]

■ 23. Section 1042.101 is amended by revising Table 1 in paragraph (a)(3) to read as follows:

§ 1042.101 Exhaust emission standards.

(a) * * *

(3) * * *

TABLE 1 TO § 1042.101—TIER 3 STANDARDS FOR CATEGORY 1 ENGINES BELOW 3700 kW [A]

Power density and application	Displacement (L/cyl)	Maximum engine power	Model year	PM (g/kW-hr)	NO_X + HC (g/kW-hr) [b]
All	disp. < 0.9	kW < 19	2009+	0.40	7.5
		19 ≤ kW < 75	2009–2013	0.30	7.5
			2014+	0.30	4.7
Commercial engines with kW/L ≤ 35 [b].	disp. < 0.9	kW ≥ 75	2012+	0.14	5.4
	0.9 ≤ disp. < 1.2	all	2013+	0.12	5.4
	1.2 ≤ disp. < 2.5	kW < 600	2014–2017	0.11	5.6
			2018+	0.10	5.6
		kW ≥ 600	2014+	0.11	5.6
	2.5 ≤ disp. < 3.5	kW < 600	2013–2017	0.11	5.6
			2018+	0.10	5.6
		kW ≥ 600	2013+	0.11	5.6
	3.5 ≤ disp. < 7.0	kW < 600	2012–2017	0.11	5.8
			2018+	0.10	5.8
		kW ≥ 600	2012+	0.11	5.8

TABLE 1 TO § 1042.101—TIER 3 STANDARDS FOR CATEGORY 1 ENGINES BELOW 3700 kW [A]—Continued

Power density and application	Displacement (L/cyl)	Maximum engine power	Model year	PM (g/kW-hr)	NO_X + HC (g/kW-hr) [b]
Commercial engines with kW/L > 35 and all recreational engines [b].	disp. < 0.9	kW ≥ 75	2012+	0.15	5.8
	0.9 ≤ disp. < 1.2	all	2013+	0.14	5.8
	1.2 ≤ disp. < 2.5		2014+	0.12	5.8
	2.5 ≤ disp. < 3.5		2013+	0.12	5.8
	3.5 ≤ disp. < 7.0		2012+	0.11	5.8

[a] No Tier 3 standards apply for commercial Category 1 engines at or above 3700 kW. See § 1042.1(c) and paragraph (a)(6) of this section for the standards that apply for these engines.

[b] The applicable NO_X + HC standards specified for Tier 2 engines in Appendix I of this part continue to apply instead of the values noted in the table for commercial engines at or above 2000 kW. FELs for these engines may not be higher than the Tier 1 NO_X standard specified in Appendix I of this part.

* * * * *

Subpart G—[Amended]

■ 24. Section 1042.635 is amended by revising paragraphs (a) and (b) and removing and reserving paragraph (c) to read as follows:

§ 1042.635 National security exemption.

* * * * *

(a) An engine is exempt without a request if it will be used or owned by an agency of the federal government responsible for national defense, where the vessel in which it is installed has armor, permanently attached weaponry, specialized electronic warfare systems, unique stealth performance requirements, and/or unique combat maneuverability requirements. This applies to both remanufactured and freshly manufactured marine engines.

(b) Manufacturers may request a national security exemption for engines not meeting the conditions of paragraph (a) of this section, as long as the request is endorsed by an agency of the federal government responsible for national defense. Agencies of the federal government responsible for national defense may request exemptions for remanufactured engines. In your request, explain why you need the exemption.

(c) [Reserved].

* * * * *

Subpart I—[Amended]

■ 25. Section 1042.850 is amended by adding paragraph (d) to read as follows:

§ 1042.850 Exemptions and hardship relief.

* * * * *

(d) Other exemptions specified in subpart G of this part and 40 CFR part 1068, subparts C and D also apply to remanufactured engines. For example, the national security exemption applies to remanufactured engines as described in § 1042.635.

PART 1048—CONTROL OF EMISSIONS FROM NEW, LARGE NONROAD SPARK-IGNITION ENGINES

■ 26. The authority citation for part 1048 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

■ 27. Section 1048.15 is amended by revising paragraph (a) to read as follows:

§ 1048.15 Do any other regulation parts apply to me?

(a) Part 1060 of this chapter describes standards and procedures for controlling evaporative emissions from engines fueled by gasoline or other volatile liquid fuels and the associated fuel systems. These requirements apply to engine manufacturers as specified in this part 1048. Part 1060 applies optionally for equipment manufacturers and fuel-system component manufacturers for certifying their products.

* * * * *

Subpart I—[Amended]

■ 28. Section 1048.801 is amended by revising the definition for ''Constant-speed engine'' to read as follows:

§ 1048.801 What definitions apply to this part?

* * * * *

Constant-speed engine means an engine that is certified only for constant-speed operation. This may include engines that allow the operator to adjust the set point for fixing the appropriate governed speed. See subparts B and C of this part for specific provisions related to certifying engines only for constant-speed operation. Engines whose constant-speed governor function is removed or disabled are no longer constant-speed engines.

* * * * *

PART 1054—CONTROL OF EMISSIONS FROM NEW, SMALL NONROAD SPARK-IGNITION ENGINES AND EQUIPMENT

■ 29. The authority citation for part 1054 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart G—[Amended]

■ 30. Section 1054.690 is amended by revising paragraph (a) to read as follows:

§ 1054.690 What bond requirements apply for certified engines?

(a) Before introducing certified engines into U.S. commerce, you must post a bond to cover any potential compliance or enforcement actions under the Clean Air Act unless you demonstrate to us in your application for certification that you are able to meet any potential compliance- or enforcement-related obligations, as described in this section. See paragraph (j) of this section for the requirements related to importing engines that have been certified by someone else. Note that you might also post bond under this section to meet your obligations under § 1054.120.

* * * * *

PART 1060—CONTROL OF EVAPORATIVE EMISSIONS FROM NEW AND IN-USE NONROAD AND STATIONARY EQUIPMENT

■ 31. The authority citation for part 1060 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart B—[Amended]

■ 32. Section 1060.102 is amended by revising paragraph (d)(1) to read as follows:

§ 1060.102 What permeation emission control requirements apply for fuel lines?

* * * * *

(d) * * *

(1) EPA Low-Emission Fuel Lines must have permeation emissions at or below 10 g/m²/day when measured according to the test procedure described in § 1060.510. Fuel lines that comply with this emission standard are deemed to comply with all the emission standards specified in this section.

* * * * *

■ 33. Section 1060.103 is amended by revising paragraph (d) to read as follows:

§ 1060.103 What permeation emission control requirements apply for fuel tanks?

* * * * *

(d) For purposes of this part, fuel tanks do not include fuel lines that are subject to § 1060.102, petcocks designed for draining fuel, grommets used with fuel lines, or grommets used with other hose or tubing excluded from the definition of ''fuel line.'' Fuel tanks include other fittings (such as fuel caps, gaskets, and O-rings) that are directly mounted to the fuel tank.

* * * * *

■ 34. Section 1060.105 is amended by revising paragraph (c)(2) to read as follows:

§ 1060.105 What diurnal requirements apply for equipment?

* * * * *

(c) * * *

(2) They must remain sealed up to a positive pressure of 24.5 kPa (3.5 psig); however, they may contain air inlets that open when there is a vacuum pressure inside the tank. Such fuel tanks may not contain air outlets that vent to the atmosphere at pressures below 34.5 kPa (5.0 psig).

* * * * *

Subpart F—[Amended]

■ 35. Section 1060.501 is amended by revising paragraph (e) to read as follows:

§ 1060.501 General testing provisions.

* * * * *

(e) Accuracy and precision of mass balances must be sufficient to ensure accuracy and precision of two percent or better for emission measurements for products at the maximum level allowed by the standard. The readability of the display may not be coarser than half of the required accuracy and precision. Examples are shown in the following table for a digital readout:

	Example #1	Example #2	Example #3
Applicable standard	1.5 g/m²/day	1.5 g/m²/day	15 g/m²/day.
Internal surface area	1.15 m²	0.47 m²	0.015 m².
Length of test	14.0 days	14.0 days	14.1 days.
Maximum allowable mass change	24.15 g	9.87 g	3.173 g.
Required accuracy and precision	±0.483 g or better	±0.197 g or better	±0.0635 g or better.
Required readability	0.1 g or better	0.1 g or better	0.01 g or better.

■ 36. Section 1060.510 is revised to read as follows:

§ 1060.510 How do I test EPA Low-Emission Fuel Lines for permeation emissions?

For EPA Low-Emission Fuel Lines, measure emissions according to SAE J2260, which is incorporated by reference in § 1060.810.

■ 37. Section 1060.515 is amended by revising paragraphs (a)(1) and (c) to read as follows:

§ 1060.515 How do I test EPA Nonroad Fuel Lines and EPA Cold-Weather Fuel Lines for permeation emissions?

* * * * *

(a) * * *

(1) For EPA Nonroad Fuel Lines, use Fuel CE10, which is Fuel C as specified in ASTM D471 (incorporated by reference in § 1060.810) blended with ethanol such that the blended fuel has 10.0 ± 1.0 percent ethanol by volume.

* * * * *

(c) Measure fuel line permeation emissions using the equipment and procedures for weight-loss testing specified in SAE J30 or SAE J1527 (incorporated by reference in § 1060.810). Start the measurement procedure within 8 hours after draining and refilling the fuel line. Perform the emission test over a sampling period of 14 days.

* * * * *

PART 1065—ENGINE-TESTING PROCEDURES

■ 38. The authority citation for part 1065 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart G—[Amended]

■ 39. Section 1065.672 is amended by revising paragraph (d)(2) to read as follows:

§ 1065.672 Drift correction.

* * * * *

(d) * * *

(2) Correct for drift using the following equation:

$$x_{\text{idriftcorrected}} = x_{\text{refzero}} + \left(x_{\text{refspan}} - x_{\text{refzero}}\right) \cdot \frac{2x_{\text{i}} - \left(x_{\text{prezero}} + x_{\text{postzero}}\right)}{\left(x_{\text{prespan}} + x_{\text{postspan}}\right) - \left(x_{\text{prezero}} + x_{\text{postzero}}\right)}$$

Eq. 1065.672-1

Where:

$x_{\text{idriftcorrected}}$ = concentration corrected for drift.

x_{refzero} = reference concentration of the zero gas, which is usually zero unless known to be otherwise.

x_{refspan} = reference concentration of the span gas.

x_{prespan} = pre-test interval gas analyzer response to the span gas concentration.

x_{postspan} = post-test interval gas analyzer response to the span gas concentration.

x_{i} or $\bar{x}$ = concentration recorded during test, before drift correction.

x_{prezero} = pre-test interval gas analyzer response to the zero gas concentration.

x_{postzero} = post-test interval gas analyzer response to the zero gas concentration.

Example:

x_{refzero} = 0 µmol/mol

x_{refspan} = 1800.0 µmol/mol

x_{prespan} = 1800.5 µmol/mol

x_{postspan} = 1695.8 µmol/mol

x_{i} or $\bar{x}$ = 435.5 µmol/mol

x_{prezero} = 0.6 µmol/mol

$x_{postzero} = -5.2$ μmol/mol

$$x_{idriftcorrected} = 0 + (1800.0 - 0) \cdot \frac{2 \cdot 435.5 - (0.6 + (-5.2))}{(1800.5 + 1695.8) - (0.6 + (-5.2))}$$

$x_{idriftcorrected} = 450.2$ μmol/mol

* * * * *

Subpart K—[Amended]

■ 40. Section 1065.1001 is amended by revising the definition for ''Constant-speed operation'' to read as follows:

§ 1065.1001 Definitions.

* * * * *

Constant-speed operation means engine operation with a governor that automatically controls the operator demand to maintain engine speed, even under changing load. Governors do not always maintain speed exactly constant. Typically speed can decrease (0.1 to 10) % below the speed at zero load, such that the minimum speed occurs near the engine's point of maximum power. (Note: An engine with an adjustable governor setting may be considered to operate at constant speed, subject to our approval. For such engines, the governor setting is considered an adjustable parameter.)

* * * * *

PART 1068—GENERAL COMPLIANCE PROVISIONS FOR NONROAD PROGRAMS

■ 41. The authority citation for part 1068 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart C—[Amended]

■ 42. Section 1068.201 is amended by revising paragraph (h) to read as follows:

§ 1068.201 Does EPA exempt or exclude any engines/equipment from the prohibited acts?

* * * * *

(h) You may ask us to modify the administrative requirements for the exemptions described in this subpart or in subpart D of this part. We may approve your request if we determine that such approval is consistent with the intent of this part. For example, waivable administrative requirements might include some reporting requirements, but would not include any eligibility requirements or use restrictions.

* * * * *

■ 43. Section 1068.225 is amended by revising paragraphs (a) and (b) and removing and reserving paragraph (c) to read as follows:

§ 1068.225 What are the provisions for exempting engines/equipment for national security?

(a) An engine/equipment is exempt without a request if it will be used or owned by an agency of the federal government responsible for national defense, where the equipment in which it is installed has armor, permanently attached weaponry, or other substantial features typical of military combat.

(b) Manufacturers may request a national security exemption for engines/equipment not meeting the conditions of paragraph (b) of this section as long as the request is endorsed by an agency of the federal government responsible for national defense. In your request, explain why you need the exemption.

(c) [Reserved].

* * * * *

Subpart D—[Amended]

■ 44. Section 1068.325 is amended as follows:

■ a. By revising paragraph (g).

■ b. By redesignating paragraph (i) as paragraph (j).

■ c. By adding and reserving paragraph (i).

§ 1068.325 What are the temporary exemptions for imported engines/equipment?

* * * * *

(g) You may import an engine if another company already has a certificate of conformity and will be modifying the engine to be in its final, certified configuration under the provisions of § 1068.262. You may also import a partially complete engine by shipping it from one of your facilities to another under the provisions of § 1068.260(c). If you are importing a used engine that becomes new as a result of importation, you must meet all the requirements that apply to original engine manufacturers under § 1068.262.

* * * * *

(i) [Reserved]

* * * * *

[FR Doc. E9–2405 Filed 2–23–09; 8:45 am]

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Federal Register

Tuesday,
February 24, 2009

Part III

The President

Executive Order 13504—Amending Executive Order 13390

Federal Register
Vol. 74, No. 35
Tuesday, February 24, 2009

Presidential Documents

Title 3—

The President

Executive Order 13504 of February 20, 2009

Amending Executive Order 13390

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121–5206), and in order to extend the work of the Coordinator of Federal Support for the Recovery and Rebuilding of the Gulf Coast Region, Executive Order 13390 of November 1, 2005, as amended, is further amended by striking ''February 28, 2009'' and inserting in lieu thereof ''September 30, 2009''.

THE WHITE HOUSE,
February 20, 2009.

[FR Doc. E9–4103
Filed 2–23–09; 11:15 am]
Billing code 3195–W9–P

Federal Register

Tuesday,
February 24, 2009

Part IV

Postal Service

Change in Rates of General Applicability for Competitive Products; Notice

POSTAL SERVICE

Change in Rates of General Applicability for Competitive Products

Editorial Note: Notice document E9-3483 was inadvertently removed from the issue of Monday, February 23, 2009. It appears in this issue in its entirety.

AGENCY: Postal Service.™

ACTION: Notice of a change in rates of general applicability for competitive products.

SUMMARY: This notice sets forth changes in rates of general applicability for competitive products.

DATES: *Effective Date:* May 11, 2009.

FOR FURTHER INFORMATION CONTACT: Daniel J. Foucheaux, 202–268–2989.

SUPPLEMENTARY INFORMATION: On February 3, 2009, pursuant to their authority under 39 U.S.C. 3632, the Governors of the Postal Service established prices and classification changes for competitive products. The Governors' Decision and the record of proceedings in connection with this Decision are reprinted below in accordance with 39 U.S.C. 3632(b)(2).

Neva R. Watson,

Attorney, Legislative.

Decision of the Governors of the United States Postal Service on Changes in Rates and Classes of General Applicability for Certain Competitive Products (Governors' Decision No. 09–01)

February 3, 2009

Statement of Explanation and Justification

Pursuant to our authority under section 3632 of title 39, as amended by the Postal Accountability and Enhancement Act of 2006 (''PAEA''), we establish new prices of general applicability for the following competitive products, and such changes in classifications as are necessary to define the new prices: Parcel Select, Premium Forwarding Service, International Priority Airmail, International Surface Air Lift, and International Ancillary Services. Management's analysis of these changes is provided in Attachment A and the prices and classification are shown in full in Attachment B. We have reviewed management's analysis and have evaluated the new prices and classification changes in accordance with 39 U.S.C. 3632–3633 and 39 CFR 3015.2. We approve the changes set forth in Attachment B, finding that they are appropriate, and are consistent with the regulatory criteria.

In Parcel Select, there are three categories (Origin BMC Presort, BMC Presort, and Barcoded Inter-BMC and Intra-BMC) that were not included in the January 2009 competitive products' price increase. These categories' prices are calculated based on (market-dominant) Single-Piece Parcel Post prices. Accordingly, these categories' prices are being increased concurrently with the market-dominant price change effective on May 11, 2009, in order to maintain their relationship with the Single-Piece Parcel Post prices on which they are based. As a result, prices for the overall Parcel Select product will increase by an additional one-half of one percent. Minor structural changes are also made within the two Presort price categories to better reflect the discount for barcoding. The nonpresort categories (Barcoded Inter-BMC and Intra-BMC) are now merged into one category, Barcoded Nonpresort.

Premium Forwarding Service prices were not changed as part of the competitive products' price increase in January 2009. Premium Forwarding Service prices will increase by 20.2 percent overall on May 11, 2009.

International Priority Airmail (IPA) and International Surface Air Lift (ISAL) prices were not changed as part of the January 2009 adjustment. Their prices are calculated based on First-Class Mail International prices, which are being increased as part of the market-dominant price change effective May 11, 2009. There are also several structural changes: new country specific price groups are added; pricing will be differentiated by presort level (Direct Country, Mixed Country, and Worldwide Non-presort); and Worldwide Non-presort, previously applicable only to IPA, will now also be applicable to ISAL. In addition, mixed country sacks would only be applicable to dropshipped items, and the minimum volume per mailing for IPA is raised to 50 pounds. Noncontractual IPA will have a price increase of 20.8 percent and noncontractual ISAL will increase by 2.4 percent.

Prices for competitive International Ancillary Services are also increasing to coincide with identical increases in the prices of market-dominant International Ancillary Services. Prices for the competitive International Ancillary Services will increase, on average, by 6.1 percent.

As described in Attachment A, these changes satisfy the statutory requirements. They should not result in the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)). Each competitive product should cover its attributable costs (39 U.S.C. 3633(a)(2)). They should allow competitive products as a whole to comply with 39 U.S.C. 3633(a)(3), which, as implemented by 39 CFR 3015.7(c), requires competitive products to contribute a minimum of 5.5 percent to the Postal Service's total institutional costs.

Order

The changes in prices and classes set forth herein shall be effective at 12:01 a.m. on May 11, 2009. We direct the Secretary to have this decision published in the **Federal Register** in accordance with 39 U.S.C. 3632(b)(2). We also direct management to file with the Postal Regulatory Commission appropriate notice of these changes.

By The Governors:

_____/s/_____,

Alan C. Kessler.

Chairman.

Certification of Governors' Vote In Governors' Decision No. 09–01

I Hereby Certify that the Governors voted on adopting Governors' Decision No. 09–01, and that, consistent with 39 U.S.C. 3632(a), a majority of the governors then holding office concurred in the Decision.

Date: February 3, 2009.

_____/s/_____,

Julie S. Moore.

Secretary of the Board of Governors.

Analysis of Price and Classification Changes

The prices for the following Shipping Services (competitive) products will change on May 11, 2009, as explained below.

I. Parcel Select

There are three categories within Parcel Select (Origin BMC Presort, BMC Presort, and Barcoded Inter-BMC and Intra-BMC) that were not included in the January 2009 price increase for Shipping Services. Although these categories are part of Shipping Services, their prices are being increased in May because they are calculated based on Single-Piece Parcel Post prices, which are part of Mailing Services. The increase in prices for these categories will increase prices for the overall Parcel Select product by an additional one-half of one percent. Also, the price charts within the presorted categories have been re-aligned slightly to better reflect the inclusion of the 3-cent discount for barcoding, and the inter-BMC and intra-BMC prices are merged into one category for barcoded nonpresort parcels.

II. Premium Forwarding Service

Premium Forwarding Service provides residential delivery with a forwarding service for their mail when they are away from their primary residences. Most mail from a customer's permanent address is forwarded once a week via Priority Mail to the customer's temporary address. The customer is charged an enrollment fee and a weekly fee. Overall, Premium Forwarding Service prices will increase by 20.2 percent. These prices were not changed as part of the Shipping Services price increase in January 2009. This is the first price increase for the service since inception in 2005. Premium Forwarding Service had been part of Mailing Services, but, subsequent to last year's price change, was moved, at the Postal Service's request, to Shipping Services. The Premium Forwarding Service enrollment price will increase from $10.00 to $15.00 and the weekly reshipment price will increase from $11.95 to $13.95.

III. IPA/ISAL

IPA and ISAL are bulk international letter products which are closely related to the single-piece First-Class Mail International (FCMI) letter prices that will change in May 2009. While most IPA and ISAL content is entered under customized contractual arrangements with customers, some IPA and ISAL is tendered by customers that do not maintain contracts. These noncontractual prices were not changed as part of the January 2009 adjustment, but are being changed now to align them with FCMI price change in May. There are also several structural changes: new country specific price groups are added; pricing will be differentiated by presort level (Direct Country, Mixed Country, and Worldwide Non-presort); and Worldwide Non-presort, previously applicable only to IPA, will now also be applicable to ISAL. In addition, mixed country sacks would only be applicable to dropshipped items, and the minimum volume per mailing for IPA is raised to 50 pounds. Once implemented, the noncontractual prices will result in increases in the rates charged to customers that have executed customized agreements.

International Priority Airmail (IPA) is a bulk international airmail service for mailing First-Class Mail International items. Noncontractual International Priority Airmail (IPA) will have a price increase of 20.8 percent. This increase is driven by new cost information for noncontractual volumes.

International Surface Air Lift (ISAL) is an international bulk mailing service for mailing First-Class Mail International items. ISAL shipments are flown to the foreign destinations and entered into that country's surface or nonpriority mail system for delivery. Noncontractual International Surface Airlift will have a price increase of 2.4 percent.

IV. International Ancillary Services

Certain International Ancillary Services that are combined with other competitive products are also within the scope of this competitive price change. Customers may purchase an International Certificate of Mailing for evidence of mailing. Customers who purchase International Registered Mail for additional security and limited indemnity protection may also buy International Return Receipt, which provides the sender with evidence of delivery, and International Restricted Delivery, which limits delivery to an indentified recipient. On average, prices for International Certificate of Mailing increase 6.7 percent, for International Registered Mail 6.5 percent, for International Restricted Delivery 4.7 percent, and for International Return Receipt 4.5 percent.

V. Summary

As shown in the nonpublic annex, the price changes should enable each competitive product to cover its attributable costs (39 U.S.C. 3633(a)(2)) and should result in competitive products as a whole complying with 39 U.S.C. 3633(a)(3), which, as implemented by 39 CFR 3015.7(c), requires competitive products to contribute a minimum of 5.5 percent to the Postal Service's institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products should arise (39 U.S.C. 3633(a)(1)).

RESTRICTED AND SENSITIVE BUSINESS INFORMATION -- DO NOT DISCLOSE
NONPUBLIC ANNEX TO ANALYSIS OF COMPETITIVE PRODUCTS' PRICE AND CLASSIFICATION CHANGE

Attachment A to Governors' Decision 09-01 (p. 3)

Competitive Product Contribution & Cost Coverage Analysis

May 2009 Implementation	FY09Q4-FY10Q3 Volume (000's)	FY09Q4-FY10Q3 Revenue (000's)	FY09Q4-FY10Q3 Cost (000's)	FY09Q4-FY10Q3 Contribution (000's)	FY09Q4-FY10Q3 Cost Coverage
Parcel Select					
Price Increase	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
PFS					
Price Increase	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
IPA (Noncontractual)					
Price Increase	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
ISAL (Noncontractual)					
Price Increase	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
International Ancillary Services[1]					
International Certificate of Mailing (Competitive)	[REDACTED]	[REDACTED]	[REDACTED]		
International Registered Mail (Competitive)	[REDACTED]	[REDACTED]	[REDACTED]		
International Return Receipt (Competitive)	[REDACTED]	[REDACTED]	[REDACTED]		
International Restricted Delivery (Competitive)	[REDACTED]	[REDACTED]	[REDACTED]		

Notes:
N/A=Not available
[1]FY 09 figures; Quarterly estimates are not available

2115 Parcel Select

***

2115.4 Price Categories

***

- OBMC Presort – Entered at the origin bulk mail center.
  - Machinable ~~(~~Barcoded~~)~~
  - [Machinable Nonbarcoded and]Nonmachinable
  - Balloon Rate
  - Oversized

- BMC Presort – Entered at a designated facility.
  - Machinable ~~(~~Barcoded~~)~~
  - [Machinable Nonbarcoded and]Nonmachinable
  - Balloon Rate
  - Oversized

- Barcoded [Nonpresort] ~~– Entered at a designated facility.~~
  - ~~Inter-BMC~~
  - ~~Intra-BMC~~
  - Balloon Rate

***

2115.6 Prices

DDU Entered

***

DSCF and DBMC Entered

a. Machinable DSCF and DBMC

***

b. Balloon Rate

***

~~b~~[c]. Nonmachinable DSCF and DBMC

***

~~c~~[d]. Balloon Rate

***

~~d~~[e]. Oversized Price ***

~~e~~[f]. Loyalty Incentives

***

~~f~~[g]. Growth Incentives

***

OBMC Presort Entered

a. ~~Machinable~~ OBMC Presort [Machinable] ~~(~~Barcoded~~)~~

Weight Not Over (Pounds)	Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)
1	3.72	3.72	3.72	3.72	3.72	3.72	3.72
2	3.72	3.97	4.52	5.84	6.15	6.44	6.91
3	4.27	5.02	5.87	7.00	7.67	8.09	8.74
4	4.87	5.87	6.76	8.02	8.87	9.48	10.39
5	5.62	6.92	7.84	8.87	9.60	10.19	11.16
6	6.32	8.02	8.76	9.76	10.27	10.84	11.85
7	7.07	8.82	9.31	10.62	11.18	11.83	12.97
8	7.38	9.16	9.68	10.99	11.78	12.56	13.85
9	7.69	9.51	10.06	11.37	12.38	13.29	14.72
10	8.00	9.85	10.43	11.74	12.98	14.03	15.59
11	8.31	10.20	10.81	12.11	13.58	14.76	16.47
12	8.62	10.54	11.18	12.48	14.18	15.49	17.34
13	8.93	10.88	11.56	12.85	14.78	16.22	18.21
14	9.24	11.23	11.93	13.22	15.38	16.95	19.09
15	9.55	11.57	12.31	13.59	15.98	17.68	19.96
16	9.86	11.92	12.69	13.96	16.58	18.41	20.83
17	10.16	12.26	13.06	14.33	17.18	19.15	21.71
18	10.47	12.61	13.42	14.81	17.78	19.88	22.58
19	10.78	12.95	13.77	15.29	18.38	20.61	23.46
20	11.09	13.30	14.12	15.76	18.98	21.34	24.33
21	11.40	13.64	14.48	16.24	19.58	22.07	25.20
22	11.71	13.99	14.83	16.71	20.18	22.80	26.08
23	12.02	14.33	15.19	17.19	20.78	23.53	26.95
24	12.33	14.68	15.54	17.66	21.38	24.27	27.82
25	12.64	15.02	15.89	18.14	21.98	25.00	28.70
26	12.95	15.37	16.25	18.62	22.58	25.73	29.57
27	13.26	15.71	16.60	19.09	23.18	26.46	30.45
28	13.57	16.06	16.96	19.57	23.78	27.19	31.32
29	13.88	16.40	17.31	20.04	24.38	27.92	32.19
30	14.19	16.75	17.67	20.52	24.98	28.65	33.07
31	14.50	17.09	18.02	20.99	25.58	29.39	33.94
32	14.81	17.44	18.37	21.47	26.19	30.12	34.81
33	15.12	17.78	18.73	21.95	26.79	30.85	35.69
34	15.43	18.13	19.08	22.42	27.39	31.58	36.56
35	15.74	18.47	19.44	22.90	27.99	32.31	37.43

For OBMC Presort pieces over 35 pounds,
use [Machinable Nonbarcoded and]Nonmachinable prices

~~b. Machinable OBMC Presort (Nonbarcoded)~~

~~The machinable OBMC Presort prices include a $0.03 barcode discount. Add $0.03 if the mailpiece is not barcoded.~~

~~c~~[b]. Balloon Rate

***

c. ~~Nonmachinable~~ OBMC Presort[Machinable Nonbarcoded and Nonmachinable]

Weight Not Over (Pounds)	Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)
1	3.75	3.75	3.75	3.75	3.75	3.75	3.75
2	3.75	4.00	4.55	5.87	6.18	6.47	6.94
3	4.30	5.05	5.90	7.03	7.70	8.12	8.77
4	4.90	5.90	6.79	8.05	8.90	9.51	10.42
5	5.65	6.95	7.87	8.90	9.63	10.22	11.19
6	6.35	8.05	8.79	9.79	10.30	10.87	11.88
7	7.10	8.85	9.34	10.65	11.21	11.86	13.00
8	7.41	9.19	9.71	11.02	11.81	12.59	13.88
9	7.72	9.54	10.09	11.40	12.41	13.32	14.75
10	8.03	9.88	10.46	11.77	13.01	14.06	15.62
11	8.34	10.23	10.84	12.14	13.61	14.79	16.50
12	8.65	10.57	11.21	12.51	14.21	15.52	17.37
13	8.96	10.91	11.59	12.88	14.81	16.25	18.24
14	9.27	11.26	11.96	13.25	15.41	16.98	19.12
15	9.58	11.60	12.34	13.62	16.01	17.71	19.99
16	9.89	11.95	12.72	13.99	16.61	18.44	20.86
17	10.19	12.29	13.09	14.36	17.21	19.18	21.74
18	10.50	12.64	13.45	14.84	17.81	19.91	22.61
19	10.81	12.98	13.80	15.32	18.41	20.64	23.49
20	11.12	13.33	14.15	15.79	19.01	21.37	24.36
21	11.43	13.67	14.51	16.27	19.61	22.10	25.23
22	11.74	14.02	14.86	16.74	20.21	22.83	26.11
23	12.05	14.36	15.22	17.22	20.81	23.56	26.98
24	12.36	14.71	15.57	17.69	21.41	24.30	27.85
25	12.67	15.05	15.92	18.17	22.01	25.03	28.73
26	12.98	15.40	16.28	18.65	22.61	25.76	29.60
27	13.29	15.74	16.63	19.12	23.21	26.49	30.48
28	13.60	16.09	16.99	19.60	23.81	27.22	31.35
29	13.91	16.43	17.34	20.07	24.41	27.95	32.22
30	14.22	16.78	17.70	20.55	25.01	28.68	33.10
31	14.53	17.12	18.05	21.02	25.61	29.42	33.97
32	14.84	17.47	18.40	21.50	26.22	30.15	34.84
33	15.15	17.81	18.76	21.98	26.82	30.88	35.72
34	15.46	18.16	19.11	22.45	27.42	31.61	36.59
35	15.77	18.50	19.47	22.93	28.02	32.34	37.46
36	15.92	18.85	19.82	23.40	28.62	33.07	38.34
37	16.08	19.19	20.18	23.88	29.22	33.80	39.21
38	16.24	19.53	20.53	24.35	29.82	34.54	40.09

c. ~~Nonmachinable~~ OBMC Presort[Machinable Nonbarcoded and Nonmachinable] (Continued)

Weight Not Over (Pounds)	Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)
39	16.39	19.88	20.88	24.83	30.42	35.27	40.96
40	16.55	20.22	21.24	25.31	31.02	36.00	41.83
41	16.70	20.57	21.59	25.78	31.62	36.73	42.71
42	16.86	20.91	21.95	26.26	32.22	37.46	43.58
43	17.02	21.08	22.30	26.73	32.82	38.19	44.45
44	17.17	21.25	22.66	27.21	33.42	38.92	45.33
45	17.33	21.42	23.01	27.68	34.02	39.66	46.20
46	17.49	21.59	23.36	28.16	34.62	40.39	47.08
47	17.64	21.76	23.72	28.64	35.22	41.12	47.95
48	17.80	21.93	24.07	29.11	35.82	41.85	48.82
49	17.96	22.10	24.43	29.59	36.42	42.58	49.70
50	18.11	22.27	24.78	30.06	37.02	43.31	50.57
51	18.27	22.44	25.14	30.54	37.62	44.04	51.44
52	18.43	22.61	25.49	31.01	38.22	44.78	52.32
53	18.58	22.78	25.84	31.49	38.82	45.51	53.19
54	18.74	22.95	26.20	31.97	39.42	46.24	54.06
55	18.90	23.12	26.55	32.44	40.02	46.97	54.94
56	19.05	23.29	26.91	32.92	40.62	47.70	55.81
57	19.21	23.46	27.26	33.39	41.22	48.43	56.69
58	19.36	23.63	27.62	33.87	41.82	49.16	57.56
59	19.52	23.80	27.97	34.35	42.42	49.90	58.43
60	19.68	23.97	28.32	34.82	43.02	50.63	59.31
61	19.83	24.14	28.68	35.30	43.62	51.36	60.18
62	19.99	24.31	29.03	35.77	44.22	52.09	61.05
63	20.15	24.48	29.39	36.25	44.82	52.82	61.93
64	20.30	24.65	29.74	36.72	45.42	53.55	62.80
65	20.46	24.82	30.09	37.20	46.02	54.28	63.68
66	20.62	24.99	30.45	37.68	46.62	55.02	64.55
67	20.77	25.16	30.80	38.15	47.22	55.75	65.42
68	20.93	25.33	31.16	38.63	47.82	56.48	66.30
69	21.09	25.50	31.51	39.10	48.42	57.21	67.17
70	21.24	25.67	31.87	39.58	49.02	57.94	68.04
Oversized	60.65	63.50	64.79	66.74	89.77	95.67	106.01

d. Balloon Rate

***

e. Oversized Price

***

BMC Presort Entered

a. ~~Machinable~~ BMC Presort[Machinable] ~~(~~Barcoded~~)~~

Weight Not Over (Pounds)	Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)
1	4.64	4.64	4.64	4.64	4.64	4.64	4.64
2	4.64	4.89	5.44	6.76	7.07	7.36	7.83
3	5.19	5.94	6.79	7.92	8.59	9.01	9.66
4	5.79	6.79	7.68	8.94	9.79	10.40	11.31
5	6.54	7.84	8.76	9.79	10.52	11.11	12.08
6	7.24	8.94	9.68	10.68	11.19	11.76	12.77
7	7.99	9.74	10.23	11.54	12.10	12.75	13.89
8	8.30	10.08	10.60	11.91	12.70	13.48	14.77
9	8.61	10.43	10.98	12.29	13.30	14.21	15.64
10	8.92	10.77	11.35	12.66	13.90	14.95	16.51
11	9.23	11.12	11.73	13.03	14.50	15.68	17.39
12	9.54	11.46	12.10	13.40	15.10	16.41	18.26
13	9.85	11.80	12.48	13.77	15.70	17.14	19.13
14	10.16	12.15	12.85	14.14	16.30	17.87	20.01
15	10.47	12.49	13.23	14.51	16.90	18.60	20.88
16	10.78	12.84	13.61	14.88	17.50	19.33	21.75
17	11.08	13.18	13.98	15.25	18.10	20.07	22.63
18	11.39	13.53	14.34	15.73	18.70	20.80	23.50
19	11.70	13.87	14.69	16.21	19.30	21.53	24.38
20	12.01	14.22	15.04	16.68	19.90	22.26	25.25
21	12.32	14.56	15.40	17.16	20.50	22.99	26.12
22	12.63	14.91	15.75	17.63	21.10	23.72	27.00
23	12.94	15.25	16.11	18.11	21.70	24.45	27.87
24	13.25	15.60	16.46	18.58	22.30	25.19	28.74
25	13.56	15.94	16.81	19.06	22.90	25.92	29.62
26	13.87	16.29	17.17	19.54	23.50	26.65	30.49
27	14.18	16.63	17.52	20.01	24.10	27.38	31.37
28	14.49	16.98	17.88	20.49	24.70	28.11	32.24
29	14.80	17.32	18.23	20.96	25.30	28.84	33.11
30	15.11	17.67	18.59	21.44	25.90	29.57	33.99
31	15.42	18.01	18.94	21.91	26.50	30.31	34.86
32	15.73	18.36	19.29	22.39	27.11	31.04	35.73
33	16.04	18.70	19.65	22.87	27.71	31.77	36.61
34	16.35	19.05	20.00	23.34	28.31	32.50	37.48
35	16.66	19.39	20.36	23.82	28.91	33.23	38.35

For BMC Presort pieces over 35 pounds,
use [Machinable Nonbarcoded and]Nonmachinable prices

~~b. Machinable BMC Presort (Nonbarcoded)~~

~~The machinable BMC Presort prices include a $0.03 barcode discount. Add $0.03 if the mailpiece is not barcoded.~~

~~c~~[b]. Balloon Rate

***

c. ~~Nonmachinable~~ BMC Presort[Machinable Nonbarcoded and Nonmachinable]

Weight Not Over (Pounds)	Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)
1	4.67	4.67	4.67	4.67	4.67	4.67	4.67
2	4.67	4.92	5.47	6.79	7.10	7.39	7.86
3	5.22	5.97	6.82	7.95	8.62	9.04	9.69
4	5.82	6.82	7.71	8.97	9.82	10.43	11.34
5	6.57	7.87	8.79	9.82	10.55	11.14	12.11
6	7.27	8.97	9.71	10.71	11.22	11.79	12.80
7	8.02	9.77	10.26	11.57	12.13	12.78	13.92
8	8.33	10.11	10.63	11.94	12.73	13.51	14.80
9	8.64	10.46	11.01	12.32	13.33	14.24	15.67
10	8.95	10.80	11.38	12.69	13.93	14.98	16.54
11	9.26	11.15	11.76	13.06	14.53	15.71	17.42
12	9.57	11.49	12.13	13.43	15.13	16.44	18.29
13	9.88	11.83	12.51	13.80	15.73	17.17	19.16
14	10.19	12.18	12.88	14.17	16.33	17.90	20.04
15	10.50	12.52	13.26	14.54	16.93	18.63	20.91
16	10.81	12.87	13.64	14.91	17.53	19.36	21.78
17	11.11	13.21	14.01	15.28	18.13	20.10	22.66
18	11.42	13.56	14.37	15.76	18.73	20.83	23.53
19	11.73	13.90	14.72	16.24	19.33	21.56	24.41
20	12.04	14.25	15.07	16.71	19.93	22.29	25.28
21	12.35	14.59	15.43	17.19	20.53	23.02	26.15
22	12.66	14.94	15.78	17.66	21.13	23.75	27.03
23	12.97	15.28	16.14	18.14	21.73	24.48	27.90
24	13.28	15.63	16.49	18.61	22.33	25.22	28.77
25	13.59	15.97	16.84	19.09	22.93	25.95	29.65
26	13.90	16.32	17.20	19.57	23.53	26.68	30.52
27	14.21	16.66	17.55	20.04	24.13	27.41	31.40
28	14.52	17.01	17.91	20.52	24.73	28.14	32.27
29	14.83	17.35	18.26	20.99	25.33	28.87	33.14
30	15.14	17.70	18.62	21.47	25.93	29.60	34.02
31	15.45	18.04	18.97	21.94	26.53	30.34	34.89
32	15.76	18.39	19.32	22.42	27.14	31.07	35.76
33	16.07	18.73	19.68	22.90	27.74	31.80	36.64
34	16.38	19.08	20.03	23.37	28.34	32.53	37.51
35	16.69	19.42	20.39	23.85	28.94	33.26	38.38
36	16.84	19.77	20.74	24.32	29.54	33.99	39.26
37	17.00	20.11	21.10	24.80	30.14	34.72	40.13
38	17.16	20.45	21.45	25.27	30.74	35.46	41.01
39	17.31	20.80	21.80	25.75	31.34	36.19	41.88

c. ~~Nonmachinable~~ BMC Presort[Machinable Nonbarcoded and Nonmachinable] (Continued)

Weight Not Over (Pounds)	Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)
40	17.47	21.14	22.16	26.23	31.94	36.92	42.75
41	17.62	21.49	22.51	26.70	32.54	37.65	43.63
42	17.78	21.83	22.87	27.18	33.14	38.38	44.50
43	17.94	22.00	23.22	27.65	33.74	39.11	45.37
44	18.09	22.17	23.58	28.13	34.34	39.84	46.25
45	18.25	22.34	23.93	28.60	34.94	40.58	47.12
46	18.41	22.51	24.28	29.08	35.54	41.31	48.00
47	18.56	22.68	24.64	29.56	36.14	42.04	48.87
48	18.72	22.85	24.99	30.03	36.74	42.77	49.74
49	18.88	23.02	25.35	30.51	37.34	43.50	50.62
50	19.03	23.19	25.70	30.98	37.94	44.23	51.49
51	19.19	23.36	26.06	31.46	38.54	44.96	52.36
52	19.35	23.53	26.41	31.93	39.14	45.70	53.24
53	19.50	23.70	26.76	32.41	39.74	46.43	54.11
54	19.66	23.87	27.12	32.89	40.34	47.16	54.98
55	19.82	24.04	27.47	33.36	40.94	47.89	55.86
56	19.97	24.21	27.83	33.84	41.54	48.62	56.73
57	20.13	24.38	28.18	34.31	42.14	49.35	57.61
58	20.28	24.55	28.54	34.79	42.74	50.08	58.48
59	20.44	24.72	28.89	35.27	43.34	50.82	59.35
60	20.60	24.89	29.24	35.74	43.94	51.55	60.23
61	20.75	25.06	29.60	36.22	44.54	52.28	61.10
62	20.91	25.23	29.95	36.69	45.14	53.01	61.97
63	21.07	25.40	30.31	37.17	45.74	53.74	62.85
64	21.22	25.57	30.66	37.64	46.34	54.47	63.72
65	21.38	25.74	31.01	38.12	46.94	55.20	64.60
66	21.54	25.91	31.37	38.60	47.54	55.94	65.47
67	21.69	26.08	31.72	39.07	48.14	56.67	66.34
68	21.85	26.25	32.08	39.55	48.74	57.40	67.22
69	22.01	26.42	32.43	40.02	49.34	58.13	68.09
70	22.16	26.59	32.79	40.50	49.94	58.86	68.96
Oversized	61.57	64.42	65.71	67.66	90.69	96.59	106.93

d. Balloon Rate

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e. Oversized Price

***

Barcoded[Nonpresort] ~~*Inter-BMC and Intra-BMC Entered*~~

~~a. Barcoded Inter-BMC~~

Weight Not Over (Pounds)	Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)
1	4.87	4.87	4.87	4.87	4.87	4.87	4.87
2	4.87	5.12	5.67	6.99	7.30	7.59	8.06
3	5.42	6.17	7.02	8.15	8.82	9.24	9.89
4	6.02	7.02	7.91	9.17	10.02	10.63	11.54
5	6.77	8.07	8.99	10.02	10.75	11.34	12.31
6	7.47	9.17	9.91	10.91	11.42	11.99	13.00
7	8.22	9.97	10.46	11.77	12.33	12.98	14.12
8	8.53	10.31	10.83	12.14	12.93	13.71	15.00
9	8.84	10.66	11.21	12.52	13.53	14.44	15.87
10	9.15	11.00	11.58	12.89	14.13	15.18	16.74
11	9.46	11.35	11.96	13.26	14.73	15.91	17.62
12	9.77	11.69	12.33	13.63	15.33	16.64	18.49
13	10.08	12.03	12.71	14.00	15.93	17.37	19.36
14	10.39	12.38	13.08	14.37	16.53	18.10	20.24
15	10.70	12.72	13.46	14.74	17.13	18.83	21.11
16	11.01	13.07	13.84	15.11	17.73	19.56	21.98
17	11.31	13.41	14.21	15.48	18.33	20.30	22.86
18	11.62	13.76	14.57	15.96	18.93	21.03	23.73
19	11.93	14.10	14.92	16.44	19.53	21.76	24.61
20	12.24	14.45	15.27	16.91	20.13	22.49	25.48
21	12.55	14.79	15.63	17.39	20.73	23.22	26.35
22	12.86	15.14	15.98	17.86	21.33	23.95	27.23
23	13.17	15.48	16.34	18.34	21.93	24.68	28.10
24	13.48	15.83	16.69	18.81	22.53	25.42	28.97
25	13.79	16.17	17.04	19.29	23.13	26.15	29.85
26	14.10	16.52	17.40	19.77	23.73	26.88	30.72
27	14.41	16.86	17.75	20.24	24.33	27.61	31.60
28	14.72	17.21	18.11	20.72	24.93	28.34	32.47
29	15.03	17.55	18.46	21.19	25.53	29.07	33.34
30	15.34	17.90	18.82	21.67	26.13	29.80	34.22
31	15.65	18.24	19.17	22.14	26.73	30.54	35.09
32	15.96	18.59	19.52	22.62	27.34	31.27	35.96
33	16.27	18.93	19.88	23.10	27.94	32.00	36.84
34	16.58	19.28	20.23	23.57	28.54	32.73	37.71
35	16.89	19.62	20.59	24.05	29.14	33.46	38.58

~~b.~~ Balloon Rate

Pieces exceeding 84 inches in length and girth combined (but not more than 108 inches) and weighing less than 20 pounds are subject to a price equal to that for a 20-pound parcel for the zone to which the parcel is addressed.

~~c. Barcoded Intra-BMC~~

~~d. Balloon Rate~~

~~Pieces exceeding 84 inches in length and girth combined (but not more than 108 inches) and weighing less than 20 pounds are subject to a price equal to that for a 20-pound parcel for the zone to which the parcel is addressed.~~

2125 Premium Forwarding Service

* * * * *

2125.2 Prices

	($)
Enrollment	15.00
Weekly Reshipment	13.95

* * * * *

2225 International Priority Airmail (IPA)

2225.1 Description

a. International Priority Airmail is a bulk international airmail service for mailing First-Class Mail International items.

b. International Priority Airmail may include matter containing personal information, partially or wholly hand-written ~~or~~ [and] typewritten matter, bills[,] or statements of account.

c. [International Priority Airmail is not a shipping option for] Priority Mail International items, ~~either~~ [(whether] ordinary or insured[).]~~, may not be mailed using International Priority Airmail~~.

d. International Priority Airmail is sealed against postal inspection and shall not be opened except as authorized by law.

e. [International Priority Airmail presorted mail and M-Bags are assigned to a specified price group based on the destination country. A price group may consist of one specific country or multiple countries.] ~~Most prices for international postage are segmented into Price Groups with multiple destination countries represented in each Price Group.~~ To [determine] ~~identify what~~ the price group for a destination country, ~~is in,~~ refer to the Country Price Group List for International Mail (4000). ~~The number of price groups that exist depends on the category of mail. A particular destination country may fall into different Price Groups for different categories of mail~~

***

2225.3 Minimum Volume Requirements

[To qualify, a minimum quantity of 50 pounds of mail is required which may include a combination of presort mail, worldwide nonpresort mail, or M-bag mail to achieve the 50 pound minimum.]

	~~Minimum Volume Requirements~~
~~Presort~~	~~11 pounds of presorted mail to a single rate group~~
~~Worldwide Nonpresort~~	~~11 pounds in the total mailing~~
~~M-Bag~~	~~None~~

2225.4 Price Categories

The following price categories are available for the product specified in this section:

International Priority Airmail

- Presort Mail (Full Service and ISC Drop Shipment)
  - Price Groups 1 -~~9~~ [15]
- Worldwide Nonpresort Mail (Full Service and ISC Drop Shipment)
  - Worldwide

International Priority Airmail M-Bag (Full Service and ISC Drop Shipment)

- Price Groups 1 -~~9~~ [15]

***

2225.6 Prices

International Priority Airmail

The price is determined by adding the applicable per-piece price to the applicable per-pound price. The per-piece price applies to each mailpiece regardless of weight. The per-pound price applies to the net weight (gross weight of the sack minus the tare weight of the sack) of the mail for the specific rate group.

Price group	Direct country sacks			Mixed country sacks		
	Per piece	Full service per lb.	ISC drop shipment per lb.	Per piece	Full service per lb.	ISC drop shipment per lb.
1	$0.43	$7.12	$4.62			
2	0.15	6.69	4.19			
3	0.42	9.07	6.57			
4	0.45	9.52	7.02			
5	0.43	9.26	6.76			
6	0.44	9.26	6.76			
7	0.42	9.00	6.50			
8	0.41	9.00	6.50			
9	0.33	9.97	7.47			
10	0.41	9.20	6.70			
11	0.40	9.00	6.50	0.42		6.83
12	0.15	8.00	5.50	0.16		5.78
13	0.16	7.35	4.85	0.17		5.10
14	0.15	9.00	6.50	0.16		6.83
15	0.12	9.50	7.00	0.13		7.35

WORLDWIDE NONPRESORTED SACKS

Price group	Per piece	Full service per lb.	ISC drop shipment per lb.
n/a	$0.47	$10.98	$8.09

~~a. Presort Mail (Full Service and ISC Drop Shipment)~~

~~i. Per Piece~~

	~~Price Group~~								
	~~1 ($)~~	~~2 ($)~~	~~3 ($)~~	~~4 ($)~~	~~5 ($)~~	~~6 ($)~~	~~7 ($)~~	~~8 ($)~~	~~9 ($)~~
~~Full Service~~	~~0.40~~	~~0.15~~	~~0.40~~	~~0.41~~	~~0.15~~	~~0.15~~	~~0.15~~	~~0.12~~	~~0.31~~
~~ISC Drop Shipment~~	~~0.40~~	~~0.15~~	~~0.40~~	~~0.41~~	~~0.15~~	~~0.15~~	~~0.15~~	~~0.12~~	~~0.31~~

~~ii. Per Pound~~

	~~Price Group~~								
	~~1 ($)~~	~~2 ($)~~	~~3 ($)~~	~~4 ($)~~	~~5 ($)~~	~~6 ($)~~	~~7 ($)~~	~~8 ($)~~	~~9 ($)~~
~~Full Service~~	~~5.44~~	~~6.10~~	~~7.50~~	~~7.70~~	~~6.50~~	~~5.80~~	~~7.50~~	~~8.00~~	~~8.25~~
~~ISC Drop Shipment~~	~~4.44~~	~~5.10~~	~~6.50~~	~~6.70~~	~~5.50~~	~~4.80~~	~~6.50~~	~~7.00~~	~~7.25~~

~~b. Worldwide Nonpresort Mail (Full Service and ISC Drop Shipment)~~

~~i. Per Piece~~

	~~($)~~
~~Full Service~~	~~0.36~~
~~ISC Drop Shipment~~	~~0.36~~

~~ii. Per Pound~~

	~~($)~~
~~Full Service~~	~~8.50~~
~~ISC Drop Shipment~~	~~7.50~~

International Priority Airmail M-Bag

The price is based on the applicable per-pound price. The per-pound price applies to the net weight (gross weight of the sack minus the tare weight of the sack) of the mail for the specific rate group.

a. International Priority Airmail M-Bag (Full Service)

~~Maximum Weight (pounds)~~	~~Price Group~~								
	~~1 ($)~~	~~2 ($)~~	~~3 ($)~~	~~4 ($)~~	~~5 ($)~~	~~6 ($)~~	~~7 ($)~~	~~8 ($)~~	~~9 ($)~~
~~11~~	~~23.10~~	~~29.70~~	~~39.60~~	~~56.65~~	~~48.40~~	~~46.20~~	~~54.45~~	~~53.35~~	~~61.60~~
~~For each additional pound or fraction thereof~~	~~2.10~~	~~2.70~~	~~3.60~~	~~5.15~~	~~4.40~~	~~4.20~~	~~4.95~~	~~4.85~~	~~5.60~~

[

Price Group	Full Service Per Lb.
1	$4.60
2	5.20
3	6.10
4	6.10
5	6.10
6	6.10
7	6.10
8	6.10
9	8.10
10	7.65
11	6.10
12	6.90
13	6.70
14	7.45
15	7.35
Note: *Full Service* M-bags are subject to the minimum price for 11 lbs.	

]

b. International Priority Airmail M-Bag (ISC Drop Shipment)

~~Maximum Weight (pounds)~~	~~Price Group~~								
	~~1 ($)~~	~~2 ($)~~	~~3 ($)~~	~~4 ($)~~	~~5 ($)~~	~~6 ($)~~	~~7 ($)~~	~~8 ($)~~	~~9 ($)~~
~~5~~	~~19.30~~	~~25.00~~	~~30.85~~	~~44.50~~	~~38.75~~	~~38.65~~	~~44.80~~	~~42.50~~	~~47.75~~
~~6~~	~~19.75~~	~~25.60~~	~~31.85~~	~~46.25~~	~~39.90~~	~~39.45~~	~~45.95~~	~~43.85~~	~~49.60~~
~~7~~	~~20.20~~	~~26.20~~	~~32.85~~	~~48.00~~	~~41.05~~	~~40.25~~	~~47.10~~	~~45.20~~	~~51.45~~
~~8~~	~~20.65~~	~~26.80~~	~~33.85~~	~~49.75~~	~~42.20~~	~~41.05~~	~~48.25~~	~~46.55~~	~~53.30~~
~~9~~	~~21.10~~	~~27.40~~	~~34.85~~	~~51.50~~	~~43.35~~	~~41.85~~	~~49.40~~	~~47.90~~	~~55.15~~
~~10~~	~~21.55~~	~~28.00~~	~~35.85~~	~~53.25~~	~~44.50~~	~~42.65~~	~~50.55~~	~~49.25~~	~~57.00~~
~~11~~	~~22.00~~	~~28.60~~	~~36.85~~	~~55.00~~	~~45.65~~	~~43.45~~	~~51.70~~	~~50.60~~	~~58.85~~
~~For each additional pound or fraction thereof~~	~~2.00~~	~~2.60~~	~~3.35~~	~~5.00~~	~~4.15~~	~~3.95~~	~~4.70~~	~~4.60~~	~~5.35~~

[

Price Group	5 lbs	6 lbs.	7 lbs.	8 lbs.	9 lbs.	10 lbs.	11 lbs.	Each Additional Pound
1	19.30	19.75	20.20	20.65	21.10	21.55	22.00	2.00
2	25.00	25.60	26.20	26.80	27.40	28.00	28.60	2.60
3	30.85	31.85	32.85	33.85	34.85	35.85	36.85	3.35
4	30.85	31.85	32.85	33.85	34.85	35.85	36.85	3.35
5	30.85	31.85	32.85	33.85	34.85	35.85	36.85	3.35
6	30.85	31.85	32.85	33.85	34.85	35.85	36.85	3.35
7	30.85	31.85	32.85	33.85	34.85	35.85	36.85	3.35
8	30.85	31.85	32.85	33.85	34.85	35.85	36.85	3.35
9	47.75	49.60	51.45	53.30	55.15	57.00	58.85	5.35
10	44.50	46.25	48.00	49.75	51.50	53.25	55.00	5.00
11	30.85	31.85	32.85	33.85	34.85	35.85	36.85	3.35
12	38.75	39.90	41.05	42.20	43.35	44.50	45.65	4.15
13	38.65	39.45	40.25	41.05	41.85	42.65	43.45	3.95
14	44.80	45.95	47.10	48.25	49.40	50.55	51.70	4.70
15	42.50	43.85	45.20	46.55	47.90	49.25	50.60	4.60
Note: ISC Drop Shipment M-bags are subject to the minimum price for 5 lbs]								

2230 International Surface [Air Lift] ~~Airlift~~ (ISAL)

2230.1 Description

a. International Surface [Air Lift] ~~Airlift~~ is an international bulk mailing service for mailing First-Class Mail International items. International Surface [Air Lift] ~~Airlift~~ shipments are flown to the foreign destinations and entered into that country's surface or nonpriority mail system for delivery.

b. International Surface [Air Lift] ~~Airlift~~ may include matter containing personal information, partially or wholly hand-written or typewritten matter, or bills or statements of account.

c. International Surface [Air Lift] ~~Airlift~~ is not sealed against postal inspection. Mailing of matter by International Surface [Air Lift] ~~Airlift~~ constitutes consent by the mailer to postal inspection of the contents, regardless of the physical closure.

d. [A Price Group can be dedicated for one specific country, or multiple countries.] ~~Most prices for international postage are segmented into Price Groups with multiple destination countries represented in each Price Group.~~ To identify what price group a destination country is in, refer to Country Price Group List for International Mail (4000). ~~The number of price groups that exist depends on the category of mail. A particular destination country may fall into different Price Groups for different categories of mail.~~

2230.2 Size and Weight Limitations

Mailpiece Requirements (mailpieces contained within M-Bags are subject to the separate International Direct Sacks—M-Bag (2515) requirements)

a. Letters

	Length	Height	Thickness	Weight
Minimum	5.5 inches	3.5 inches	0.007 inch	none
Maximum	11.5 inches	6.125 inches	0.25 inch	3.5 ounces

Notes

~~1. Packages of letter-size pieces of mail should be no thicker than approximately a handful of mail (4" to 6"). A package or packet is defined as 10 or more pieces of mail to the same country separation or 1 pound or more regardless of the number of pieces.~~

b. Postcards

	Length	Height	Thickness	Weight
Minimum	5.5 inches	3.5 inches	0.007 inch	none
Maximum	6 inches	4.25 inches	0.016 inch	not applicable

c. Large Envelopes (Flats)~~1~~

	Length	Height	Thickness	Weight
Minimum~~2~~ [1]	11.5 inches	6.125 inches	0.25 inch	none
Maximum	15 inches	12 inches	0.75 inch~~es~~	4 pounds

Notes

~~1. Packages of flat-size mail may be thicker than 6", but weigh no more than 11 pounds. A package or packet is defined as 10 or more pieces of mail to the same country separation or 1 pound or more regardless of the number of pieces.~~

[1] ~~2~~. Only one minimum dimension must be met.

d. Packages (Small Packets)

	Length	Height	Thickness	Weight
Minimum	large enough to accommodate postage, address, and other required elements on the address side			none
Maximum	24 inches			4 pounds
	Length plus height plus thickness of 36 inches			

e. Rolls

	Length	Length plus twice the diameter	Weight
Minimum	4 inches	6.75 inches	none
Maximum	36 inches	42 inches	4 pounds

2230.3 Minimum Volume Requirements

[To qualify, a minimum quantity of 50 pounds of mail is required which may include a combination of presort mail, worldwide nonpresort mail, or M-bag mail to achieve the 50 pound minimum.]

	~~Minimum Volume Requirements~~
~~Full Service and ISC Drop Shipment~~	~~50 pounds per mailing~~

2230.4 Price Categories

The following price categories are available for the product specified in this section:

- International Surface Air Lift (Full Service and ISC Drop Shipment)
  - Price Groups 1 ~~-9~~ [15]
- International Surface Air Lift M-Bags (Full Service and ISC Drop Shipment)
  - Price Groups 1 ~~-9~~ [15]

2230.6 Prices

International Surface Air Lift (Full Service and ISC Drop Shipment)

The price is determined by adding the applicable per-piece price to the applicable per-pound price. The per-piece price applies to each mailpiece regardless of weight. The per-pound price applies to the net weight (gross weight of the sack minus the tare weight of the sack) of the mail for the specific rate group.

~~a. Per Piece~~

	~~Price Group~~								
	~~1 ($)~~	~~2 ($)~~	~~3 ($)~~	~~4 ($)~~	~~5 ($)~~	~~6 ($)~~	~~7 ($)~~	~~8 ($)~~	~~9 ($)~~
~~Full Service~~	~~0.41~~	~~0.15~~	~~0.43~~	~~0.44~~	~~0.15~~	~~0.15~~	~~0.15~~	~~0.12~~	~~0.30~~
~~ISC Drop Shipment~~	~~0.41~~	~~0.15~~	~~0.43~~	~~0.44~~	~~0.15~~	~~0.15~~	~~0.15~~	~~0.12~~	~~0.30~~

~~b. Per Pound~~

	~~Price Group~~								
	~~1 ($)~~	~~2 ($)~~	~~3 ($)~~	~~4 ($)~~	~~5 ($)~~	~~6 ($)~~	~~7 ($)~~	~~8 ($)~~	~~9 ($)~~
~~Full Service~~	~~3.61~~	~~5.15~~	~~4.45~~	~~4.46~~	~~5.45~~	~~5.55~~	~~5.45~~	~~6.60~~	~~4.48~~
~~ISC Drop Shipment~~	~~2.61~~	~~4.15~~	~~3.45~~	~~3.46~~	~~4.45~~	~~4.55~~	~~4.45~~	~~5.60~~	~~3.48~~

Price group	Direct country sacks			Mixed country sacks		
	Per piece	Full service per lb.	ISC drop shipment per lb.	Per piece	Full service per lb.	ISC drop shipment per lb.
1	$0.43	$3.85	$2.85	.....	.....	.....
2	0.12	4.86	3.86	.....	.....	.....
3	0.43	4.49	3.49	.....	.....	.....
4	0.43	4.59	3.59	.....	.....	.....
5	0.43	4.56	3.56	.....	.....	.....
6	0.43	4.45	3.45	.....	.....	.....
7	0.44	4.66	3.66	.....	.....	.....
8	0.43	4.45	3.45	.....	.....	.....
9	0.31	4.76	3.76	.....	.....	.....
10	0.46	4.67	3.67	.....	.....	.....
11	0.43	4.49	3.49	0.46	.....	3.67
12	0.15	5.45	4.45	0.16	.....	4.68
13	0.15	5.55	4.55	0.16	.....	4.78
14	0.15	5.45	4.45	0.16	.....	4.68
15	0.12	6.60	5.60	0.13	.....	5.88

WORLDWIDE NONPRESORTED SACKS

Price group	Per piece	Full service per lb.	ISC drop shipment per lb.
n/a	$0.51	$7.63	6.47

International Surface Air Lift M-Bags

The price is based on the applicable per-pound price. The per-pound price applies to the net weight (gross weight of the sack minus the tare weight of the sack) of the mail for the specific rate group.

a. International Surface Air Lift M-Bags (Full Service)

~~Maximum Weight (pounds)~~	~~Price Group~~								
	~~1 ($)~~	~~2 ($)~~	~~3 ($)~~	~~4 ($)~~	~~5 ($)~~	~~6 ($)~~	~~7 ($)~~	~~8 ($)~~	~~9 ($)~~
~~11~~	~~17.60~~	~~18.70~~	~~22.00~~	~~30.80~~	~~25.85~~	~~25.85~~	~~28.60~~	~~35.75~~	~~33.00~~
~~For each additional pound or fraction thereof~~	~~1.60~~	~~1.70~~	~~2.00~~	~~2.80~~	~~2.35~~	~~2.35~~	~~2.60~~	~~3.25~~	~~3.00~~

[

Price Group	Full Service Per Lb.
1	$1.60
2	1.70
3	2.00
4	2.00
5	2.00
6	2.00
7	2.00
8	2.00
9	3.00
10	2.80
11	2.03
12	2.35
13	2.35
14	2.60
15	3.25
Note: *Full Service* M-bags are subject to the minimum price for 11 lbs.	

]

b. International Surface Air Lift M-Bag ISC (ISC Drop Shipment)

~~Maximum Weight (pounds)~~	~~Price Group~~								
	~~1 ($)~~	~~2 ($)~~	~~3 ($)~~	~~4 ($)~~	~~5 ($)~~	~~6 ($)~~	~~7 ($)~~	~~8 ($)~~	~~9 ($)~~
~~5~~	~~15.90~~	~~14.30~~	~~11.45~~	~~16.25~~	~~12.90~~	~~14.40~~	~~12.05~~	~~16.20~~	~~18.25~~
~~6~~	~~16.00~~	~~14.85~~	~~12.75~~	~~18.40~~	~~14.60~~	~~15.85~~	~~14.35~~	~~19.00~~	~~20.25~~
~~7~~	~~16.10~~	~~15.40~~	~~14.05~~	~~20.55~~	~~16.30~~	~~17.30~~	~~16.65~~	~~21.80~~	~~22.25~~
~~8~~	~~16.20~~	~~15.95~~	~~15.35~~	~~22.70~~	~~18.00~~	~~18.75~~	~~18.95~~	~~24.60~~	~~24.25~~
~~9~~	~~16.30~~	~~16.50~~	~~16.65~~	~~24.85~~	~~19.70~~	~~20.20~~	~~21.25~~	~~27.40~~	~~26.25~~
~~10~~	~~16.40~~	~~17.05~~	~~17.95~~	~~27.00~~	~~21.40~~	~~21.65~~	~~23.55~~	~~30.20~~	~~28.25~~
~~11~~	~~16.50~~	~~17.60~~	~~19.25~~	~~29.15~~	~~23.10~~	~~23.10~~	~~25.85~~	~~33.00~~	~~30.25~~
~~For each additional pound or fraction thereof~~	~~1.50~~	~~1.60~~	~~1.75~~	~~2.65~~	~~2.10~~	~~2.10~~	~~2.35~~	~~3.00~~	~~2.75~~

[

Price Group	5 lbs	6 lbs.	7 lbs.	8 lbs.	9 lbs.	10 lbs.	11 lbs.	Each Additional Pound
1	15.90	16.00	16.10	16.20	16.30	16.40	16.50	1.50
2	14.30	14.85	15.40	15.95	16.50	17.05	17.60	1.60
3	11.45	12.75	14.05	15.35	16.65	17.95	19.25	1.75
4	11.45	12.75	14.05	15.35	16.65	17.95	19.25	1.75
5	11.45	12.75	14.05	15.35	16.65	17.95	19.25	1.75
6	11.45	12.75	14.05	15.35	16.65	17.95	19.25	1.75
7	11.45	12.75	14.05	15.35	16.65	17.95	19.25	1.75
8	11.45	12.75	14.05	15.35	16.65	17.95	19.25	1.75
9	18.25	20.25	22.25	24.25	26.25	28.25	30.25	2.75
10	16.25	18.40	20.55	22.70	24.85	27.00	29.15	2.65
11	11.64	12.98	14.31	15.64	16.98	18.31	19.64	1.79
12	12.90	14.60	16.30	18.00	19.70	21.40	23.10	2.10
13	14.40	15.85	17.30	18.75	20.20	21.65	23.10	2.10
14	12.05	14.35	16.65	18.95	21.25	23.55	25.85	2.35
15	16.20	19.00	21.80	24.60	27.40	30.20	33.00	3.00
Note: ISC Drop Shipment M-bags are subject to the minimum price for 5 lbs								

]

2250 International Ancillary Services

2250.1 International Certificate of Mailing

* * * * *

2250.1.2 Prices

Individual Pieces Prices

	($)
Original certificate of mailing for listed pieces of ordinary Priority Mail International parcels	1.15
Three or more pieces individually listed in a firm mailing book or an approved customer provided manifest (per piece)	0.42
Each additional copy of original certificate of mailing or firm mailing bills (each copy)	1.15

Multiple Pieces Prices

Identical pieces of ordinary Single-Piece First-Class Mail International paid with regular stamps, precanceled stamps, or meter stamps are subject to the following fees:

	($)
Up to 1,000 pieces (one certificate for total number)	6.50
Each additional 1,000 pieces or fraction	0.75
Duplicate copy	1.15

2250.2 International Registered Mail

* * * * *

2250.2.2 Prices

	($)
Per Piece	11.50

2250.3 International Return Receipt

* * * * *

2250.3.2 Prices

Outbound International Return Receipt

	($)
Per Piece	2.30

Inbound International Return Receipt

No additional payment.

2250.4 International Restricted Delivery

* * * * *

2250.4.2 Prices

	($)
Per Piece	4.50

2250.5 International Insurance

* * * * *

2250.5.3 Prices

Outbound International Insurance

a. Priority Mail International Insurance

Indemnity limit not over ($)	Canada ($)	All other countries ($)
50	1.75	2.50
100	2.25	3.40
200	2.75	4.40
300	4.70	5.40
400	5.70	6.40
500	6.70	7.40
600	7.70	8.40
675	8.70	
700	N/A	9.40
Over 700	N/A	9.40 plus 1.00 for each 100.00 or fraction thereof over 700.00. Maximum indemnity varies by country.

b. Express Mail International Merchandise Insurance

Amount of coverage: ($)	($)
0.01 to 100.00	0.00
100.01 to 200.00	0.75
200.01 to 500.00	2.15
500.01 to 1,000.00	3.55
1,000.01 to 1,500.00	4.95
1,500.01 to 2,000.00	6.35
2,000.01 to 2,500.00	7.75
2,500.01 to 3,000.00	9.15
3,000.01 to 3,500.00	10.55
3,500.01 to 4,000.00	11.95
4,000.01 to 4,500.00	13.35
4,500.01 to 5,000.00	14.75

Part D—Country Price Lists For International Mail

4000 COUNTRY PRICE LISTS FOR INTERNATIONAL MAIL

Country	Market Dominant	Competitive			
		International Expedited Services		International Packages	IPA & ISAL[5]
	SPFCMI[1]	GXG[2]	EMI[3]	PMI[4]	
A					
Afghanistan	6	6	-	6	~~8~~ [15]
Albania	4	4	4	4	~~5~~ [12]
Algeria	8	4	8	8	~~8~~ [15]
Andorra	5	5	5	5	~~3~~ [11]
Angola	7	4	7	7	~~8~~ [15]
Anguilla	9	7	9	9	~~6~~ [13]
Antigua & Barbuda	9	7	-	9	~~6~~ [13]
Argentina	9	8	9	9	~~6~~ [13]
Armenia	4	4	4	4	~~8~~ [15]
Aruba	9	7	9	9	~~6~~ [13]
Ascension	7	-	-	-	~~5~~ [12]
Australia	3	6	10	10	9
Austria	5	5	5	5	~~3~~ [11]
Azerbaijan	4	4	4	4	~~8~~ [15]
B					
Bahamas	9	7	9	9	~~6~~ [13]
Bahrain	8	6	8	8	~~8~~ [15]
Bangladesh	6	6	6	6	~~8~~ [15]
Barbados	9	7	9	9	~~6~~ [13]
Belarus	4	4	4	4	~~5~~ [[12]
Belgium	5	3	5	5	~~3~~ [11]
Belize	9	8	9	9	~~6~~ [13]
Benin	7	4	7	7	~~8~~ [15]
Bermuda	9	7	9	9	~~6~~ [13]
Bhutan	6	6	6	6	~~8~~ [[15]
Bolivia	9	8	9	9	~~6~~ [13]
Bosnia-Herzegovina	4	4	4	4	~~5~~ [12]
Botswana	7	4	7	7	~~8~~ [15]
Brazil	9	8	9	9	~~6~~ [13]
British Virgin Islands	9	7	-	9	~~6~~ [13]
Brunei Darussalam	6	4	6	6	~~7~~ [14]
Bulgaria	4	4	4	4	~~5~~ [12]
Burkina Faso	7	4	7	7	~~8~~ [15]
Burma (Myanmar)	6	-	-	6	~~8~~ [15]
Burundi	7	4	7	7	~~8~~ [15]

Country	Market Dominant	Competitive			
		International Expedited Services		International Packages	IPA &
	SPFCMI[1]	GXG[2]	EMI[3]	PMI[4]	ISAL[5]
C					
Cambodia	6	8	6	6	~~7~~ [14]
Cameroon	7	4	7	7	~~8~~ [15]
Canada	1	1	1	1	1
Cape Verde	7	4	7	7	~~8~~ [15]
Cayman Islands	9	7	9	9	~~6~~ [13]
Central African Republic	7	-	7	7	~~8~~ [15]
Chad	7	4	7	7	~~8~~ [15]
Chile	9	8	9	9	~~6~~ 13]
China	3	6	3	3	~~7~~ [14]
Colombia	9	8	9	9	~~6~~ [13]
Comoros	7	-	-	7	~~8~~ [15]
Congo, Democratic Republic of the	7	4	7	7	~~8~~ [15]
Congo, Republic of the	7	4	7	7	~~8~~ [15]
Costa Rica	9	8	9	9	~~6~~ [13]
Cote d'Ivoire (Ivory Coast)	7	4	7	7	~~8~~ [15]
Croatia	4	4	4	4	~~5~~ [12]
Cuba	9	-	-	-	~~6~~ [13]
Cyprus	4	6	4	4	~~8~~ [15]
Czech Republic	4	4	4	4	~~5~~ [12]
D					
Denmark	5	5	5	5	~~3~~ [11]
Djibouti	7	4	7	7	~~8~~ [15]
Dominica	9	7	9	9	~~6~~ [13]
Dominican Republic	9	7	9	9	~~6~~ [13]
E					
Ecuador	9	8	9	9	~~6~~ [13]
Egypt	8	6	8	8	~~8~~ [15]
El Salvador	9	8	9	9	~~6~~ [13]
Equatorial Guinea	7	-	7	7	~~8~~ [15]
Eritrea	7	4	7	7	~~8~~ [15]
Estonia	4	4	4	4	~~5~~ [12]
Ethiopia	8	4	8	8	~~8~~ [15]
F					
Falkland Islands	9	-	-	-	~~6~~ [13]
Faroe Islands	5	5	5	5	~~5~~ [12]
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Country	Market Dominant	Competitive			
		International Expedited Services		International Packages	IPA & ISAL[5]
	SPFCMI[1]	GXG[2]	EMI[3]	PMI[4]	
G					
Gabon	7	4	7	7	~~8~~ [15]
Gambia	7	4	-	7	~~8~~ [15]
Georgia, Republic of	4	4	4	4	~~8~~ [15]
Germany	5	3	5	5	~~3~~ [4]
Ghana	7	4	7	7	~~8~~ [15]
Gibraltar	5	4	-	5	~~3~~ [11]
Great Britain and Northern Ireland	5	3	5	5	3
Greece	5	5	5	5	~~3~~ [11]
Greenland	5	5	-	5	~~3~~ [11]
Grenada	9	7	9	9	~~6~~ [13]
Guadeloupe	9	7	9	9	~~6~~ [13]
Guatemala	9	8	9	9	~~6~~ [13]
Guinea	7	4	7	7	~~8~~ [15]
Guinea-Bissau	7	-	7	7	~~8~~ [15]
Guyana	9	8	9	9	~~6~~ [13]
H					
Haiti	9	7	9	9	~~6~~ [13]
Honduras	9	8	9	9	~~6~~ [13]
Hong Kong	3	3	3	3	~~7~~ [14]
Hungary	4	4	4	4	~~5~~ [12]
I					
Iceland	5	5	5	5	~~3~~ [11]
India	6	6	6	6	~~8~~ [15]
Indonesia	6	6	6	6	~~7~~ [14]
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Iraq	8	6	8	8	~~8~~ [15]
Ireland (Eire)	5	3	5	5	~~3~~ [11]
Israel	8	6	8	8	~~3~~ [11]
Italy	5	3	5	5	~~3~~ [7]
J					
Jamaica	9	7	9	9	~~6~~ [13]
Japan	3	3	3	3	~~4~~ [10]
Jordan	8	6	8	8	~~8~~ [15]

Country	Market Dominant	Competitive			
		International Expedited Services		International Packages	IPA & ISAL[5]
	SPFCMI[1]	GXG[2]	EMI[3]	PMI[4]	
K					
Kazakhstan	6	4	6	6	~~8~~ [15]
Kenya	7	4	7	7	~~8~~ [15]
Kiribati	6	-	-	6	~~7~~ [14]
Korea, Democratic People's Republic of (North)	6	-	-	-	~~7~~ [14]
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L					
Laos	6	8	6	6	~~7~~ [14]
Latvia	4	4	4	4	~~5~~ [12]
Lebanon	8	6	-	8	~~8~~ [15]
Lesotho	7	4	7	7	~~8~~ [15]
Liberia	7	4	7	7	~~8~~15]
Libya	8	-	-	8	~~8~~ [15]
Liechtenstein	5	5	5	5	~~3~~ [11]
Lithuania	4	4	4	4	~~5~~ [12]
Luxembourg	5	3	5	5	~~3~~ [11]
M					
Macao	6	3	6	6	~~5~~ [12]
Macedonia, Republic of	4	4	4	4	~~5~~ [12]
Madagascar	7	4	7	7	~~8~~ [15]
Malawi	7	4	7	7	~~8~~ [15]
Malaysia	6	6	6	6	~~7~~ [14]
Maldives	6	6	6	6	~~8~~ [15]
Mali	7	4	7	7	~~8~~ [15]
Malta	5	5	5	5	~~8~~ [15]
Martinique	9	7	9	9	~~6~~ [13]
Mauritania	7	4	7	7	~~8~~ [15]
Mauritius	7	4	7	7	~~8~~ [15]
Mexico	2	2	2	2	2
Moldova	4	4	4	4	~~8~~ [15]
Mongolia	6	4	6	6	~~7~~ [14]
Montserrat	9	7	-	9	~~6~~ [13]
Morocco	8	4	8	8	~~8~~ [15]
Mozambique	7	4	7	7	~~8~~ [15]

Country	Market Dominant	Competitive			
		International Expedited Services		International Packages	IPA & ISAL[5]
	SPFCMI[1]	GXG[2]	EMI[3]	PMI[4]	
N					
Namibia	7	4	7	7	~~8~~ [15]
Nauru	6	-	6	6	~~7~~ 14]
Nepal	6	6	6	6	~~7~~ [14]
Netherlands	5	3	5	5	~~3~~ [8]
Netherlands Antilles	9	7	9	9	~~6~~ [13]
New Caledonia	6	8	6	6	~~7~~ [14]
New Zealand	6	6	10	10	4 [11]
Nicaragua	9	8	9	9	~~6~~ [13]
Niger	7	4	7	7	~~8~~ [15]
Nigeria	7	4	7	7	~~8~~ [15]
Norway	5	5	5	5	~~3~~ [11]
O					
Oman	8	6	8	8	~~8~~ [15]
P					
Pakistan	6	6	6	6	~~8~~ [15]
Panama	9	8	9	9	~~6~~ [13]
Papua New Guinea	6	8	6	6	~~7~~ [[14]
Paraguay	9	8	9	9	~~6~~ [13]
Peru	9	8	9	9	~~6~~ [13]
Philippines	6	6	6	6	~~7~~ [14
Pitcairn Island	6	-	-	6	~~7~~ [14]
Poland	4	4	4	4	~~5~~ [12]
Portugal	5	5	5	5	~~3~~ [11]
Q					
Qatar	8	6	8	8	~~8~~ [15]
R					
Reunion	9	4	-	9	~~8~~ [15]
Romania	4	4	4	4	~~5~~ [12]
Russia	4	4	4	4	~~5~~ [12]
Rwanda	7	4	7	7	~~8~~ [15]

Country	Market Dominant	Competitive			
		International Expedited Services		International Packages	IPA &
	SPFCMI[1]	GXG[2]	EMI[3]	PMI[4]	ISAL[5]
S					
St. Christopher (St. Kitts) & Nevis	9	7	9	9	~~6~~ [13]
Saint Helena	7	-	-	7	~~8~~ [15]
Saint Lucia	9	7	9	9	~~6~~ [13]
Saint Pierre & Miquelon	4	-	-	4	~~6~~ [13]
Saint Vincent & Grenadines	9	7	9	9	~~6~~ [13]
San Marino	5	3	5	5	~~3~~ [11]
Sao Tome & Principe	7	-	-	7	~~5~~ [12]
Saudi Arabia	8	4	8	8	~~8~~ [15]
Senegal	7	4	7	7	~~8~~ [15]
Serbia-Montenegro (Yugoslavia)	5	4	5	5	~~5~~ [12]
Seychelles	7	4	7	7	~~8~~ [15]
Sierra Leone	7	-	7	7	~~8~~ [15]
Singapore	6	3	6	6	~~7~~ [14]
Slovak Republic (Slovakia)	5	4	5	5	~~5~~ [12]
Slovenia	5	4	5	5	~~5~~ [12]
Solomon Islands	6	-	6	6	~~7~~ [14]
Somalia	-	-	-	-	~~8~~ [15]
South Africa	7	4	7	7	~~8~~ [15]
Spain	5	5	5	5	~~3~~ [11]
Sri Lanka	6	6	6	6	~~8~~ [15]
Sudan	7	-	7	7	~~8~~ [15]
Suriname	9	8	-	9	~~6~~ [13]
Swaziland	7	4	7	7	~~8~~ [15]
Sweden	5	5	5	5	~~3~~ [11]
Switzerland	5	5	5	5	~~3~~ [6]
Syrian Arab Republic (Syria)	8	-	8	8	~~8~~ [15]

Country	Market Dominant	Competitive			
		International Expedited Services		International Packages	IPA & ISAL[5]
	SPFCMI[1]	GXG[2]	EMI[3]	PMI[4]	
T					
Taiwan	6	3	6	6	~~7~~ [14]
Tajikistan	6	-	6	6	~~8~~ [15]
Tanzania	7	4	7	7	~~8~~ [15]
Thailand	6	6	6	6	~~7~~ [14]
Togo	7	4	7	7	~~8~~ [15]
Tonga	6	-	-	6	~~7~~ 14]
Trinidad & Tobago	9	7	9	9	~~6~~ [13]
Tristan da Cunha	7	-	-	7	~~8~~ [15]
Tunisia	8	4	8	8	~~8~~ [15]
Turkey	4	6	4	4	~~5~~ [12]
Turkmenistan	6	-	6	6	~~5~~ [12]
Turks & Caicos Islands	9	7	9	9	~~6~~ [13]
Tuvalu	6	-	-	6	~~7~~ [14]
U					
Uganda	7	4	7	7	~~8~~ [15]
Ukraine	4	4	4	4	~~8~~ [15]
United Arab Emirates	8	6	8	8	~~8~~ [15]
Uruguay	9	8	9	9	~~6~~ [13]
Uzbekistan	6	4	6	6	~~8~~ [15]
V					
Vanuatu	6	8	6	6	~~7~~ [14]
Vatican City	5	3	5	5	~~3~~ [11]
Venezuela	9	8	9	9	~~6~~ [13]
Vietnam	6	6	6	6	~~7~~ [14]
W					
Wallis & Futuna Islands	6	4	-	6	~~7~~ [14]
Western Samoa	6	-	6	6	~~7~~ [14]
Y					
Yemen	8	6	8	8	~~8~~ [15]
Z					
Zambia	7	4	7	7	~~8~~ [15]
Zimbabwe	7	4	7	7	~~8~~ [15]

Notes

1. SPFCMI = Single-Piece First-Class Mail International. The same country price groups also apply to International Direct Sacks – M-Bags.

2. GXG = Global Express Guaranteed

3. EMI = Express Mail International

4. PMI = Priority Mail International

5. IPA = International Priority [Airmail] ~~Airlift~~;
ISAL = International Surface [Air Lift]~~Airlift~~.
[IPA country price groups are also available at section 292.452 of the International Mail Manual. ISAL country price groups are also available at section 293.452 of the International Mail Manual.]
ISAL service is not available to all countries. See ~~Individual Country Listings for availability.~~ [International Mail Manual section 293.452.]

Editorial Note: Notice document E9–3483 was inadvertently removed from the issue of Monday, February 23, 2009. It appears in this issue in its entirety.

[FR Doc. E9–3483 Filed 2–20–09; 8:45 am]
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