Federal Register

11–4–10 Thursday
Vol. 75 No. 213 Nov. 4, 2010

Pages 67897–68168

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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Presidential Documents

Title 3—

The President

Proclamation 8590 of October 29, 2010

Military Family Month, 2010

By the President of the United States of America

A Proclamation

We owe each day of security and freedom that we enjoy to the members of our Armed Forces and their families. Behind our brave service men and women, there are family members and loved ones who share in their sacrifice and provide unending support. During Military Family Month, we celebrate the exceptional contributions of our military families, and we reaffirm our commitments to these selfless individuals who exemplify the highest principles of our Nation.

Across America, military families inspire us all with their courage, strength, and deep devotion to our country. They endure the challenges of multiple deployments and moves; spend holidays and life milestones apart; juggle everyday tasks while a spouse, parent, son, or daughter is in harm's way; and honor the service of their loved ones and the memory of those lost.

Just as we hold a sacred trust to the extraordinary Americans willing to lay down their lives to protect us all, we also have a national commitment to support and engage our military families. They are proud to serve our country; yet, they face unique challenges because of that service. My Administration has taken important steps to help them shoulder their sacrifice, and we are working to ensure they have the resources to care for themselves and the tools to reach their dreams. We are working to improve family resilience, enhance the educational experience of military children, and ensure military spouses have employment and advancement opportunities, despite the relocations and deployment cycles of military life. Our historic investment to build a 21st-century Department of Veterans Affairs is helping to provide our veterans with the benefits and care they have earned. We are also standing with our service members and their families as they transition back into civilian life, providing counseling as well as job training and placement. And, through the Post-9/11 GI Bill, our veterans and their families can pursue the dream of higher education.

However, Government can only do so much. While only a fraction of Americans are in military families, all of us share in the responsibility of caring for our military families and veterans, and all sectors of our society are better off when we reach out and work together to support these patriots. By offering job opportunities and workplace flexibility, businesses and companies can benefit from the unparalleled dedication and skills of a service member or military spouse. Through coordination with local community groups, individuals and organizations can ensure our military families have the help they need and deserve when a loved one is deployed. Even the smallest actions by neighbors and friends send a large message of profound gratitude to the families who risk everything to see us safe and free.

As America asks ever more of military families, they have a right to expect more of us—it is our national challenge and moral obligation to uphold that promise. If we hold ourselves to the same high standard of excellence our military families live by every day, we will realize the vision of an America that supports and engages these heroes now and for decades to come.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2010 as Military Family Month. I call on all Americans to honor military families through private actions and public service for the tremendous contributions they make in support of our service members and our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of October, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fifth.

[FR Doc. 2010–28061
Filed 11–3–10; 8:45 am]
Billing code 3195–W1–P

Presidential Documents

Proclamation 8591 of October 29, 2010

National Alzheimer's Disease Awareness Month, 2010

By the President of the United States of America

A Proclamation

Alzheimer's disease tragically robs individuals of their memories and leads to progressive mental and physical impairments. This eventually fatal disease represents a serious and growing threat to the health of our Nation, impacting millions of Americans and their families. During National Alzheimer's Disease Awareness Month, we recommit to improving its detection and treatment, finding a cure, and standing with all whose lives are affected by this terrible disease.

As we continue our fight against Alzheimer's disease, we must seek new ways to prevent, delay, and treat this disease. Through the American Recovery and Reinvestment Act, we are boosting funding for promising research on risk factors, on improving diagnostic tools and therapies, and in identifying new preventive measures.

This year's landmark Affordable Care Act also makes important progress for those living with Alzheimer's disease, as well as their loved ones and caretakers. This legislation establishes the Cures Acceleration Network, which will advance cutting-edge research, aid in the development of highly needed cures, and reduce barriers between laboratory discoveries and clinical trials for debilitating and life-threatening conditions like Alzheimer's disease. The Affordable Care Act seeks to improve care by training nursing home workers who care for residents with dementia and establishes the Community Living Assistance Services and Supports (CLASS) Program, a new national long-term care insurance option. This legislation also provides Medicare beneficiaries with free annual wellness visits to increase the likelihood of early cognitive impairment detection, allowing patients and families to better plan for care needs. And by 2014, Americans living with Alzheimer's disease and other pre-existing conditions will not have to worry about having their insurance coverage discontinued or denied.

The human cost of Alzheimer's disease is staggering. We can—and must—come together to address this growing health challenge. Caring for a person with Alzheimer's disease is a full-time, non-stop job, and this month, we also honor the compassionate caregivers and medical professionals who provide endless comfort and attention to those facing Alzheimer's disease. Until we find more effective treatments and a cure, we must continue to support both Alzheimer's disease research and the caregivers and victims of this devastating disease.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2010 as National Alzheimer's Disease Awareness Month. I call upon the people of the United States to learn more about Alzheimer's disease and what they can do to support their families, friends, and neighbors who care for those with the disease.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of October, in the year of our Lord two thousand ten, and of the

Independence of the United States of America the two hundred and thirty-fifth.

[FR Doc. 2010–28062
Filed 11–3–10; 8:45 am]
Billing code 3195–W1–P

Presidential Documents

Proclamation 8592 of October 29, 2010

National Diabetes Month, 2010

By the President of the United States of America

A Proclamation

Today, nearly 24 million Americans have diabetes, and thousands more are diagnosed each day. During National Diabetes Month, we recommit to educating Americans about the risk factors and warning signs of diabetes, and we honor all those living with or lost to this disease.

Diabetes can lead to severe health problems and complications such as heart disease, stroke, vision loss, kidney disease, nerve damage, and amputation. Type 1 diabetes, which can occur at any age but is most often diagnosed in young people, is managed by a lifetime of regular medication or insulin treatment. Type 2 diabetes is far more common, and the number of people developing or at elevated risk for the disease is growing at an alarming rate, including among our Nation's children. Risk is highest among individuals over the age of 45, particularly those who are overweight, inactive, or have a family history of the disease, as well as among certain racial and minority groups. While less prevalent, gestational diabetes in expectant mothers may lead to a more complicated or dangerous delivery, and can contribute to their child's obesity later in life. With more Americans becoming affected by diabetes and its consequences every day, our Nation must work together to better prevent, manage, and treat this disease in all its variations.

Obesity is one of the most significant risk factors for Type 2 diabetes. National Diabetes Month gives Americans an opportunity to redouble their efforts to reduce their chances of developing Type 2 diabetes by engaging in regular physical activity, maintaining a healthy weight, and making nutritious food choices. For people already living with diabetes, these lifestyle changes can help with the management of this disease, and delay or prevent complications.

We must also do more to reverse the climbing rates of childhood obesity so all America's children can grow into healthy, happy, and active adults. Through her "Let's Move!" initiative, First Lady Michelle Obama is helping to lead an Administration-wide effort to solve the epidemic of childhood obesity within a generation. "Let's Move!" promotes nutritious foods and physical activities that lead to life-long healthy habits. I encourage all parents, educators, and concerned Americans to visit www.LetsMove.gov for more information and resources on making healthy choices for our children.

The new health insurance reform law, the Affordable Care Act, adds a number of tools for reversing the increase in diabetes and caring for those facing this disease. Insurance companies are no longer able to deny health coverage or exclude benefits for children due to a pre-existing condition, including diabetes. This vital protection will apply to all Americans by 2014. Also, all new health plans and Medicare must now provide diabetes screenings free of charge to patients, and Medicare covers the full cost of medical nutritional therapy to help seniors manage diabetes. This landmark new law also requires most chain restaurants to clearly post nutritional information on their menus, ensuring that Americans have consistent facts about food choices and can make more informed, healthier selections.

In recognition of National Diabetes Month, I commend those bravely fighting this disease; the families and friends who support them; and the health care providers, researchers, and advocates working to reduce this disease's impact on our Nation. Together, we can take the small steps that lead to big rewards—a healthier future for our citizens and our Nation.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2010 as National Diabetes Month. I call upon all Americans, school systems, government agencies, nonprofit organizations, health care providers, and research institutions to join in activities that raise diabetes awareness and help prevent, treat, and manage the disease.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of October, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fifth.

[FR Doc. 2010–28064
Filed 11–3–10; 8:45 am]
Billing code 3195–W1–P

Presidential Documents

Proclamation 8593 of October 29, 2010

National Family Caregivers Month, 2010

By the President of the United States of America

A Proclamation

Every day, family members, friends, neighbors, and concerned individuals across America provide essential attention and assistance to their loved ones. Many individuals in need of care—including children, elders, and persons with disabilities—would have difficulty remaining safely in their homes and community without the support of their relatives and caregivers.

Caregivers often look after multiple generations of family members. Their efforts are vital to the quality of life of countless American seniors, bringing comfort and friendship to these treasured citizens. However, this labor of love can result in physical, psychological, and financial hardship for caregivers, and research suggests they often put their own health and well-being at risk while assisting loved ones. Through the National Family Caregiver Support Program, individuals can help their loved ones remain comfortably in the home and receive assistance with their caregiving responsibilities. This program provides information, assistance, counseling, training, support groups, and respite care for caregivers across our country.

My Administration's Middle Class Task Force, led by Vice President Joe Biden, has made supporting family caregivers a priority, and we are working to assist caregivers as they juggle work, filial, and financial responsibilities. We made important progress with this year's Affordable Care Act, and because of this landmark legislation, Americans will be able to take advantage of the Community Living Assistance Services and Supports (CLASS) Program. This voluntary insurance program will help individuals with long-term care needs to maintain independent living, as well as compensate family caregivers for their devoted work.

Our businesses and companies can also contribute to families' ability to care for their loved ones in need. By offering flexible work arrangements and paid leave when caregiving duties require employees to miss work, employers can enable workers with caregiver responsibilities to balance work and family obligations more easily. Such efforts impact countless lives across our Nation, easing concerns and contributing to the well-being of individuals and families as they go about their daily lives.

During National Family Caregivers Month, we honor the millions of Americans who give endlessly of themselves to provide for the health and well-being of a beloved family member. Through their countless hours of service to their families and communities, they are a shining example of our Nation's great capacity to care for each other.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2010 as National Family Caregivers Month. I encourage all Americans to pay tribute to those who provide care for their family members, friends, and neighbors in need.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of October, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fifth.

[FR Doc. 2010–28078
Filed 11–3–10; 8:45 am]
Billing code 3195–W1–P

Presidential Documents

Proclamation 8594 of October 29, 2010

National Hospice Month, 2010

By the President of the United States of America

A Proclamation

During National Hospice Month, we recognize the dignity hospice care can provide to patients who need it most, and the professionals, volunteers, and family members who bring peace to individuals in their final days.

Hospice care gives medical services, emotional support, and spiritual resources to people facing life-limiting illnesses. It can also help families and caregivers manage the details and emotional challenges of caring for a dying loved one. The decision to place someone into a hospice program can be difficult, but Americans can have peace of mind knowing the doctors and professionals involved with these services are trained to administer high-quality and comprehensive care for terminally ill individuals. As many of our Nation's veterans age and cope with illness, hospice and palliative care can also provide tailored support to meet the needs of these heroes.

The Affordable Care Act signed into law this year protects and expands hospice services covered under Federal health care programs. Prior to its enactment, the prohibition on concurrent care for Federal health care programs meant patients could not receive hospice care before first discontinuing treatments to cure their disease. The Affordable Care Act permanently eliminates this prohibition for children enrolled in Medicaid and the Children's Health Insurance Program, and creates demonstration projects to test how the elimination of the concurrent care prohibition would impact Medicare. As a result, fewer children, seniors, and families will have to make the heart-rending choice between coverage that fights an illness and coverage that provides needed comfort.

All Americans should take comfort in the important work of hospice care, which enables individuals to carry on their lives, in spite of a terminal illness. During this month, let us recognize those who allow the terminally ill to receive comfortable and dignified care.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2010 as National Hospice Month. I encourage citizens, medical institutions, government and social service agencies, businesses, nonprofit organizations, and other interested groups to join in activities that promote awareness of the important role of hospice care.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of October, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fifth.

[FR Doc. 2010–28082
Filed 11–3–10; 8:45 am]
Billing code 3195–W1–P

Presidential Documents

Proclamation 8595 of October 29, 2010

National Native American Heritage Month, 2010

By the President of the United States of America

A Proclamation

For millennia before Europeans settled in North America, the indigenous peoples of this continent flourished with vibrant cultures and were the original stewards of the land. From generation to generation, they handed down invaluable cultural knowledge and rich traditions, which continue to thrive in Native American communities across our country today. During National Native American Heritage Month, we honor and celebrate their importance to our great Nation and our world.

America's journey has been marked both by bright times of progress and dark moments of injustice for American Indians and Alaska Natives. Since the birth of America, they have contributed immeasurably to our country and our heritage, distinguishing themselves as scholars, artists, entrepreneurs, and leaders in all aspects of our society. Native Americans have also served in the United States Armed Forces with honor and distinction, defending the security of our Nation with their lives. Yet, our tribal communities face stark realities, including disproportionately high rates of poverty, unemployment, crime, and disease. These disparities are unacceptable, and we must acknowledge both our history and our current challenges if we are to ensure that all of our children have an equal opportunity to pursue the American dream. From upholding the tribal sovereignty recognized and reaffirmed in our Constitution and laws to strengthening our unique nation-to-nation relationship, my Administration stands firm in fulfilling our Nation's commitments.

Over the past 2 years, we have made important steps towards working as partners with Native Americans to build sustainable and healthy native communities. The American Recovery and Reinvestment Act continues to impact the lives of American Indians and Alaska Natives, including through important projects to improve, rebuild, and renovate schools so our children can get the education and skills they will need to compete in the global economy. At last year's White House Tribal Nations Conference, I also announced a new consultation process to improve communication and coordination between the Federal Government and tribal governments.

This year, I was proud to sign the landmark Affordable Care Act, which permanently reauthorized the Indian Health Care Improvement Act, a cornerstone of health care for American Indians and Alaska Natives. This vital legislation will help modernize the Indian health care system and improve health care for 1.9 million American Indians and Alaska Natives. To combat the high rates of crime and sexual violence in Native communities, I signed the Tribal Law and Order Act in July to bolster tribal law enforcement and enhance their abilities to prosecute and fight crime more effectively. And, recently, my Administration reached a settlement in a lawsuit brought by Native American farmers against the United States Department of Agriculture that underscores our commitment to treat all our citizens fairly.

As we celebrate the contributions and heritage of Native Americans during this month, we also recommit to supporting tribal self-determination, security, and prosperity for all Native Americans. While we cannot erase the

scourges or broken promises of our past, we will move ahead together in writing a new, brighter chapter in our joint history.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2010 as National Native American Heritage Month. I call upon all Americans to commemorate this month with appropriate programs and activities, and to celebrate November 26, 2010, as Native American Heritage Day.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of October, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fifth.

[FR Doc. 2010–28088
Filed 11–3–10; 8:45 am]
Billing code 3195–W1–P

Rules and Regulations

Federal Register
Vol. 75, No. 213
Thursday, November 4, 2010

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

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

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2010–0082]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security Office of the Inspector General–002 Investigative Records System of Records

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of an updated and reissued system of records titled, "Department of Homeland Security Office of the Inspector General—002 Investigative Records System of Records" from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective November 4, 2010.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Melinda D. Holliday McDonald, Esq. (202–254–4284), Privacy Officer, Office of the Inspector General, Mail Stop 2600, 245 Murray Drive, SW., Building 410, Washington, DC 20528; or by facsimile (202) 254–4299. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) Office of Inspector General (OIG) published a notice of proposed rulemaking in the **Federal Register**, 74 FR 55482, October 28, 2009, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the DHS/OIG–002 Investigative Records System of Records. The DHS/OIG–002 Investigative Records System of Records notice was published concurrently in the **Federal Register**, 74 FR 55569, October 28, 2009, and comments were invited on both the Notice of Proposed Rulemaking (NPRM) and System of Records Notice (SORN).

Public Comments

DHS received one comment on the NPRM and no comments on the SORN.

NPRM

The one comment received on the NPRM noted the inability to correct personal information contained within the DHS/OIG–002 Investigative Records System of Records and the inability to obtain legal and/or civil remedy to dispute incorrect information contained within the system of records. The commenter acknowledged that the overall exemptions DHS seeks from the Privacy Act are necessary and consistent with common exemptions sought by law enforcement agencies nationally. However, the commenter expressed concern with the exemptions in subsection (e)(5) of the Privacy Act (Collection of Information), coupled with exemption in subsection (g). The commenter stated that information contained in a file that is inaccurate should not be in that file when the effects could damage that individual. The commenter stated that on a case-by-case basis there must be an opportunity to remedy incomplete and irrelevant information to make that person's character whole.

DHS/OIG believes that there is a need for the exemptions provided for in this document. However, DHS/OIG recognizes that there may be instances where such exemptions can be waived as stated in the NPRM and implemented in the Final Rule. In appropriate circumstances, where compliance would not appear to interfere with, or adversely affect, the law enforcement and national security purposes of the system and the overall law enforcement and security process, the applicable exemptions may be waived.

In the case of access requests from the DHS/OIG–002 Investigative Records System of Records, each access request will be evaluated on a case-by-case basis and if no harm to law enforcement interests or national security would ensue from disclosure, the exemption may be waived and the records (or portions of the records) may be disclosed.

In the case of amendment requests from the DHS/OIG–002 Investigative Records System of Records, such requests would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated and could disclose security-sensitive information that could be detrimental to homeland security; therefore, the exemption from amendment requests is necessary.

SORN

No SORN comments were received.

After consideration of public comments, the Department will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

■ For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

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

Authority: 6 U.S.C. 101 *et seq.;* Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. In Appendix C to Part 5, revise paragraph "5" to read as follows:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

5. The DHS/OIG–002 Investigative Records System of Records consists of electronic and paper records used by the DHS OIG. The DHS/OIG–002 Investigative Records System of Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to the enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; and national security and intelligence activities. The DHS/OIG–002 Investigative Records System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS components and

may contain personally identifiable information collected by other federal, state, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to limitations set forth in 5 U.S.C. 552a(c)(3) and (c)(4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5) and (e)(8); (f); and (g) pursuant to 5 U.S.C. 552a(j)(2). Additionally, the Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to limitations set forth in 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H); and (f) pursuant to 5 U.S.C. 552a(k)(1), (k)(2) and (k)(5). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (c)(4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation; and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, tamper with witnesses or evidence, and avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, tamper with witnesses or evidence, and avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject as to the nature or existence of an investigation, thereby interfering with the related investigation and law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise investigations by: revealing the existence of an otherwise confidential investigation and thereby providing an opportunity for the subject of an investigation to conceal evidence, alter patterns of behavior, or take other actions that could thwart investigative efforts; revealing the identity of witnesses in investigations thereby providing an opportunity for the subjects of the investigations or others to harass, intimidate, or otherwise interfere with the collection of evidence or other information from such witnesses; or revealing the identity of confidential informants, which would negatively affect the informants' usefulness in any ongoing or future investigations and discourage members of the public from cooperating as confidential informants in any future investigations.

(f) From subsections (e)(4)(G) and (e)(4)(H) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish rules or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in this system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS' ability to obtain, serve, and issue subpoenas, warrants and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals' rights to access and amend their records contained in the system. Therefore, DHS is not required to establish rules or procedures pursuant to which individuals may seek a civil remedy for the agency's refusals to amend a record; refusal to comply with a request for access to records; failure to maintain accurate, relevant, timely, and complete records; or failure to otherwise comply with an individual's right to access or amend records.

* * * * *

Dated: October 6, 2010.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2010–27830 Filed 11–3–10; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0817; Airspace Docket No. 10–ASO–31]

Amendment of Class E Airspace; Charleston, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E Airspace at Charleston, SC, by removing the East Cooper Airport from the airspace description. The East Cooper Airport has been renamed Mt. Pleasant Regional Airport-Faison Field, Mt. Pleasant, SC, and established under separate rulemaking. This amendment is necessary for the safe navigation of our National Airspace System.

DATES: Effective 0901 UTC, December 6, 2010. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

The airspace description for Charleston, SC, is a combination of the Charleston AFB/International Airport, the Charleston Executive Airport, and the East Cooper Airport. The East Cooper Airport has been renamed Mt. Pleasant Regional Airport-Faison Field, Mt. Pleasant, SC, and separate rulemaking has been established for the airport (75 FR 16335). To eliminate confusion, all references to the East Cooper Airport is being removed from the legal description of Class E airspace, Charleston, SC.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71

amends the Class E airspace extending upward from 700 feet above the surface at Charleston, SC, by removing the East Cooper Airport from the legal description. Since this is an administrative change that does not involve a change in the dimensions or operating requirements for that airspace, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

The Class E airspace designations are published in Paragraph 6005 of FAA order 7400.9U, signed August 18, 2010, and effective September 15, 2010, 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 FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, signed August 18, 2010, and effective September 15, 2010, is amended as follows:

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

* * * * *

ASO SC E5 Charleston, SC [Amended]

Charleston AFB/International Airport, SC
(Lat. 32°53′56″ N., long. 80°02′26″ W.)
Charleston Executive Airport
(Lat. 32°42′04″ N., long. 80°00′09″ W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Charleston AFB/International Airport and within a 7-mile radius of Charleston Executive Airport.

Issued in College Park, Georgia, on October 19, 2010.

Mark D. Ward,

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

[FR Doc. 2010–27647 Filed 11–3–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0052; Airspace Docket No. 10–AEA–19]

Amendment of Class E Airspace; Jeannette, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E Airspace at Jeannette, PA. Jeannette District Hospital will no longer be using the heliport therefore reference to the Jeannette District Hospital Heliport in the legal description is being removed. The boundaries, altitudes and operating requirements will not change.

DATES: Effective 0901 UTC, December 6, 2010.

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

FOR FURTHER INFORMATION CONTACT: Richard Horrocks, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5588.

SUPPLEMENTARY INFORMATION:

History

The Point in Space in the legal description of the Class E airspace area for Jeannette, PA serves both the Monsour Medical Center Heliport and the Jeannette District Hospital Heliport. The FAA is removing reference only to the Jeannette District Hospital Heliport. This change does not affect the boundaries, altitudes, or operating requirements of the airspace, therefore, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends the Class E airspace extending upward from 700 feet above the surface at Jeannette, PA, by removing the Jeannette District Hospital Heliport reference from the legal description. The Point in Space within the legal description will continue to serve Monsour Medical Center Heliport.

The Class E airspace designations are published in Paragraph 6005 of FAA order 7400.9U, signed August 18, 2010, and effective September 15, 2010, 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 FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, effective September 15, 2010, is amended as follows:

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

* * * * *

AEA PA E5 Jeannette, PA [Amended]

Monsour Medical Center Heliport Point In Space Coordinates
(Lat. 40°19′49″ N., long. 79°37′44″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point in Space coordinates, at Lat. 40°19′49″ N., long. 79°37′44″ W., serving the Monsour Medical Center Heliport.

Issued in College Park, Georgia, on October 19, 2010.

Mark D. Ward,

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

[FR Doc. 2010–27644 Filed 11–3–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 510

North Korea Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control ("OFAC") is issuing regulations with respect to North Korea to implement Executive Order 13466 of June 26, 2008, and Executive Order 13551 of August 30, 2010. OFAC intends to supplement this part 510 with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance and additional general licenses and statements of licensing policy.

DATES: *Effective Date:* November 4, 2010.

FOR FURTHER INFORMATION CONTACT: Assistant Director for Compliance, Outreach & Implementation, *tel.:* 202/622–2490, Assistant Director for Licensing, *tel.:* 202/622–2480, Assistant Director for Policy, *tel.:* 202/622–4855, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), *tel.:* 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

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

Background

On June 26, 2008, the President, invoking the authority of, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) ("IEEPA") and the National Emergencies Act (50 U.S.C. 1601 *et seq.*) ("NEA"), issued Executive Order 13466 (73 FR 36787, June 27, 2008) ("E.O. 13466"). On August 30, 2010, the President, invoking the authority of, *inter alia,* IEEPA, the NEA, and section 5 of the United Nations Participation Act (22 U.S.C. 287c), issued Executive Order 13551 (75 FR 53837, September 1, 2010) ("E.O. 13551"), effective at 12:01 p.m. eastern daylight time on August 30, 2010.

The Department of the Treasury's Office of Foreign Assets Control is issuing the North Korea Sanctions Regulations, 31 CFR part 510 (the "Regulations"), to implement E.O. 13466 and E.O. 13551, pursuant to authorities delegated to the Secretary of the Treasury in those orders. A copy of E.O. 13466 appears in appendix A to this part. A copy of E.O. 13551 appears in appendix B to this part.

The Regulations are being published in abbreviated form at this time for the purpose of providing immediate guidance to the public. OFAC intends to supplement this part 510 with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance and additional general licenses and statements of licensing policy. (The appendices to the Regulations will be removed when OFAC supplements this part with a more comprehensive set of regulations.)

Public Participation

Because the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the "Reporting, Procedures and Penalties Regulations"). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 510

Administrative practice and procedure, Banks, Banking, Blocking of assets, Credit, North Korea, Services.

■ For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control adds part 510 to 31 CFR Chapter V to read as follows:

PART 510—NORTH KOREA SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
510.101 Relation of this part to other laws and regulations.

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Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13466, 73 FR 36787, June 27, 2008, 3 CFR, 2008 Comp., p. 195; E.O. 13551, 75 FR 53837, September 1, 2010.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 510.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Note to § 510.101: This part has been published in abbreviated form for the purpose of providing immediate guidance to the public. OFAC intends to supplement this part with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance and additional general licenses and statements of licensing policy.

Subpart B—Prohibitions

§ 510.201 Prohibited transactions.

(a) All transactions prohibited pursuant to Executive Order 13466 are also prohibited pursuant to this part.

Note 1 to § 510.201(a): The property and interests in property of North Korea or a North Korean national blocked pursuant to this paragraph are referred to throughout this part as "property and interests in property blocked pursuant to § 510.201(a)."

(b) All transactions prohibited pursuant to Executive Order 13551 are also prohibited pursuant to this part.

Note 1 to § 510.201: The names of persons listed in or designated pursuant to Executive Order 13551, whose property and interests in property are blocked pursuant to this section, are published on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List ("SDN" list) (which is accessible via the Office of Foreign Assets Control's Web site), published in the **Federal Register**, and incorporated into Appendix A to this chapter with the identifier "[DPRK]." *See* § 510.406 concerning entities that may not be listed on the SDN list but whose property and interests in property are nevertheless blocked pursuant to this section.

Note 2 to § 510.201: Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) ("IEEPA") explicitly authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to this part also are published on the SDN list, published in the **Federal Register**, and incorporated into Appendix A to this chapter with the identifier "[BPI–DPRK]."

Note 3 to § 510.201: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of the status of their property and interests in property as blocked pursuant to § 501.201(a) or of their status as persons whose property and interests in property are blocked pursuant to § 510.201(b).

§ 510.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 510.201 is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interest.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 510.201, unless the person who holds or maintains such property, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of IEEPA, Executive Order 13466,

Executive Order 13551, this part, and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property is or was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property is or was held or maintained (and as to such person only);

(2) The person with whom such property is or was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property is or was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other directive or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

Note to paragraph (d) of § 510.202: The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (d)(2) of this section have been satisfied.

(e) Unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property or interest in property blocked pursuant to § 510.201.

§ 510.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraphs (c) or (d) of this section, or as otherwise directed by the Office of Foreign Assets Control, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 510.201 shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(3) Funds held or placed in a blocked account pursuant to this paragraph (b) may not be invested in instruments the maturity of which exceeds 180 days. If interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(c) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 510.201 may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraphs (b) or (d) of this section.

(d) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 510.201 may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(e) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity securities, to sell or liquidate such property. However, the Office of Foreign Assets Control may issue licenses permitting or directing such sales or liquidation in appropriate cases.

(f) Funds subject to this section may not be held, invested, or reinvested in a manner that provides immediate financial or economic benefit or access to North Korea or any North Korean national who has property or interests in property blocked pursuant to § 510.201(a) or any person whose property and interests in property are blocked pursuant to § 510.201(b), nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

Subpart C—General Definitions

§ 510.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibitions in § 510.201, and either blocked pursuant to § 510.201(a) or held in the name of a person whose property and interests in property are blocked pursuant to § 510.201(b), or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control expressly authorizing such action.

Note to § 510.301: See § 510.406 concerning the blocked status of property and interests in property of an entity that is 50 percent or more owned by a person whose property and interests in property are blocked pursuant to § 510.201.

§ 510.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part as follows:

(a) With respect to property and interests in property blocked pursuant to E.O. 13466, June 26, 2008;

Note to paragraph (a): Prior to June 26, 2008, all property and interests in property currently blocked pursuant to E.O. 13466 were blocked pursuant to 31 CFR part 500.

(b) With respect to a person listed in the Annex to E.O. 13551, 12:01 p.m. eastern daylight time, August 30, 2010; or

(c) With respect to a person whose property and interests in property are otherwise blocked pursuant to E.O. 13551, the earlier of the date of actual or constructive notice that such person's property and interests in property are blocked.

§ 510.303 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

§ 510.304 Interest.

Except as otherwise provided in this part, the term *interest,* when used with respect to property (*e.g.,* "an interest in property"), means an interest of any nature whatsoever, direct or indirect.

§ 510.305 Licenses; general and specific.

(a) Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part.

(c) The term *specific license* means any license or authorization not set forth in subpart E of this part but issued pursuant to this part.

Note to § 510.305: See § 501.801 of this chapter on licensing procedures.

§ 510.306 Person.

The term *person* means an individual or entity.

§ 510.307 Property; property interest.

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future, or contingent.

§ 510.308 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property. Without limitation on the foregoing, it shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 510.309 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 510.310 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes but is not limited to depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

§ 510.311 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Subpart D—Interpretations

§ 510.401 [Reserved]

§ 510.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in this part, any provision in or appendix to this chapter, or any order, regulation, ruling, instruction, or license issued by the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal proceeding commenced or pending, prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 510.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a person, such property shall no longer be deemed to be property blocked pursuant to § 510.201, unless there exists in the property another interest that is blocked pursuant to § 510.201 or any other part of this chapter, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property and interests in property are blocked pursuant to § 510.201(b), such property shall be deemed to be property in which that person has an interest and therefore blocked.

§ 510.404 Transactions ordinarily incident to a licensed transaction authorized.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) An ordinarily incident transaction, not explicitly authorized within the terms of the license, by or with a person

whose property and interests in property are blocked pursuant to § 510.201(b); or

(b) An ordinarily incident transaction, not explicitly authorized within the terms of the license, involving a debit to a blocked account or a transfer of blocked property.

§ 510.405 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 510.201 if effected after the effective date.

§ 510.406 Entities owned by a person whose property and interests in property are blocked.

A person whose property and interests in property are blocked pursuant to § 510.201(b) has an interest in all property and interests in property of an entity in which it owns, directly or indirectly, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked pursuant to § 510.201(b), regardless of whether the entity itself is listed in the Annex or designated pursuant to Executive Order 13551.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 510.501 [Reserved]

§ 510.502 [Reserved]

§ 510.503 Exclusion from licenses.

The Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license or from the privileges conferred by any license. The Office of Foreign Assets Control also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon actual or constructive notice of the exclusions or restrictions.

§ 510.504 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which a person whose property and interests in property are blocked pursuant to § 510.201(b) has any interest that comes within the possession or control of a U.S. financial institution must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may be made only to another blocked account held in the same name.

Note to § 510.504: See § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. See also § 510.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 510.505 Entries in certain accounts for normal service charges authorized.

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term *normal service charges* shall include charges in payment or reimbursement for interest due; cable, telegraph, Internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 510.506 Provision of certain legal services authorized.

(a) The provision of the following legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 510.201(b) is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of the United States or any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons named as defendants in or otherwise made parties to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation and conduct of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction;

(4) Representation of persons before any federal or state agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to persons whose property and interests in property are blocked pursuant to § 510.201(b), not otherwise authorized in this part, requires the issuance of a specific license.

(c) Entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 510.201 is prohibited unless licensed pursuant to this part.

§ 510.507 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services in the United States to persons whose property and interests in property are blocked pursuant to § 510.201(b) is authorized, provided that all receipt of payment for such services must be specifically licensed.

Subpart F—[Reserved]

Subpart G—[Reserved]

Subpart H—Procedures

§ 510.801 [Reserved]

§ 510.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13466 of June 26, 2008 (73 FR 36787, June 27, 2008), or Executive Order 13551 of August 30, 2010 (75 FR 53837, September 1, 2010), and any further Executive orders relating to the national emergency declared in Executive Order 13466, may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 510.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget ("OMB") under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, see § 501.901 of this chapter. 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 assigned by OMB.

Appendix A to Part 510—Executive Order 13466

Executive Order 13466 of June 26, 2008

Continuing Certain Restrictions With Respect to North Korea and North Korean Nationals

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), and section 301 of title 3, United States Code, I, GEORGE W. BUSH, President of the United States of America, find that the current existence and risk of the proliferation of weapons-usable fissile material on the Korean Peninsula constitute an unusual and extraordinary threat to the national security and foreign policy of the United States, and I hereby declare a national emergency to deal with that threat. I further find that, as we deal with that threat through multilateral diplomacy, it is necessary to continue certain restrictions with respect to North Korea that would otherwise be lifted pursuant to a forthcoming proclamation that will terminate the exercise of authorities under the Trading With the Enemy Act (50 U.S.C. App. 1 *et seq.*) (TWEA) with respect to North Korea.

Accordingly, I hereby order:

Section 1. Except to the extent provided in statutes or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the date of this order, the following are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

All property and interests in property of North Korea or a North Korean national that, pursuant to the President's authorities under the TWEA, the exercise of which has been continued in accordance with section 101(b) of Public Law 95–223 (91 Stat. 1625; 50 U.S.C. App. 5(b) note), were blocked as of June 16, 2000, and remained blocked immediately prior to the date of this order.

Sec. 2. Except to the extent provided in statutes or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the date of this order, United States persons may not register a vessel in North Korea, obtain authorization for a vessel to fly the North Korean flag, or own, lease, operate, or insure any vessel flagged by North Korea.

Sec. 3. (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 4. For the purposes of this order:

(a) The term "person" means an individual or entity;

(b) The term "entity" means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization; and

(c) The term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Sec. 5. The Secretary of the Treasury, after consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 6. The Secretary of the Treasury, after consultation with the Secretary of State, is hereby authorized to submit the recurring and final reports to the Congress on the national emergency declared in this order, consistent with section 401(c) of the NEA (50 U.S.C. 1641(c)) and section 204(c) of IEEPA (50 U.S.C. 1703(c)).

Sec. 7. 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, instrumentalities, or entities, its officers or employees, or any other person.

George W. Bush,
THE WHITE HOUSE,
June 26, 2008.

Appendix B to Part 510—Executive Order 13551

Executive Order 13551 of August 30, 2010

Blocking Property of Certain Persons With Respect to North Korea

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 5 of the United Nations Participation Act of 1945 (22 U.S.C. 287c) (UNPA), and section 301 of title 3, United States Code; in view of United Nations Security Council Resolution (UNSCR) 1718 of October 14, 2006, and UNSCR 1874 of June 12, 2009; and to take additional steps with respect to the situation in North Korea.

I, BARACK OBAMA, President of the United States of America, hereby expand the scope of the national emergency declared in Executive Order 13466 of June 26, 2008, finding that the continued actions and policies of the Government of North Korea, manifested most recently by its unprovoked attack that resulted in the sinking of the Republic of Korea Navy ship Cheonan and the deaths of 46 sailors in March 2010; its announced test of a nuclear device and its missile launches in 2009; its actions in violation of UNSCRs 1718 and 1874, including the procurement of luxury goods; and its illicit and deceptive activities in international markets through which it obtains financial and other support, including money laundering, the counterfeiting of goods and currency, bulk cash smuggling, and narcotics trafficking, destabilize the Korean peninsula and imperil U.S. Armed Forces, allies, and trading partners in the region, and thereby constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States.

I hereby order:

Section 1. (a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any overseas branch, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(i) The persons listed in the Annex to this order; and

(ii) Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(A) To have, directly or indirectly, imported, exported, or reexported to, into, or from North Korea any arms or related materiel;

(B) To have, directly or indirectly, provided training, advice, or other services or assistance, or engaged in financial transactions, related to the manufacture, maintenance, or use of any arms or related materiel to be imported, exported, or reexported to, into, or from North Korea, or following their importation, exportation, or reexportation to, into, or from North Korea;

(C) To have, directly or indirectly, imported, exported, or reexported luxury goods to or into North Korea;

(D) To have, directly or indirectly, engaged in money laundering, the counterfeiting of goods or currency, bulk cash smuggling, narcotics trafficking, or other illicit economic activity that involves or supports the Government of North Korea or any senior official thereof;

(E) To have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the activities described in subsections (a)(ii)(A)–(D) of this section or any person whose property and interests in property are blocked pursuant to this order;

(F) To be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order; or (G) to have attempted to engage in any of the activities described in subsections (a)(ii)(A)–(F) of this section.

(b) I hereby determine that, to the extent section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) may apply, the making of donations of the types of articles specified in such section by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order would seriously impair my ability to deal with the national emergency declared in

Executive Order 13466 and expanded in scope in this order, and I hereby prohibit such donations as provided by subsection (a) of this section.

(c) The prohibitions in subsection (a) of this section include, but are not limited to:

(i) The making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(ii) The receipt of any contribution or provision of funds, goods, or services from any such person.

(d) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

Sec. 2. (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 3. The provisions of Executive Order 13466 remain in effect, and this order does not affect any action taken pursuant to that order.

Sec. 4. For the purposes of this order:

(a) The term "person" means an individual or entity;

(b) The term "entity" means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) The term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States;

(d) The term "North Korea" includes the territory of the Democratic People's Republic of Korea and the Government of North Korea;

(e) The term "Government of North Korea" means the Government of the Democratic People's Republic of Korea, its agencies, instrumentalities, and controlled entities; and

(f) The term "luxury goods" includes those items listed in 15 CFR 746.4(b)(l) and Supplement No. 1 to part 746 and similar items.

Sec. 5. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render these measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in Executive Order 13466 and expanded in scope in this order, there need be no prior notice of a listing or determination made pursuant to section 1(a) of this order.

Sec. 6. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and the UNPA, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 7. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to determine that circumstances no longer warrant the blocking of the property and interests in property of a person listed in the Annex to this order, and to take necessary action to give effect to that determination.

Sec. 8. 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, agents, or any other person.

Sec. 9. This order is effective at 12:01 p.m., eastern daylight time on August 30, 2010.

Barack Obama,
THE WHITE HOUSE,
August 30, 2010.

ANNEX

Individual

1. KIM Yong Chol [born 1946 or 1947]

Entities

1. Green Pine Associated Corporation
2. Reconnaissance General Bureau
3. Office 39

Dated: October 26, 2010.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

Approved: October 28, 2010.

Stuart A. Levey,

Under Secretary, Office of Terrorism and Financial Intelligence, Department of the Treasury.

[FR Doc. 2010–27829 Filed 11–3–10; 8:45 am]

BILLING CODE 4810–AL–P

Proposed Rules

Federal Register
Vol. 75, No. 213
Thursday, November 4, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R05–RCRA–2010–0843; SW–FRL–9221–2]

Hazardous Waste Management System; Proposed Exclusion for Identifying and Listing Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA (also, "the Agency" or "we" in this preamble) is proposing to grant a petition submitted by Owosso Graphic Arts Inc. (Owosso), in Owosso Michigan to exclude (or "delist") up to 244 cubic yards of wastewater treatment sludge per year from the list of hazardous wastes.

The Agency has tentatively decided to grant the petition based on an evaluation of waste-specific information provided by Owosso. This proposed decision, if finalized, conditionally excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act.

We conclude that Owosso's petitioned waste is nonhazardous with respect to the original listing criteria and that there are no other factors which would cause the waste to be hazardous when disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage industrial solid waste.

DATES: Comments must be received on or before December 6, 2010. Requests for an informal hearing must reach EPA by November 19, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. [EPA–R05–RCRA–2010–0843] by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Mail:* to Christopher Lambesis, Environmental Protection Agency, Land and Chemicals Division, (Mail Code: LR–8J), EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604.
- *Hand Delivery:* to Christopher Lambesis, Land and Chemicals Division, EPA Region 5, 8th Floor, 77 West Jackson Boulevard, Chicago, IL 60604. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please contact Christopher Lambesis at (312) 886–3583.

Instructions: Direct your comments to Docket ID No. [EPA–R05–RCRA–2010–0843]. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Any person may request an informal hearing on this proposed decision by filing a request with Bruce Sypniewski, Acting Director, Land and Chemicals Division, Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. The request must contain the information prescribed in 40 CFR 260.20(d).

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Records Center, 7th floor, U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. We recommend you telephone Christopher Lambesis at (312) 886–3583 before visiting the Region 5 office. The public may copy material from the regulatory docket at 15 cents per page.

FOR FURTHER INFORMATION CONTACT: Christopher Lambesis, Land and Chemicals Division, (Mail Code: LR–8J), EPA Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604; telephone number: (312) 886–3583; fax number (312) 692–2195; e-mail address: *lambesis.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information
II. Background
  A. What is a listed waste?
  B. What is a delisting petition?
  C. What factors must EPA consider in deciding whether to grant a delisting petition?
III. EPA's Evaluation of the Waste Information and Data
  A. What waste did Owosso petition EPA to delist?
  B. How does Owosso generate the waste?
  C. How did Owosso sample and analyze the waste?
  D. What were the results of Owosso's analysis of the waste?
  E. How did EPA evaluate the risk of delisting this waste?
  F. What did EPA conclude about Owosso's waste?
IV. Conditions for Exclusion
  A. When would EPA finalize the proposed delisting exclusion?
  B. How will Owosso manage the waste if it is delisted?

C. What are the maximum allowable concentrations of hazardous constituents in the waste?
D. How frequently must Owosso test the waste?
E. What data must Owosso submit?
F. What happens if Owosso's waste fails to meet the conditions of the exclusion?
G. What must Owosso do if the process changes?
V. How would this action affect states?
VI. Statutory and Executive Order Reviews

I. Overview Information

The EPA is proposing to grant a petition submitted by Owosso Graphic Arts Incorporated (Owosso) located in Owosso, Michigan to exclude or delist an annual volume of 244 cubic yards of F006 wastewater treatment sludge from the lists of hazardous waste set forth in Title 40 of the Code of Federal Regulations (40 CFR) 261.31. Owosso claims that the petitioned waste does not meet the criteria for which EPA listed it, and that there are no additional constituents or factors which could cause the waste to be hazardous.

Based on our review described in section III, we agree with the petitioner that the waste is nonhazardous. We reviewed the description of the process which generates the waste and the analytical data submitted by Owosso. We believe that the petitioned waste does not meet the criteria for which the waste was listed, and that there are no other factors which might cause the waste to be hazardous.

II. Background

A. What is a listed waste?

The EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of Resource Conservation and Recovery Act (RCRA). The EPA has amended this list several times and published it in 40 CFR 261.31 and 261.32.

We list these wastes as hazardous because: (1) They typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in § 261.11(a)(2) or (3).

B. What is a delisting petition?

Individual waste streams may vary depending on raw materials, industrial processes, and other factors. Thus, while a waste described in the regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be.

A procedure to exclude or delist a waste is provided in 40 CFR 260.20 and 260.22 which allows a person, or a facility, to submit a petition to the EPA or to an authorized state demonstrating that a specific waste from a particular generating facility is not hazardous.

In a delisting petition, the petitioner must show that a waste does not meet any of the criteria for listed wastes in 40 CFR 261.11 and that the waste does not exhibit any of the hazardous waste characteristics of ignitability, reactivity, corrosivity, or toxicity. The petitioner must present sufficient information for us to decide whether any factors in addition to those for which the waste was listed warrant retaining it as a hazardous waste. (*See* § 260.22, 42 United States Code—U.S.C.—6921(f) and the background documents for the listed wastes.)

If a delisting petition is granted, the generator remains obligated under RCRA to confirm that the waste remains nonhazardous.

C. What factors must EPA consider in deciding whether to grant a delisting petition?

In reviewing this petition, we considered the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). *See* section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). We evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (3).

Besides considering the criteria in 40 CFR 260.22(a), 261.11(a)(2) and (3), 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those for which we listed the waste if these additional factors could cause the waste to be hazardous.

Our tentative decision to delist waste from Owosso's facility is based on our evaluation of the waste for factors or criteria which could cause the waste to be hazardous. These factors included: (1) Whether the waste is considered acutely toxic; (2) the toxicity of the constituents; (3) the concentration of the constituents in the waste; (4) the tendency of the constituents to migrate and to bioaccumulate; (5) the persistence in the environment of any constituents once released from the waste; (6) plausible and specific types of management of the petitioned waste; (7) the quantity of waste produced; and (8) waste variability.

EPA must also consider as hazardous wastes mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. *See* 40 CFR 261.3(a)(2)(iv) and (c)(2)(i), called the "mixture" and "derived-from" rules, respectively. Mixture and derived-from wastes are also eligible for exclusion but remain hazardous until excluded.

III. EPA's Evaluation of the Waste Information and Data

A. What waste did Owosso petition EPA to delist?

In May 2005, Owosso petitioned EPA to exclude an annual volume of 244 cubic yards of F006 wastewater treatment sludges generated at its facility located in Owosso, Michigan from the list of hazardous wastes contained in 40 CFR 261.31. F006 is defined in § 261.31 as "Wastewater treatment sludges from electroplating operations * * *" Owosso claims that the petitioned waste does not meet the criteria for which F006 was listed (i.e., cadmium, hexavalent chromium, nickel and complexed cyanide) and that there are no other factors which would cause the waste to be hazardous.

B. How does Owosso generate the waste?

Owosso Graphic Arts conducts chemical etching of magnesium plates to produce photoengraved dies for the printing and foil stamping industries. Owosso Graphic Arts also etches other metals using ferric chloride to produce similar products. The magnesium etching process is physically separated from that of the other metals and share no common equipment, piping or waste handling procedures.

A desired pattern is applied to a magnesium plate in the form of a printed laminate sensitive to ultra-violet (UV) light. After UV exposure, the magnesium plate is exposed to a spray of developing agent in a self-contained unit that washes away areas of laminate where etching is to occur. The solvent trichloroethylene (TCE) was used as the developing agent until December 2007 when an aqueous solution (Hydro-Coat) containing inorganic sodium salt and a surfactant replaced TCE.

The aqueous developer was used until September 2008 when Owosso began using the solvent n-methyl 2-pyrrolidone (NMP) as the developing agent.

Nitric acid is used to etch the surface of magnesium plates to create the contoured die surface. The developed plate is cleaned with a mild (1–2 percent) nitric acid solution to remove the remaining protective coating from

the plate. The cleaning solution is discharged to a publicly owned treatment works (POTW) subject to the Clean Water Act.

The plate is placed in one of several self-contained etching units varying in size and equipped with reservoirs of nitric acid-based etching solution (nitric acid, water, Mag-O 20 detergent). The reservoir may contain between 200–400 liters of etching solution depending on the size of the etching unit. Each magnesium plate is weighed prior to entering the etching process and again once etching is completed. The difference between the initial weight and the post-etching weight is used to calculate the amount of magnesium residual remaining in the etching solution reservoir. The amount of metal residue introduced into the etching solution varies based on the size of the plate being etched and depth of the etching required by individual projects.

Operators of the system may adjust the strength of the acid between etching events to balance the acid content of the solution for optimal etching performance. Once the metal concentration becomes too great to provide optimal etching, the nitric acid solution is considered spent and is transferred to a wastewater treatment process for neutralization.

Wastewater treatment sludge is produced in a batch process in which spent etchant (nitric acid based etching solution described above) is pumped to a holding tank to await treatment. Transfer of approximately 500 gallons of spent etchant into the holding tank occurs on a daily basis.

The used etchant is combined with sodium hydroxide and water to neutralize the spent etchant prior to discharge to the City of Owosso's POTW. The neutralization process requires a residence time of approximately 30 minutes for complete neutralization of the spent acid solution. The treated solution is allowed to settle for 12 hours to allow solids to precipitate and settle to the bottom of the tank. The supernatant liquid is decanted for discharge to the POTW.

Dewatering of precipitate formed during wastewater treatment occurs in a filter press adjacent to the tank containment area. The filter press is emptied into three steel gondolas prior to being placed in a lined roll-off container.

C. How did Owosso sample and analyze the petitioned waste?

Owosso collected a sample of the waste in July 2004 for total oil and grease (SW–846 Method 9071B), volatiles (SW–846 Method 8260B), semi volatiles and pesticides (SW–846 Method 8270C), polychlorinated biphenyls—PCBs—(SW–846 Method 8082), and metals (SW–846 Method 6010B except for mercury—SW–846 Method 7471). Owosso sampled the sludge again in August 2004 for oil and grease (SW–846 Method 9071B). Owosso continued to characterize the waste based on a November 2004 Sampling and Analysis Plan. Due to the small waste stream size, EPA and Owosso agreed to conservatively estimate constituent leaching by dividing the total result by 20. This simulates the TCLP test with the assumption that all of the constituent in the total would leach. Owosso collected five composite samples of the waste between December 2004 and March 2005 and analyzed them for bromomethane and chloromethane (SW–846 Method 8260B), cyanide (SW–846 Method 9012A), sulfide (SW–846 Method 9034), antimony and arsenic (SW–846 Method 6020B), cadmium, chromium, copper, lead, nickel, and zinc (SW–846 Method 6010B). This subset of constituents was comprised of waste constituents detected in prior sampling events and the constituents for which the waste was listed.

EPA later asked for additional analysis for trichloroethylene (TCE) since Owosso's process includes TCE as a graphic image developer and may be expected in the waste. Accordingly, Owosso collected additional grab samples of the waste in November 2007 for full-scan total volatile analysis (SW–846 Methods 5035 & 8260B). TCE was detected, however, Owosso had replaced the TCE developer with the aqueous developing agent by this time. To confirm that concentrations of TCE in the waste were decreasing since TCE was no longer used and only residual TCE remained in the process, Owosso collected three additional grab samples for volatile analysis in April and May of 2008 (SW–846 Method 5035 & 8260B).

Owosso collected four composite samples of the sludge and one sample of the raw product NMP in March 2010. The samples were analyzed by a modified SW–846 8270 method for tentatively identifies compounds (TICs). The raw product NMP sample was used to determine the NMP retention time in order to aid in the analysis of the composite samples. The concentration of TICs with similar mass spectra and retention time to NMP were added to the overall concentration because they may be derivatives of NMP.

D. What were the results of Owosso's analysis of its waste?

The table below presents the maximum observed total concentrations for all detected constituents for which maximum allowable total and leachate concentrations were available. Leachate concentrations were estimated by dividing the total concentration by 20 (the dilution factor from the TCLP test). Total concentrations are expressed in milligrams per kilogram (mg/kg). Leachate concentrations are expressed in milligrams per liter (mg/L). Owosso submitted a signed statement certifying accuracy and responsibility of the results. See 40 CFR 260.22(i)(12).

Constituent detected	Maximum observed concentration		Maximum allowable concentration		GW (mg/L)
	Total [1] (mg/kg)	TCLP [2] (mg/L)	Total (mg/kg)	TCLP (mg/L)	
Volatile Organic Compounds					
bromomethane	3.8	0.19	172,000	none	0.026
chloromethane	1.9	0.095	none	178	0.39
n-methyl,2-pyrrolidone	15.79 E	0.79	none	734	1.65
trichloroethylene	1.1	0.055	975,000	[4] 0.5	0.005
Metals					
antimony	47	2.4	none	3.15	0.006
arsenic	2.0	0.10	4,580	[3] 0.25	[3] 0.0005
cadmium	3.8	0.19	121,000	[4] 1.0	0.005
chromium	35	1.8	[5] 2,590	[4] 5.0	0.1

Constituent detected	Maximum observed concentration		Maximum allowable concentration		GW (mg/L)
	Total [1] (mg/kg)	TCLP [2] (mg/L)	Total (mg/kg)	TCLP (mg/L)	
copper	1,020	51	none	700	1.3
cyanide	20	1.0	none	91	0.2
lead	24	1.2	none	[4] 5.0	0.015
nickel	35	1.8	905,000	400	0.750
zinc	14,000	700	none	6,000	11.3

[1] Converted to dry weight basis.
[2] Estimated from the total concentration (Total/20).
[3] Set at groundwater concentration corresponding to 1×10^{-5} excess cancer risk.
[4] Based on the toxicity characteristic in 40 CFR 261 subpart C.
[5] Based on assuming 100% hexavalent chromium.
E—Estimated (Constituent not present in calibration standard. Calculated using total peak area from reconstructed ion chromatogram w/response factor of 1. Concentration converted to dry weight and represents the sum of NMP and NMP-like TICs).

E. How did EPA evaluate the risk of delisting this waste?

For this delisting determination, we assumed that the waste would be disposed in a Subtitle D landfill and we considered transport of waste constituents through ground water, surface water and air. We evaluated Owosso's petitioned waste using the Agency's Delisting Risk Assessment Software (DRAS) to predict the concentration of hazardous constituents that might be released from the petitioned waste and to determine if the waste would pose a threat. To predict the potential for release to groundwater from landfilled wastes and subsequent routes of exposure to a receptor, the DRAS uses dilution attenuation factors derived from EPA's Composite Model for leachate migration with Transformation Products. From a release to ground water, the DRAS considers routes of exposure to a human receptor of ingestion of contaminated ground water, inhalation from groundwater while showering and dermal contact from groundwater while bathing.

From a release to surface water by erosion of waste from an open landfill into storm water run-off, DRAS evaluates the exposure to a human receptor by fish ingestion and ingestion of drinking water. From a release of waste particles and volatile emissions to air from the surface of an open landfill, DRAS considers routes of exposure of inhalation of volatile constituents, inhalation of particles, and air deposition of particles on residential soil and subsequent ingestion of the contaminated soil by a child. The technical support document and the user's guide to DRAS are included in the docket.

At a target cancer risk of 1×10^{-6} and a target hazard quotient of 1.0, the DRAS program determined maximum allowable concentrations for each constituent in both the waste and the leachate at an annual waste volume of 244 cubic yards. However, since naturally occurring concentrations of arsenic are often higher than allowable concentrations set by the DRAS at a risk of 1×10^{-6}, EPA set the allowable concentration of leachable arsenic at a target cancer risk of 1×10^{-5}, which corresponds to a concentration at the point of exposure of approximately one twentieth of the existing Safe Drinking Water Act (SDWA) Maximum Contaminant Level (MCL). Arsenic is not expected to be a major constituent of concern in this waste.

We used the maximum estimated annual waste volume and the maximum reported total and estimated leachate concentrations as inputs to estimate the constituent concentrations in the ground water, soil, surface water or air. If, using an appropriate analytical method, a constituent was not detected in any sample, it was considered not to be present in the waste.

F. What did EPA conclude about Owosso's waste?

The maximum reported concentrations of the hazardous constituents found in this waste are presented in the table above. The table also presents the maximum allowable concentrations. The concentrations of all constituents in both the waste and the leachate are below the allowable concentrations. We, therefore, conclude that Owosso's wastewater treatment sludge is not a substantial or potential hazard to human health and the environment when disposed of in a Subtitle D landfill.

We, therefore, propose to grant an exclusion for this waste. If this exclusion is finalized, Owosso must dispose of this waste in a Subtitle D landfill permitted or licensed by a state, and will remain obligated to verify that the waste meets the allowable concentrations set forth here. Owosso must also continue to determine whether the waste is identified in subpart C of 40 CFR pursuant to § 261.11(c).

IV. Conditions for Exclusion

A. When would EPA finalize the proposed delisting exclusion?

HSWA specifically requires the EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not make a final decision or grant an exclusion until it has addressed all timely public comments on today's proposal, including any at public hearings.

Since this rule would reduce the existing requirements for persons generating hazardous wastes, the regulated community does not need a six-month period to come into compliance in accordance with section 3010 of RCRA as amended by HSWA.

B. How will Owosso manage the waste if it is delisted?

If the petitioned waste is delisted, Owosso must dispose of it in a Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial waste.

C. What are the maximum allowable concentrations of hazardous constituents in the waste?

Concentrations measured in the TCLP (or Oily Waste Extraction Procedure, where appropriate) extract of the waste of the following constituents must not exceed the following (mg/l): Antimony—3.15; arsenic—0.25; cadmium—1; chromium—5; lead—5; and zinc—6,000.

D. How frequently must Owosso test the waste?

Owosso must analyze a representative sample of the wastewater treatment sludges on an annual basis to demonstrate that the constituents of concern in the petitioned waste do not exceed the concentrations of concern in section IV.C above. Owosso must use

methods with sufficient analytical sensitivity and appropriate quality control procedures. SW–846 Method 1311 must be used for generation of the leachate extract used in the testing of the delisting levels if oil and grease comprise less than one percent of the waste. SW–846 Method 1330A must be used for generation of the leaching extract if oil and grease comprise 1 percent or more of the waste. SW–846 Method 9071B must be used for determination of oil and grease. SW–846 Methods 1311, 1330A, and 9071B are incorporated by reference in 40 CFR 260.11. A total analysis of the waste (accounting for any filterable liquids and the dilution factor inherent in the TCLP method) may be used to estimate the TCLP concentration as provided for in section 1.2 of Method 1311.

E. What data must Owosso submit?

Owosso must submit the data obtained through annual verification testing to U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604, upon the anniversary of the effective date of this exclusion. Owosso must compile, summarize, and maintain on site records of operating conditions and analytical data. Owosso must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).

F. What happens if Owosso fails to meet the conditions of the exclusion?

If Owosso violates the terms and conditions established in the exclusion, the Agency may start procedures to withdraw the exclusion.

If the verification testing of the waste does not meet the delisting concentrations described in section IV.C above or other data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste indicates that any constituent is at a concentration in the leachate higher than the specified delisting concentration, or is in the groundwater at a concentration higher than the maximum allowable groundwater concentration (in the table in Section III.D.), Owosso must notify the Agency within 10 days of first possessing or being made aware of the data. The exclusion will be suspended and the waste managed as hazardous until Owosso has received written approval from the Agency to continue the exclusion. Owosso may provide sampling results which support the continuation of the delisting exclusion.

The EPA has the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 (1978) *et seq.* to reopen a delisting decision if we receive new information indicating that the conditions of this exclusion have been violated, or are otherwise not being met.

G. What must Owosso do if the process changes?

If Owosso significantly changes the manufacturing or treatment process or the chemicals used in the manufacturing or treatment process, Owosso may not handle the wastewater treatment sludge generated from the new process under this exclusion until it has demonstrated to the EPA that the waste meets the concentrations set in section IV.C and that no new hazardous constituents listed in Appendix VIII of 40 CFR part 261 have been introduced. Owosso must manage wastes generated after the process change as hazardous waste until Owosso has received written notice from EPA that the delisting is reinstated.

V. How would this action affect the states?

Because EPA is issuing today's exclusion under the federal RCRA delisting program, only states subject to federal RCRA delisting provisions would be affected. This exclusion may not be effective in states which have received our authorization to make their own delisting decisions.

EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the state. We urge petitioners to contact the state regulatory authority to establish the status of their wastes under the state law.

EPA has also authorized some states to administer a delisting program in place of the federal program, that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states. If Owosso manages the waste in any state with delisting authorization, Owosso must obtain delisting authorization from that state before it can manage the waste as nonhazardous in that state.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866, "Regulatory Planning and Review " (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore, is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, this final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism", (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule.

Similarly, because this rule will affect only a particular facility, this final rule does not have tribal implications, as specified in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant as defined in 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. The basis for this belief is that the Agency used DRAS, which considers health and safety risks to children, to calculate the maximum allowable concentrations for this rule. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866. This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988, "Civil Justice Reform", (61 FR 4729, February 7, 1996), in issuing this rule,

EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Authority: Section 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: October 26, 2010.

Bruce F. Sypniewski,

Acting Director, Land and Chemicals Division.

For the reasons set out in the preamble, EPA proposes to amend 40 CFR part 261 as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of Appendix IX to part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Owosso Graphic Arts ..	Owosso, Michigan	Wastewater treatment sludges, F006, generated at Owosso Graphic Arts (Owosso) facility in Owosso, Michigan at a maximum annual rate of 244 cubic yards per year. The sludge must be disposed of in a Subtitle D landfill which is licensed, permitted, or otherwise authorized by a state to accept the delisted wastewater treatment sludge. The exclusion becomes effective as of [insert final publication date]. 1. *Delisting Levels:* (A) The constituent concentrations measured in a leachate extract may not exceed the following concentrations (mg/L): antimony—3.15; arsenic—0.25; cadmium—1; chromium—5; lead—5; and zinc—6,000. (B) Maximum allowable groundwater concentrations (mg/L) are as follows: antimony—0.006; arsenic—0.0005; cadmium—0.005; chromium—0.1; lead—0.015; and zinc—11.3. 2. *Annual Verification Testing:* To verify that the waste does not exceed the specified delisting concentrations, Owosso must collect and analyze one waste sample on an annual basis using methods with appropriate detection concentrations and elements of quality control. SW–846 Method 1311 must be used for generation of the leachate extract used in the testing of the delisting levels if oil and grease comprise less than 1 percent of the waste. SW–846 Method 1330A must be used for generation of the leaching extract if oil and grease comprise 1 percent or more of the waste. SW–846 Method 9071B must be used for determination of oil and grease. SW–846 Methods 1311, 1330A, and 9071B are incorporated by reference in 40 CFR 260.11. A total analysis of the waste (accounting for any filterable liquids and the dilution factor inherent in the TCLP method) may be used to estimate the TCLP concentration as provided for in section 1.2 of Method 1311. 3. *Changes in Operating Conditions:* Owosso must notify the EPA in writing if the manufacturing process, the chemicals used in the manufacturing process, the treatment process, or the chemicals used in the treatment process significantly change. Owosso must handle wastes generated after the process change as hazardous until it has: Demonstrated that the wastes continue to meet the delisting concentrations in section 1.; demonstrated that no new hazardous constituents listed in appendix VIII of part 261 have been introduced; and it has received written approval from EPA. 4. *Data Submittals:* Owosso must submit the data obtained through verification testing or as required by other conditions of this rule to U.S. EPA Region 5, RCRA Delisting Program (LR–8J), 77 W. Jackson Boulevard, Chicago, IL 60604. The annual verification data and certification of proper disposal must be submitted upon the anniversary of the effective date of this exclusion. Owosso must compile, summarize, and maintain on site for a minimum of five years records of operating conditions and analytical data. Owosso must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		5. *Reopener Language*—(A) If, anytime after disposal of the delisted waste, Owosso possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste indicating that any constituent is at a concentration in the leachate higher than the specified delisting concentration, or is in the groundwater at a concentration higher than the maximum allowable groundwater concentration in paragraph (1), then Owosso must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraph (A) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify Owosso in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing Owosso with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. Owosso shall have 30 days from the date of the Regional Administrator's notice to present the information. (D) If after 30 days Owosso presents no further information or after a review of any submitted information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise.
*	*	* * * * *

* * * * *

[FR Doc. 2010–27886 Filed 11–3–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2009–0060; MO 92210–0–0008]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition to List Cirsium wrightii (Wright's Marsh Thistle) as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a 12-month finding on a petition to list *Cirsium wrightii* (Wright's marsh thistle) as endangered or threatened and to designate critical habitat under the Endangered Species Act of 1973, as amended. After review of all available scientific and commercial information, we find that listing *C. wrightii* as endangered or threatened throughout its range is warranted. Currently, however, listing of *C. wrightii* is precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. Upon publication of this 12-month petition finding, we will add *C. wrightii* to our candidate species list. We will develop a proposed rule to list *C. wrightii* as our priorities allow. We will make any determination on critical habitat during development of the proposed rule. In the interim period, we will address the status of the candidate taxon through our annual Candidate Notice of Review.

DATES: The finding announced in this document was made on November 4, 2010.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R2–ES–2009–0060. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours by contacting the U.S. Fish and Wildlife Service, New Mexico Ecological Services Office, 2105 Osuna NE, Albuquerque, NM 87113. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT: Wally "J" Murphy, Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office (*see* **ADDRESSES**); by telephone at 505–346–4781; or by facsimile at 505–346–2542. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the List of Endangered and Threatened Wildlife that contains substantial scientific and commercial information that listing may be warranted, we make a finding within 12 months of the date of receipt of the petition on whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are threatened or endangered, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these findings in the **Federal Register**.

Previous Federal Actions

On October 15, 2008, we received a petition from the WildEarth Guardians, dated October 9, 2008, requesting that

we list *Cirsium wrightii* (Wright's marsh thistle) as endangered or threatened under the Act. Additionally, the petitioner requested that critical habitat be designated concurrent with listing of *C. wrightii.* In a November 26, 2008, letter to the petitioner, we responded that we had reviewed the petition and determined that an emergency listing was not necessary. We also stated that, to the maximum extent practicable, we would address their petition within 90 days.

The petition asserted that water diversion, habitat loss and degradation through current livestock grazing, inadequate regulatory mechanisms, weed control, nonnative species, drought, and climate change threaten *C. wrightii.* During our review of the petition, we found that the majority of information cited in the petition was not readily available to us. Therefore, on December 18, 2008, we requested that the petitioner provide references. On February 13, 2009, the petitioner provided additional references.

On September 10, 2009, we published a 90-day finding in the **Federal Register** that the petition presented substantial information that listing *C. wrightii* may be warranted. That document also initiated a status review of the subspecies (74 FR 46542). On February 11, 2010, WildEarth Guardians filed suit against the Service for failure to issue a 12-month finding on the petition (*WildEarth Guardians* v. *Salazar,* No. 10-cv-00122 BRB–DJS (D.N.M.)). Pursuant to a stipulated settlement agreement, the 12-month finding is due to the **Federal Register** by October 31, 2010. This notice constitutes our 12-month finding for the petition to list *C. wrightii* as threatened or endangered with critical habitat.

Species Information

Cirsium wrightii is a biennial (a plant completing development in 2 years, flowering its second year) or a weak monocarpic perennial (a plant that flowers, sets seed, then dies), in the sunflower family (Asteraceae). The plant is prickly with short black spines and a 3- to 8-foot (ft) (0.9- to 2.4-meter (m)) single stalk covered with succulent leaves (Sivinski 1996, p. 1; Arizona Game and Fish Department (AGFD) 2001, p. 1). Numerous slender flowering branches emerge from the stalk, starting about one-third up the length of the plant. Branches are terminated by one or a few small flowering heads, which have numerous slender phyllaries (a modified leaf associated with the flower) (Sivinski 1996, p. 1). Flowers are white to pale pink in areas of the Sacramento Mountains of New Mexico, but are vivid pink in the Santa Rosa, New Mexico, locality (Sivinski 1996, p. 1). In New Mexico, the species occurs in wet, alkaline soils in spring seeps and marshy edges of streams and ponds between 3,450 and 7,850 ft (1,152 and 2,393 m) in elevation (Sivinski 1996, p. 1; 2005a, pp. 3–4; Worthington 2002a).

Cirsium wrightii is a wetland obligate (occurs only in water-saturated soils) that was originally collected in 1851 at San Bernardino Cienaga, Cochise County, Arizona (Gray 1853, p. 101; Smithsonian 1849, p. 1). Historically, the species was found in Arizona, New Mexico, and Chihuahua, Mexico (Gray 1853, p. 101; Coulter 1891, p. 244; Kearney and Peebles 1951, p. 952; Correll and Johnston 1970, p. 1719; U.S. Fish and Wildlife Service (Service) 1995, p. 1). Recently it was learned that an occurrence of another sunflower, *Cirsium texanum* (Texas thistle), in Presidio County, Texas, had been incorrectly identified as *C. wrightii* (Poole 2010, p. 1). All of the previously presumed specimens of *C. wrightii* from Texas have now been correctly identified as *Cirsium texanum* (Texas thistle), rather than *C. wrightii* (Sivinski 1994a, p. 1; 1996, p. 2; 2006a, p. 1; Worthington 2002a, p. 4). These species are easily confused on herbarium sheets (Sivinski 1996, p. 2). However, in the field, *C. wrightii* differs from *C. texanum* in physical appearance (New Mexico Rare Plant Technical Council (NMRPTC) 2009, p. 1)). The presumed Texas specimens of *C. wrightii* that were previously identified from herbarium sheets, rather than field identification, have been found to be *C. texanum* (Sivinski 1996, p. 2).

In the New Mexico portion of the species' range, *Cirsium wrightii* appears to be an obligate of seeps, springs, and wetlands that have saturated soils with surface or subsurface water flow (Sivinski 1996; Service 1998; Worthington 2002a, p. 2; NMRPTC 2009). Plants commonly found in areas inhabited by this species include *Scirpus* spp. (bulrush), *Salix* spp. (willow), *Baccharis glutinosa* (seepwillow), *Helianthus paradoxus* (Pecos sunflower), *Juncus* spp. (rush), and *Typha* spp. (cattail) (Sivinski 1996, pp. 2–5; Sivinski and Bleakly 2004, p. 2; Worthington 2002a, pp. 1–2).

Distribution and Range

Cirsium wrightii currently occurs in New Mexico; however, it has been extirpated from all previously known locations in Arizona (Sivinski 1996, pp. 1, 4, 9, 2006a, 2009a, p. 1; Worthington 2002a, p. 4), and was misidentified and likely not ever present in Texas (Poole 1992; 2010; Sivinski 1996, p. 2). The status of the species in Mexico is uncertain, with few verified collections of the plant. Numerous surveys of potential habitat have been conducted over the years with few new localities documented (*e.g.,* Poole 1992, 2010; Sivinski 1994, 1996, 2005, 2009a; Worthington 2002a).

Cirsium wrightii is ranked by NatureServe as a G2 (imperiled) species. It was changed from G3 (vulnerable) to G2 in 2003 (NatureServe 2009, p. 1). Similarly, its National Status ranking for the United States is N2 (imperiled due to a restricted range and very few populations) (NatureServe 2009, p. 2). Though these rankings do not provide any regulatory protections, the NatureServe designations do serve to notify the public of the species' status.

In New Mexico, there are eight general confirmed locations of *Cirsium wrightii:* Santa Rosa, Guadalupe County; Bitter Lake National Wildlife Refuge (BLNWR), Chaves County; Blue Spring, Eddy County; La Luz Canyon, Karr Canyon, Silver Springs, and Tularosa Creek, Otero County; and Alamosa Creek, Socorro County (Bridge 2001, p. 1; Sivinski and Bleakly 2004, p. 2; NMRPTC 2009, p. 1; Sivinski 1994, p. 1; 1996, p. 2; 2005, p. 1; 2005a, pp. 3–5; 2009, 2009a; Service 1998, p. 1; Worthington 2002, p. 1; 2002a, pp. 1–3). Four of the eight localities are clustered within about 10 miles (mi) (16 kilometers (km)) of each other on the west slope of the Sacramento Mountains, Otero County, whereas the remaining four localities are widely disjunct, separated from the Sacramento localities by about 75 to 140 mi (120 to 225 km) and from each other by about 75 to 215 mi (120 to 345 km). In the Sacramento Mountains, two of these four localities occur on the Lincoln National Forest, one locality is on private land and the remaining locality is on the Mescalero Apache Reservation. In the Pecos River Valley, one locality is on public lands on the BLNWR, Chaves County; one is on private land near the Black River, Eddy County; and one is in the vicinity of Santa Rosa, Guadalupe County, on private, municipal, and State lands. The remaining locality is on private land on Alamosa Creek, Socorro County. Localities vary in relative population size from less than 20 individuals covering only about 50 square feet (ft^2) ((5 square meters (m^2)) at the Silver Springs locality, to several thousand individuals on BLNWR.

Within New Mexico, historic localities from the City of Roswell land, Chaves County, Lake Valley in Sierra County, and La Luz and Haynes Canyons in Otero County are extirpated

(NMRPTC 2009, p. 2; Sivinski 2005, p. 1; 2005a p. 4; 2009a, p. 2). Finally, a *Cirsium* species at Rattlesnake Springs, Eddy County, is thought to be a hybrid between *C. wrightii* and *C. texanum* (NMRPTC 2009, p. 2). This population blooms in May rather than the typical season of *C. wrightii* from August to October (NMRPTC 2009, p. 2).

We are unaware of specific long-term monitoring data on absolute abundance estimates for *Cirsium wrightii* in New Mexico, but have estimates of relative abundance for most extant localities (*see also* Sivinski 1996, 2005a, 2006a, 2009, 2009a). In 1996, Sivinski completed a status assessment of *C. wrightii* in New Mexico (Sivinski 1996). He subsequently continued to survey and monitor *C. wrightii* localities. Worthington (2002a) conducted surveys at 12 sites that contained suitable habitat in Karr Canyon, the Rio Penasco drainage, and in the vicinity of Sacramento Lake in the Sacramento Mountains on U.S. Forest Service (Forest Service) land in 2002. Moreover, he surveyed additional springs, but found most springs were capped or captured for municipal use by the City of Alamogordo (Worthington 2002a, p. 3). No new *C. wrightii* populations were found, although one possible new locality with plants that lacked the characteristic black tips and had different looking leaves was noted (Worthington 2002). However, the locality was not photographed, collected, or verified and the accuracy of its identification is unknown.

In Arizona, the Service has similarly contracted surveys of potential *Cirsium wrightii* habitat to verify whether any populations are extant. These will be completed by October 2010. Below, we present information on all of the known historic and extant localities of *C. wrightii* rangewide, including those that have been extirpated.

New Mexico

Tularosa Creek

The Tularosa Creek, Otero County, population of *Cirsium wrightii* occurs on private land and the Mescalero Apache Reservation. This population has significantly declined since 1995, from an estimated several thousand individual plants along 3.5 mi (5.6 km) of nearly continuous occupied marsh and wet meadows, to four scattered occupied locales of less than 50 individual flowering plants total along the same stretch in 2009 (Sivinski 1996, p. 3; 2009a, p. 2). In 1995, this was the most extensive population in the Sacramento Mountains, but it has become drier and dominated by the invasive plant *Phragmites australis* (common reed) since the 1995 survey (Sivinski 1996, p. 3; 2009a, p. 2). This population likely includes additional small adjacent localities of scattered individual plants on the Mescalero Apache Reservation, but we were unable to survey these Tribal lands (*e.g., see* Bridge 2001; Worthington 2002a). Moreover, the possible new locality found by Worthington (2002) occurs in the area.

La Luz Canyon

The small La Luz Canyon population of *Cirsium wrightii* that occurs within about 540 ft^2 (50 m^2) of spring habitat on Forest Service lands was stable at an estimated 50 plants both in 1995 and 2005 (Sivinski 1996, p. 3; 2005a, p. 4). However, an adjacent small population of 10 plants in the same general area on private land 3 mi (5.8 km) east of La Luz Canyon was extirpated between 1995 and 2005, most likely from a severe scouring flood and alteration of the spring hydrology that led to the drying of habitat (Sivinski 2005a, p. 4; 2009a, p. 2).

Karr Canyon

The Karr Canyon/Haynes Creek population of *Cirsium wrightii* previously included a cluster of a hundred plants within about 1000 ft^2 (100 m^2) of spring habitat within a highway right-of-way that was stable between 1995 and 2005 (Sivinski 1996, p. 2, 2005a, p. 4). Nevertheless, a small population of a few dozen mature plants in the same general area on private land was extirpated between 1995 and 2005 and replaced by *Phragmites australis* (Sivinski 1996, p. 2, 2005a, p. 4; 2009a, p. 2).

Silver Springs Canyon

The small Silver Springs Canyon population of *Cirsium wrightii* occurs on Forest Service land in a wet meadow and was estimated at 16 mature plants in 2002 (Worthington 2002, p. 4; 2002a, p. 15). The population was observed in July 2010 and appears to be approximately the same size (Service 2010b, p. 1). This population is growing within a seep and is adjacent to *C. vinaceum* (Sacramento Mountains thistle) (Worthington 2002, p. 4).

Bitter Lake National Wildlife Refuge

A large population of *Cirsium wrightii* was found at BLNWR in 1998 and is associated with cienagas (wet meadows) and marshes in Units 3, 5, and 6 of the refuge (Service 1998, p. 1; 2010, p. 1). All known populations of *C. wrightii* on BLNWR grow within designated critical habitat of *Helianthus paradoxus* (Service 2010a, p. 6). When *C. wrightii* was discovered on BLNWR, the population was estimated between 1,680 and 2,130 flowering plants (Service 1998, p. 1; 1999, p. 25). Sivinski (2005a, p. 3) found there was no change in this population's distribution and abundance between 1999 and 2005. In 2009, the population was estimated to be thousands of individuals, the largest known population of *C. wrightii* (Sivinski 2009a, p. 2).

Roswell

Cirsium wrightii historically occurred in North Spring, at the Roswell Country Club, Roswell, New Mexico (Sivinski 1996, p. 4). However, the population has been extirpated following the alteration and loss of all vegetation, including *C. wrightii,* as a result of the enclosure of North Spring with bricks and cement (Sivinski 1996, p. 4; New Mexico Department of Game and Fish (NMDGF) 2005a, p. 18). Sivinski surveyed most of the springs in the vicinity of Roswell in 1995 looking for *C. wrightii* populations (Sivinski 1996, p. 4). All but one spring had been capped and diverted for domestic water, and no extant or new populations were found (Sivinski 1996, p. 4).

Santa Rosa Wetlands

The Santa Rosa area is a zone of karst topography (an area of erosive limestone), with numerous sinkhole lakes and artesian springs (ground water that is under pressure) within a 6-mi (9.7-km) diameter circular depression. The localities of *C. wrightii* are scattered within some of the marshes, spring seeps, and various sinkhole lakes, with flowering plants generally rare and occurring throughout 4 sections spread out over 4 square miles (mi^2) (10 square kilometers (km^2)) on a mixture of State, private, and municipal lands, but the total area occupied in this locality is less than 5 acres (ac) (2 hectare (ha)) (Sivinski 1996, p. 4; Sivinski and Bleakly 2004, pp. 1, 3; Service 2010c, pp. 1–2). For example, the 116-ac (47-ha) Blue Hole Cienaga locality, owned by the State of New Mexico, is part of the overall population and contains sparse occurrences (*i.e.,* not continuous in distribution) of *C. wrightii* along a spring-fed creek and an adjacent seep (Sivinski and Bleakly 2004; Service 2010c). The other known localities in the area include El Rito Creek, private lands, ponds at a no-longer-used fish hatchery, Bass Lake, and Perch Lake (a large sinkhole that is partially developed for fishing and picnicking) (Sivinski 1996; 2005a; 2010a; Sivinski and Bleakly 2004). Most of the

municipal habitats are small, but have been filled and developed for recreation. This active filling of wetlands has led to the loss of *C. wrightii* plants in recent years (Service 2010c). These localities support perhaps a few hundred *C. wrightii,* but the remaining localities are smaller, isolated occurrences (Sivinski 1996, p. 6, 2009a; 2010a, p. 1; Sivinski and Bleakly 2004, p. 3). Between 1995 and 2005, the overall Santa Rosa population was thought to be stable, estimated at several thousand plants (Sivinski 1996, p. 4; 2005a, p. 3).

Blue Spring

A new population of *Cirsium wrightii* was discovered in 2009 at Blue Spring, Eddy County, New Mexico (Sivinski 2009). This population was estimated at several hundred to a few thousand plants and occupies about 1 mi (1.6 km) of riparian habitat (Sivinski 2009, p. 1). Water flow at Blue Spring is generally perennial along the 2.5-mi (4-km) run that flows into the Black River (a tributary of the Pecos) near Black River Village, New Mexico (NMDGF 2007, p. 15). We have no other information on this locality, as it was just discovered in 2009.

Alamosa Springs

Another population of *Cirsium wrightii* was discovered in 2005 at Alamosa Springs, Socorro County, New Mexico (Sivinski 2005, p. 1). There were an estimated 500–1,000 flowering adults and rosettes confined to a small, spring-fed wetland within the Alamosa Creek Valley (a tributary of the Rio Grande), but none of the plants occurred along Alamosa Creek (Sivinski 2005, p. 1; 2010a, pp. 1–2). The remaining springs in the Alamosa Creek Valley are on private land and have not been surveyed.

Lake Valley

A population of *Cirsium wrightii* was historically located within Lake Valley, Sierra County, New Mexico, but is considered extirpated (Sivinski 2005). This site is now an abandoned mining settlement, but was historically a series of marshes and cienagas. The area was diked, channeled, and drained in the early 1900s and converted to row-crop agriculture (Sivinski 2005, p. 1). There is no longer suitable habitat for *C. wrightii* within the valley (Sivinski 2005, p. 1).

Arizona

San Bernardino Cienaga

The population at the type locality (the place where the species was first found) from San Bernardino Cienaga, Arizona, has not been found again since it was originally collected in 1851, although the area was surveyed in 2006 by The Nature Conservancy (Sivinski 2006a, p. 1; 2009a, p. 1). The species is likely extirpated from the State (ADGF 2001, p. 1; Sivinski 1996, p. 4; 2009a, p. 1; Service 2009a, p. 1).

Texas

We found that *Cirsium* specimens from Texas have been confused because of the difficulty in distinguishing *Cirsium wrightii and C. texanum* from herbarium sheets (Sivinski 1994, p. 1; 1994a, p. 1; Sivinski 2006a, p. 1). All of the collections from herbariums and references identifying *C. wrightii* localities in Texas are in error (Coulter 1881, p. 244; Correll and Johnson 1970, p. 1719; Kearney and Peebles 1951, p. 952; Martin and Hutchins 1981, p. 2002; Sivinski 1994, p. 1; 1996, p. 5; Texas A&M University 1975, p. 89). Furthermore, the presumed location from Presidio, Texas, that we identified in the 90-day finding (74 FR 46544), is not *C. wrightii,* but most likely an undescribed species from northern Mexico (Poole 2010, p. 1).

Poole (1992) evaluated 74 cienagas in Texas and conducted botanical surveys at 33 of the locations within the highest potential habitat (*i.e.,* springs and wetlands) for the *Helianthus paradoxus,* which has similar habitat requirements and sometimes overlaps with *C. wrightii.* No *C. wrightii* locations were found during these extensive botanical surveys (Poole 1992). Similarly, we reviewed information from and contacted botanists who have surveyed the Diamond Y Preserve, Pecos County, Texas, owned by The Nature Conservancy. This preserve shares some of the same habitat characteristics, and many of the imperiled species, found on BLNWR, including Pecos assiminea (*Assiminea pecos*), Pecos gambusia (*Gambusia nobilis*), and *Helianthus paradoxus* (Service 2005, pp. 4, 8; 2007, p. 10; Poole 2010, p. 1). We found that Diamond Y has been thoroughly surveyed, and it does not appear that *C. wrightii* occurs on the preserve. Because we do not have any verified historic collections or known extant populations from any locations in Texas (Poole 2010, p. 1; 2010a, p. 1), we conclude that *C. wrightii* has never been present within the State.

Mexico

We have not been able to obtain any recent information on *Cirsium wrightii* in Mexico. In fact, we have located only three herbarium specimens that were collected in Mexico. One specimen was collected in 1982 at Cerro Angostura Spring, Chihuahua, Mexico (Sivinski 2009a, p. 1, 2010; CONABIO 2010). The second collection from Los Azules, Chihuahua, in 1998, was misidentified and is not *C. wrightii.* The third collection from Fronteras, Sonora, in 1890, has not yet been verified (Sivinski 2010, p. 1). As such, the status of the species in Mexico is uncertain.

In summary, there are eight general localities of *Cirsium wrightii* extant within New Mexico. Additional historical populations have been extirpated, including at least two larger and two smaller populations in New Mexico, and there are no known extant populations in Arizona. The population at BLNWR is likely the most robust, with several thousand individuals. Santa Rosa contains mostly sparse scattered localities throughout four sections of land, and some of these have been extirpated recently. The population along Tularosa Creek has undergone a significant reduction since 1995. The remaining populations in the Sacramento Mountains are all small, containing from 15 to perhaps several hundred individuals. The populations at Blue Spring and Alamosa Springs were recently discovered, and there have been no subsequent surveys to determine whether these populations are stable or declining. The collections from Texas were misidentified, and we conclude *C. wrightii* never occurred in the State. Finally, there is only one verified historic collection from Mexico, and no recent information on the status of the species from this population. For these reasons, the status of this species remains tenuous.

Summary of Information Pertaining to the Five Factors for *Cirsium wrightii*

Section 4 of the Act and implementing regulations (50 CFR part 424) set forth procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In making this finding, information pertaining to *Cirsium wrightii,* in relation to the five factors provided in section 4(a)(1) of the Act, is discussed below.

In making our 12-month finding on a petition to list *Cirsium wrightii,* we considered and evaluated the best available scientific and commercial information. This information includes the petition and associated documents, data from the 1995 through 2009 surveys and recent reports (Sivinski 1996, 2005a, 2006a, 2009, 2009a; Forest Service 2008b; Service 2010b, 2010c), as well as other information available to us. The following analysis examines the five factors described in section 4(a)(1) of the Act and those activities and conditions currently affecting *C. wrightii,* or are likely to affect the species within the foreseeable future.

In considering what factors might constitute threats to a species, we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to that factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat and, during the status review, we attempt to determine how significant a threat it is. The threat is significant if it drives, or contributes to, the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined in the Act. However, the identification of factors that could impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence sufficient to suggest that these factors are operative threats that act on the species to the point that the species may meet the definition of endangered or threatened under the Act.

A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

The most significant threat to *Cirsium wrightii* is the alteration of the hydrology of its rare wetland habitat. In fact, much of the habitat of *C. wrightii* has been and continues to be severely altered and degraded because of past and present land and water management practices including: agriculture and urban development, diversion of springs, and drought. As described below, all of the extant localities may be affected by long-term drought, whereas four of the largest *C. wrightii* localities at Blue Spring, BLNWR, Santa Rosa, and Alamosa Creek have the potential to be further modified by ongoing and future water withdrawal. Changes in water tables throughout the range of *C. wrightii* have often resulted in diminished discharge from springs or complete loss of surface water. Therefore, there has been a trend of diminishing habitat quantity and excessive degradation of habitat quality for the species throughout its range.

Availability of Water

Cirsium wrightii is found in association with seeps, springs, marshes, and wetlands that have saturated soils with surface or subsurface water flow (NMRPTC 2009; Sivinski 1996, pp. 2–7; Service 1998, p. 2; Worthington 2002a, p. 2). Southwestern riparian and aquatic systems fluctuate due to seasonal and longer term drought and wet periods, floods, and fire. Habitats with fluctuating water levels create circumstances in which population sizes may vary over time, and populations may be periodically extirpated. Because the species occurs only in areas that are water-saturated, populations have a high potential for extirpation when habitat dries due to ground and surface water depletion, draining of wetlands, or drought. Loss of water from *C. wrightii* habitat occurs through changing precipitation patterns, drought, or as a result of human impacts from groundwater pumping (withdrawal) or diversion of surface water; this can lead to the degradation and extirpation of *Cirsium wrightii* habitat (Sivinski 1996, p. 5; 2005, p. 1; Forest Service 2008, p. 19). Moreover, the drying of *C. wrightii* habitat has led to retractions of occurrence boundaries, a reduction in the numbers of plants, and, in some cases, a loss of all individuals at several localities (Sivinski 2005a, pp. 3–4). For example, during the dry conditions from 1994 to 1996, many seeps and springs in the Sacramento Mountains ceased flowing and were completely dry (Sivinski 2006b, p. 12). Naturally occurring water loss from changes in precipitation patterns have affected the volume of water flow at numerous springs in the Sacramento Mountains (Forest Service 2003, p. 43).

Drought

The National Weather Service Forecast Office and the U.S. Drought Monitor for New Mexico indicate that the Sacramento Mountains experienced a severe to extreme drought from 2003 to 2008 (Forest Service 2008, p. 22). This has led to unusually low stream or spring flows and, in some instances, no flow (*e.g., see* South Central Mountain 2002, p. 12; Shomaker 2006, p. 8; Gardner and Thompson 2008, p. 2; Newton *et al.* 2009; Sivinski 2005a, pp. 3–4, Forest Service 2003, pp. 53–54). This is likely related to severe drought conditions (Sivinski 2005a, pp. 1, 3–4). Within New Mexico, monsoonal summer precipitation can be very patchy, with some areas receiving considerably less rainfall than others. Newton *et al.* (2009) studied the hydrogeology of the Sacramento Mountains and found that the fractures in the underlying geology exhibit significant control on surface and groundwater flow and possibly groundwater recharge. Overall, their data suggest that the recharge of water wells and groundwater is correlated to the amount of precipitation during monsoon storms at all elevations (Newton *et al.* 2009, p. 22). Wet periods during summer months can significantly contribute to recharge of the ground water in the Sacramento Mountains, but these are extremely rare events (Newton *et al.* 2009). As such, drought has impacted the recharge of ground water tables throughout the Sacramento Mountains (Forest Service 2008, p. 22). For this reason, the seasonal distribution of yearly precipitation can result in temporary drought conditions and reduced water availability for some *C. wrightii* localities within this mountain range.

In 1995 and 2005, Sivinski (2005a, pp. 3–4) monitored the relative size of *Cirsium wrightii* localities rangewide to document the relationship between water availability in suitable habitat and numbers and extent of plants. He found that, when some localities dried, the localities were either extirpated or much reduced in size (Sivinski 2005a, pp. 3–4). Moreover, drying of occupied habitat also resulted in *Typha latifolia* (cattail) being replaced by dense stands of *Phragmites australis* (Sivinski 2005a, pp. 3–4), which may outcompete native vegetation including *C. wrightii* and significantly increase the threat of wildfire (*see* discussion below under "*Phragmites australis*").

Drought also affects the size of an extant locality, even when the water source does not dry out completely. The most severe drought recorded in New Mexico occurred between 1950 and 1956. If drought reduces the amount of groundwater recharge regionally, spring discharge or the areal extent of wetlands could also be reduced. Prolonged drought can lead to diminishment or drying of springs, which would have a negative impact on *Cirsium wrightii* or its habitat. Comparing historical discharges reported in the Black River from 1952 to 1956 (daily mean flow of 15.4 cubic feet per second (cfs) (0.436 cubic meters per second (cms))) to recent discharges (2002 to 2006, daily mean flow of 10.1 cfs (0.286 cms)), flows in the Black River are currently lower than flows during the extreme drought of the 1950s (NMDGF 2007, p.

26). Prolonged drought could adversely impact habitat conditions by reducing hydrologic discharge through the wetland system, thereby desiccating riparian plant communities (*e.g., see* NMDGF 2008, p. 33), including *C. wrightii.* Because of the documented extirpation and population reductions of the species caused by drought and the possibility of more widespread drought accompanying climate change, we conclude that drought constitutes a threat to *C. wrightii,* both now and in the foreseeable future.

Ground and Surface Water Depletion

Habitat loss due to ground and surface water depletion is a threat to *Cirsium wrightii.* Sivinski (1994, pp. 1–2; 1996, p. 4; 2005, p. 1; 2006, p. 4) reported loss or degradation of habitat from water diversion or draining of wetlands in Chaves, Otero, and Sierra Counties, New Mexico, areas that historically supported *Cirsium wrightii.* Increased water extraction in the last 100 years has contributed to the dramatic decline of most surface spring systems in the Chihuahuan Desert (*see* Corps 2006, p. 4; Karges 2003 and references therein). An historical population in Lake Valley, Sierra County, New Mexico, was extirpated when the wetlands were drained and converted to agricultural use (Sivinski 2005, p. 1; 2006a, p. 1). Moreover, the appropriation of water rights from springs for a "beneficial use," such as livestock water, farming, domestic use, or recreational facilities, typically uses points of diversion that can curtail natural surface flows and affect *C. wrightii* populations. For example, aquifers in the Sacramento Mountains, which contain half of all known *C. wrightii* localities, are susceptible to appropriation by existing water rights and development of new water rights, which may pose future threats to the species (Service 2008, pp. 12, 23; Forest Service 2008, pp. 23–24). The marshes, springs, and seeps within La Luz Canyon of the Sacramento Mountains are currently and were likely historically diverted or drained for irrigation and agricultural use (Sivinski 1996, p. 5; South Central Mountain 2002, p. 20). Many springs and streams in the Sacramento Mountains that were perennial during the 1900s have become intermittent or have dried completely, including La Luz Creek (Abercrombie 2003, p. 3). In this area, loss of water flow from human activities related to roads, trails, and the capture of spring water for municipal use have also been observed to affect the threatened species *Cirsium vinaceum* (Forest Service 2003, pp. 42–43). The same likely holds true for *C. wrightii,* although it has not been specifically investigated.

The severe decline in available surface and ground water since the 1990s is due largely to drought and human use (*e.g.,* Shomaker 2006, pp. 8, 20, 26). *Cirsium wrightii* occurrences in La Luz Canyon are within the municipal supply watershed, where pipelines divert water to the City of Alamogordo (Shomaker 2006, pp. 20, 26; Forest Service 2008, p. 21). The number of water wells drilled on both private and National Forest System lands within this area has increased since the 1950s, with the 1980s and 1990s being the most active years for drilling of domestic use wells (Forest Service 2008, p. 22). The total permitted groundwater extraction is approximately 2,400 acre feet per year (300 hectare-meters per year) (98,000,000 gallons per year) (370,000,000 liters per year) from nearly 300 wells (Forest Service 2008, p. 22).

In 2002, the New Mexico State Engineer declared the La Luz Canyon watershed as a Critical Management Area, which means no new groundwater appropriations would be allowed for nondomestic purposes (Forest Service 2008, p. 22). However, for domestic purposes, the demand for water use through surface diversion and ground water withdrawals is expected to increase as a result of the population increase. The human population in Alamogordo, Otero County, New Mexico, increased from about 30,000 to 36,000 from 1995 to 2000, and is expected to increase to about 56,000 by 2040 (South Central Mountain 2002, p. 11). An increasing human population and its associated agricultural and economic activities will require additional water from this relatively dry region.

Current New Mexico State law provides that anyone may obtain a permit for a domestic well, no matter what the consequences for anyone else's water rights or the impact of water resources for the area (*e.g., see* Belin *et al.* 2003, p. 72). Between 2005 and 2045, the City of Alamogordo's water demand is expected to increase from 7,140 acre-feet per year to 10,842 acre-feet per year (881 hectare-meters per year to 1337 hectare-meters per year) (Shomaker 2006, pp. 43–44). By 2045, the City of Alamogordo will likely have a projected deficit of 6,258 acre-feet per year (772 hectare-meters per year) (more than 2 billion gallons per year) (more than 8 billion liters per year) (Shomaker 2006, p. 44). Withdrawal and diversion of water from wells located on Forest Service and private lands would continue to increase for the foreseeable future and compound the effects of the recent and ongoing drought, leading to increased degradation of wetland and riparian habitat (Forest Service 2008, p. 23), which contain *Cirsium wrightii* localities. In the Sacramento Mountains, *C. wrightii* occurrences have been and will continue to be altered and potentially degraded by the issuance of a special use permit to maintain and operate water withdrawal from Forest Service lands (Forest Service 2008, p. 26). Development of additional water rights will likely dewater *C. wrightii* localities, constituting a threat to the species in this area for the foreseeable future.

Moreover, the Blue Spring and Santa Rosa occurrences of *Cirsium wrightii* are within areas where water is currently drained from wetlands or diverted or withdrawn for domestic use, which may contribute to degradation and loss of its habitat (Sivinski 1996, p. 5; 2009; 2009a; NMDGF 2007, pp. 14, 17, 22). Additionally, any activity that would interrupt the flow of water from Alamosa Creek has the potential to impact *C. wrightii.* Currently, irrigation and domestic use from about 50 farms does not appear to have reduced the baseflow of about 9 cfs (0.3 cms) from this spring-fed system (Sierra Soil and Water Conservation Service 2008, p. 2). However, Alamosa Creek would likely be negatively affected by long-term drought.

The effects of ongoing and past maintenance and operation of existing water diversions can also limit the size of *Cirsium wrightii* populations (Corps 2007, p. 29). For example, the *C. wrightii* population on City of Roswell lands has been extirpated at this location since the habitat is no longer suitable for the plant (NMDGF 2005, pp. 33–34; Sivinski 1996, pp. 4–5; 2006a, p. 5). Loss of springs and surface water flow in streams resulting from human use and drought have occurred throughout the Roswell Artesian Basin in New Mexico, often resulting in diminished discharge from springs or complete loss of surface water (Taylor 1983, 1987; NMDGF 2005, 2005a, p. 17; Jones and Balleau 1996, pp. 4, 12). Many of these spring systems could have harbored populations of *C. wrightii;* however, it is not possible to determine the extent of the loss of *C. wrightii* populations because many springs went dry before surveys could be conducted. Peak annual pumping of the alluvial aquifer (a water-bearing deposit of sand and gravel) in the Roswell Basin occurred in the 1950s. Since the 1950s, administration and metering of groundwater extraction in the basin by the New Mexico Office of the State Engineer has resulted in

stabilization of groundwater levels (NMDGF 2005a, p. 18).

As artesian wells were developed in the area, discharge from the major springs declined proportionately and some of these springs cease to flow (Jones and Balleau 1996, p. 4). Surface water flow on BLNWR has also been diminished by groundwater pumping, as evidenced by the dead springs on Salt Creek and documented reduction in spring flows on the refuge (Jones and Balleau 1996; p. 12). Aerial photos which show a larger, meandering channel for Bitter Creek are also evidence that discharge from Bitter Creek was once greater (Service 2005a; 70 FR 46312, August 9, 2005). Additionally, BLNWR actively lowers the water levels in wetlands during spring and summer (Service 2006, p. 2). It is unknown how *C. wrightii* responds to these changing water levels on the refuge, but if soils are not continuously saturated throughout the growing season, the species is likely impacted. Information from other localities suggests that populations likely contract or habitat may become invaded by *Phragmites australis* as water is withdrawn and parts of the occupied wetlands dry (*e.g.,* Sivinski 2005a, pp. 3–4).

Surface diversions, primarily for irrigation, and groundwater pumping for domestic and commercial uses also occurs at the Blue Spring locality (NMDGF 2007, p. 22; Lusk 2008). Flow in the Black River is sustained by springs, including Rattlesnake and Blue Springs, and is generally perennial in the reaches around these springs (NMDGF 2007, p. 15). Discharge at Blue Spring has varied over the past 100 years: in 1907, it was recorded at 15.2 cfs (0.430 cms), with a minimum of 14.65 cfs (0.415 cms) (Bjorklund and Motts 1959, pp. 251, 263); from 1952 to 1956, discharge varied from 8.5 to 14 cfs (0.24 to 0.40 cms), with a mean of 12 cfs (0.34 cms) (Bjorklund and Motts 1959, p. 268); and from 2002 to 2006, the mean was 11.75 cfs (0.333 cms), with a range from 6.8 to 23 cfs (0.19 to 0.65 cms) (NMDGF 2007, p.15). Bjorklund and Motts (1959, pp. 247, 263) first reported that water levels within the Black River Valley (including Blue Spring) decline during the late summer and during droughts, mostly from heavy groundwater pumping and lack of aquifer recharge. Based on flows recorded in recent years (2000–2006) at Blue Springs and in the Black River above the Carlsbad Irrigation District diversion, more surface water is appropriated than is available in the system (R. Turner, New Mexico Office of the State Engineer, pers. comm., April 2007; cited in NMDGF 2007, p. 25). This constitutes a significant threat to this locality.

In summary, the alteration and loss of habitat that currently supports *C. wrightii,* due to groundwater and surface water depletion, will continue and likely increase in the foreseeable future. Because this species is dependent on water, we find that long-term drought in combination with ground and surface water withdrawal is currently a significant threat to *C. wrightii* and its habitat, and will continue to be in the foreseeable future.

Climate Change

The Intergovernmental Panel on Climate Change (IPCC) states that warming of the climate system is unequivocal, based on observations of increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level (2007a, p. 5). For the next two decades, a warming of about 0.4 degrees Fahrenheit (°F) (0.2 degrees Celsius (°C)) per decade is projected (IPCC 2007a, p. 12). Temperature projections for the following years increasingly depend on specific emission scenarios (IPCC 2007a, p. 13). Various emissions scenarios suggest that average global temperatures are expected to increase by between 1.1 °F and 7.2 °F (0.6 °C and 4.0 °C) by the end of the 21st century, with the greatest warming expected over land (IPCC 2007a, p. 13). Warming in western mountains is projected to cause decreased snowpack, more winter flooding, and reduced summer flows, exacerbating competition for over-allocated water resources (IPCC 2007b, p. 14). The IPCC reports that it is very likely that hot extremes, heat waves, and heavy precipitation and flooding will increase in frequency (IPCC 2007b, p. 18).

Based on current understanding of climate change, air temperatures are expected to rise and precipitation patterns are expected to change in areas occupied by *Cirsium wrightii.* Because *C. wrightii* occupies relatively small areas of spring or seep habitat in an arid region plagued by drought and ongoing aquifer withdrawals (*e.g.,* in the Roswell Basin), it may be vulnerable to climatic changes that could decrease the availability of water to suitable habitat. For example, the most severe drought recorded in New Mexico occurred between 1950 and 1956. Based on the discharges reported in the Black River (fed by Blue Spring, the *C. wrightii* locality, and other spring sources) from 1952 to 1956 (daily mean of 15.4 cfs (0.436 cms)) compared to recent discharges (2002 to 2006, daily mean of 10.1 cfs (0.286 cms)), flows in the Black River are currently lower than during the drought of the 1950s (NMDGF 2007, p. 31). Moreover, Sivinski (2005a, pp. 3–4) reports that springs and wet valleys have been affected by drought in at least three canyons of the Sacramento Mountains, New Mexico, resulting in reduced *C. wrightii* populations. Similar water loss may occur within other *C. wrightii* localities, as analyzed above. If climate change leads to future drought, additional dewatering and reduction of *C. wrightii* habitat may occur.

Although the information available on climate change indicates that New Mexico will be impacted (New Mexico Climate Change Advisory Group 2006, p. 1), there is no information specific to the effects of climate change on *Cirsium wrightii* or its habitat. Reliable predictive models have not been developed for use at the local scale (*i.e.,* the eight occupied localities), and there is little certainty regarding the timing and magnitude of the resulting impacts. For example, the vulnerability of *C. wrightii* habitats to a drying climate depends, in large part, on the sources of their water supply. The sources of water to *C. wrightii* habitats are precipitation, surface water, and groundwater. Habitats that are sustained mainly by precipitation are the most likely to be affected in a drying climate. Alternatively, localities that are supplied primarily by groundwater will likely have the greatest resistance to climate change due to water stored in aquifers (*e.g., see* Poff *et al.* 2002, pp. 18–19). However, based on projections made by the IPCC, we consider climate change to be a potential exacerbating factor, worsening the impacts of other known threats. These threats include habitat degradation from prolonged periods of drought and increased temperature, and the allocation of water for use by the human population and agriculture as well as a number of potential confounding effects. In summary, we do not have evidence indicating that climate change is currently a factor affecting *C. wrightii's* existence, because the information available on the subject is insufficiently specific to the species or the possible current or future effects of climate change on the sources of their water supply. However, we consider climate change to be a potential exacerbating factor and will continue to evaluate new information on the subject as it becomes available.

Introduced Plants

Introduced plants increase the potential for habitat loss due to wildfire and competition with *Cirsium wrightii.*

Phragmites australis has recently invaded half of the known *C. wrightii* localities (BLNWR, Tularosa Creek, Santa Rosa, and Karr Canyon), forming dense stands in areas and increasing fuel load and threat of wildfire. Standing dead canes of *P. australis* and associated litter often constitute twice as much biomass as living shoots (Forest Service 2010). The high productivity and density of *P. australis* stands provide fuel loads that are often high. This abundant dead fuel carries fire well, allowing stands to burn even when the current year's shoots are green (Forest Service 2010).

As an example, on March 5, 2000, the Sandhill fire burned 1,000 ac (405 ha) of the western portion of the BLNWR, including portions of Bitter Creek. The fire burned through Dragonfly Spring, eliminating the vegetation shading the spring. Although *Cirsium wrightii* does not occur immediately within the burned area, the changes to wetland vegetation exemplify how its habitat might respond following wildfire. The pre-fire dominant vegetation of submerged aquatic plants and mixed native grasses within the burned area has been replaced by the invasive *Phragmites australis* (NMDGF 2005, p. 19–21). The *P. australis* present at BLNWR is likely of European origin (Service 2006, p. 5). Prior to the wildfire, small patches of *P. australis* occurred throughout Bitter Creek, whereas post-fire, *P. australis* colonized the burned area to form a continuous dense stand (NMDGF 2005, pp. 19–21). Stands of *P. australis* have also recently become a dominant plant in other *C. wrightii* localities (Sivinski 2005a, pp. 3–4; Sivinski and Bleakly 2004, p. 5). Controlled burns have been implemented on BLNWR to burn grass, sedge, cattail, and nonnative vegetation (*e.g., Salsola* spp. (Russian thistle and tumbleweed)), in an attempt to reduce the risk of large uncontrolled wildfires by removing excessive amounts of *Salsola* spp. and *P. australis* (Service 2006). This may temporarily reduce the threat of wildfire in one area of BLNWR, but repeated prescribed burns are likely needed to continually suppress *P. australis* growth (Service 2006, pp. 4–5).

No measures are being implemented in the other localities to reduce *P. australis.* Moreover, temperatures from prescribed burns are rarely high enough to be lethal to *P. australis* or to penetrate deeply into the wet or moist soils common in their habitat (Forest Service 2010 and references therein). Prescribed fire burns above-ground parts of *P. australis,* but below-ground rhizomes usually survive and produce plants later in the growing season or in subsequent years (Forest Service 2010 and references therein). Rarely is *P. australis* abundance decreased by fire, and postfire recovery is typically rapid. As such, prescribed fire likely will do little to reduce the long-term threat of *P. australis* to *C. wrightii*.

In addition to increasing the potential for wildfire, *Phragmites australis* can also quickly invade a site and take over a wetland, crowding out native plants and changing hydrology (Plant Conservation Alliance 2005, p. 1). The dense plant growth blocks sunlight to other plants growing in the immediate area and occupies all available habitat, turning many wetlands into dense stands that support only *P. australis* (Plant Conservation Alliance 2005, p. 1). Two *Cirsium wrightii* localities have recently been either extirpated (an occurrence in Karr Canyon), or significantly reduced in size (Tularosa Creek), following an expansion of *P. australis* (Sivinski 1996, p. 2, 2005a, p. 4; 2009a, p. 2). *P. australis* is a current threat and will likely be a continuing threat for *C. wrightii* localities through increased fire risk, competition, and changes in hydrology, especially when habitat is disturbed through burning or drying.

Ungulate Grazing

Grazing likely impacts some localities of *Cirsium wrightii,* but does not appear to be a widespread threat to the species. It is estimated that livestock grazing has damaged approximately 80 percent of stream and riparian ecosystems in the western United States (Belsky *et al.* 1999, p. 419). The damage occurs from increased sedimentation, decreased water quality, and trampling and overgrazing of stream banks where succulent forage exists (Armour *et al.* 1994, p. 10; Belsky *et al.* 1999, p. 419; Fleischner 1994, p. 631). Moreover, many acres of marsh habitats at Santa Rosa have also been plowed and converted to *Festuca pratensis* (meadow fescue) pasture for livestock grazing (Service 2005, p. 10; Corps 2007, p. 25). In the semi-arid southwestern United States, wet marshes and other habitat of *C. wrightii* attract ungulates because of the availability of water and high-quality forage (*e.g., see* Hendrickson and Minckley 1984, p. 134). Similar to *C. vinaceum,* dry periods likely increase the effects of livestock trampling and herbivory on *C. wrightii* when other water and forage plants are not available (75 FR 30761, June 2, 2010). Grazing may be more concentrated within habitats similar to those occupied by *C. wrightii* during drought years, when livestock are prone to congregate in wetland habitats or where forage production is greater than in adjacent dry uplands (*e.g., see* Forest Service 2003). Although no studies specifically related to the effects of livestock grazing on *C. wrightii* have been conducted (NMRPTC 2009, p. 2), livestock will likely eat *C. wrightii* when other green forage is scarce, and when the seedlings or rosettes are developing and abundant.

The localities in the Sacramento Mountains, Santa Rosa, Alamosa Springs, and Blue Spring have the potential to be subjected to trampling and herbivory (75 FR 30762; NMDGF 2000, p. 2, 2004, p. 7, 2005, p. 47; Corps 2007, p. 25; Service 1994, p. 6, 2005c, p. 2). For example, about three quarters of *C. wrightii* were grazed at one locality near Santa Rosa (Corps 2007, p. 25). Additionally, much of the private wet meadows and marsh habitats in the Santa Rosa area have been severely degraded by livestock grazing for many years (Sivinski and Bleakly 2004). Except for Blue Hole Cienaga, we are not aware of any fences enclosing these localities that would limit impacts to the species. In the Sacramento Mountains, for example, springs and marshes provide a majority of the watering sites for both livestock and wildlife species, especially elk (75 FR 30762). These wet springs and marshes are subject to trampling and hoof damage, and receive especially heavy use during drought periods, when neither water nor green forage are readily available elsewhere. Trampling could easily result in damage to seedlings, rosettes, and flowering stalks, thereby preventing reproduction by affected plants. It is possible that elk and livestock grazing within and adjacent to spring ecosystems could alter or remove habitat or limit the distribution of *Cirsium wrightii;* however, we found little information to support this possibility. Still, we believe the observations of livestock and elk herbivory and trampling that directly affect *C. vinaceum* and its habitat likely are also occurring in some of the *C. wrightii* localities; however, it is unknown whether these are localized or widespread threats to the species.

In summary, while livestock activities do not appear to be a widespread threat at the current time, localized impacts have been observed, and increased use of wet springs and marshes during drought conditions constitutes a threat in the foreseeable future. We will continue to monitor livestock grazing and trampling to determine whether *C. wrightii* is threatened.

Wetland Filling and Development

As described below, wetland filling and development has impacted the

Santa Rosa locality, but does not appear to be a threat to the species. A substantial percentage of wetlands in the Santa Rosa area have disappeared in the last 50 to 80 years (Metric Corporation *et al.* 2002, p. 5). Springs that fed suitable habitat for *Helianthus paradoxus* and likely also contained *Cirsium wrightii* have been converted to swimming pools and fishing ponds or drained and filled for sports fields in the towns of Roswell and Santa Rosa, New Mexico (*e.g., see* Sivinski and Bleakly 2004, p. 1; Service 2005, p. 8). Moreover, some springs and associated wetlands where *C. wrightii* occurred have been drained and developed, and the potential for further development exists (Metric Corporation 2001; Metric Corporation *et al.* 2002; Sivinski 2009a, p. 1; Sivinski and Bleakly 2004, p. 1; Service 2008b, p. 42).

Some of the *Cirsium wrightii* occurrences within the Santa Rosa locality continue to be impacted through filling and development and regular mowing. *C. wrightii* occurs at the Blue Hole fish hatchery ponds that are owned by the City of Santa Rosa (Sivinski 1996, p. 4). The City of Santa Rosa plans to dredge and fill these ponds for municipal use in the foreseeable future (Service 2008b, p. 42), which would undoubtedly impact the species. A similar action occurred in 2001 when the *C. wrightii* population at Power Dam Municipal Park in Santa Rosa was extirpated when the reservoir was drained (Sivinski 2005a, p. 3; 2009a, p. 1). Numerous wetlands in Santa Rosa were also lost many years ago to an impoundment, in which 17 ponds were created and used for a fish hatchery. The fish hatchery has since been abandoned, and all but four of the ponds filled. The remaining adjacent 116 ac (47 ha) of the Blue Hole Cienaga were purchased by the State of New Mexico to protect habitat that includes the Federally threatened *Helianthus paradoxus, C. wrightii,* and the State-endangered *Spiranthes magnicamporum* (Great Plains lady's tresses) (New Mexico State Forestry 2008, p. 1). Although we are not aware of any other specific residential or commercial development plans at this or other localities, actions that drain or fill wetlands or other habitat occupied by the species would impact *C. wrightii.*

Summary of Factor A

In summary, we found that past and present alteration of rare desert springs, seeps, and wetland habitats that support *Cirsium wrightii* is a significant threat. The four largest localities of *C. wrightii* at Blue Spring, BLNWR, Santa Rosa, and Alamosa Creek have the potential to be further modified by ongoing and future water withdrawal. Changes in water tables throughout the range of *C. wrightii* have also resulted in diminished discharge from springs or complete loss of surface water. Therefore, there has been a trend of diminishing habitat quantity and excessive degradation of habitat quality for the species throughout its range, as a result of agriculture and urban development, diversion of springs, and drought. Moreover, the presence of and effects from *Phragmites australis* threatens *C. wrightii* localities through increased fire risk, competition, and changes in hydrology. On the basis of the information presented above, we find that *Cirsium wrightii* may be threatened by the present or threatened destruction, modification, or curtailment of its habitat, both now and in the foreseeable future.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We do not have any evidence of risks to *Cirsium wrightii* from overutilization for commercial, recreational, scientific, or educational purposes, and we have no reason to believe this factor will become a threat to the species in the future. Therefore, we find overutilization for commercial, recreational, scientific, or educational purposes does not threaten *C. wrightii* now or in the foreseeable future.

C. Disease or Predation

Disease

Cirsium wrightii is not known to be affected or threatened by any disease. Therefore, we find that disease does not threaten *C. wrightii* now or in the foreseeable future.

Insect Predation

Native and nonnative insect populations have the potential to impact the condition, reproduction, and distribution of *Cirsium wrightii.* Observed seed predators on the similar *C. vinaceum* in the Sacramento Mountains include *Paracantha gentilis,* a native specialist gall fly; *Platyptilia carduidactyla,* the native artichoke plume moth; *Euphoria inda,* a native generalist bumble flower beetle; *Rhinocyllus conicus,* an introduced seed-head weevil; and *Trichosirocalus horridus,* an introduced rosette weevil (Sivinski 2008, pp. 1–11; Gardner 2010, pp. 2–3). There have been intentional releases of *Rhinocyllus conicus* to control *Carduus nutans* (musk thistle) (Sivinski 1994, p. 2; 2007, p. 6; NMRPTC 2009, p. 2; Bridge 2001, p. 1; AGFD 2001, p. 2). This exotic weevil has recently been found in habitat occupied by *C. wrightii, C. vinaceum,* and the exotic *Carduus nutans* at the Silver Springs locality (Sivinski 2007, p. 6; Gardner and Thompson 2008, p. 4). It is not known where *Trichosirocalus horridus* came from or whether they were intentionally released (Gardner 2010, p. 3); however, this exotic rosette weevil is also present in *Carduus nutans* populations ranging from the northern extent of the Mescalero Apache reservation south to Agua Chiquita canyon in the Sacramento Mountains.

Rhinocyllus conicus is not host specific to *Carduus* species and has been found living on 22 of the North American *Cirsium* species (Louda *et al.* 2003). This weevil is available from commercial suppliers and is easily gathered and transported from established colonies. Breeding and egg placement by *R. conicus* begins in mid-June, peaks in early July, and continues into August (Sivinski 2008, p. 5). Newly hatched larvae bury into the flower head and feed on the tissue. Most *R. conicus* at the Silver Springs locality emerge from the flower heads by early September; however, some immature larvae were still present in the flower heads of *C. vinaceum* in September (Sivinski 2008, p. 5). Flower heads of *C. wrightii* grow during late July to early August, which overlaps with developing and feeding larvae of *R. conicus.* The establishment of *R. conicus* beyond the Silver Springs locality will likely occur in the near future because stands of *C. nutans* are common in many of the drainages throughout the Sacramento Mountains (Gardner and Thompson 2008, p. 4), and we are concerned that it may spread to *C. wrightii* populations. For these reasons, we intend to monitor localities in the Sacramento Mountains to determine whether *C. wrightii* could be a potential host and possibly threatened by *R. conicus* infestations.

Trichosirocalus horridus, feeds on *Carduus nutans* during the rosette stage, killing first-year rosettes and stopping the growth of older plants. This weevil is available from commercial suppliers or can be gathered and transported from established colonies (Flanders *et al.* 2001, p. 4; Jennings *et al.* 2010, pp. 4–5). Moreover, *T. horridus* is capable of spreading at least a mile (1.61 km) per year on their own (Flanders *et al.* 2001, p. 4). Adults emerge from summer resting places in the fall. They lay eggs in the midrib of thistle leaves, and complete egg-laying in the spring. After 10 to 12 days, the eggs hatch, and the young weevils tunnel from the midrib into the rosette, feeding and causing

damage or possibly killing the crown tissue. The new adults emerge in May and June, feed briefly, and pass the summer in a period of inactivity (Flanders *et al.* 2001, p. 3). We are concerned about potential effects to *C. wrightii* and intend to monitor *C. wrightii* localities to determine if this introduced rosette weevil threatens the species.

Rhinocyllus conicus and a native predator, the stem borer weevil (*Lixus pervestitus*), caused a widespread premature stem death to the flower heads of the Silver Springs population of the endangered *C. vinaceum,* which co-occurs with *C. wrightii* (Sivinski 2007, pp. 8–12). These 2 insects collectively damaged up to 99 percent of *C. vinaceum* within the Silver Springs locality, resulting in nearly complete die-off of flowering stems (Sivinski 2008, p. 9, 2009b). Thus far, *L. pervestitus* has not been found on *C. vinaceum* outside of the Silver Springs population, and little is known about this insect species in New Mexico (Sivinski 2008, pp. 10–11). Nevertheless, the reproductive output of the population of *C. vinaceum* at Silver Springs was greatly reduced by these insects. Similarly, it is unknown if these weevils feed on *C. wrightii* or have the same level of impact as that of *C. vinaceum.*

Summary of Factor C

In summary, it is not known at this time whether insect predators would decrease seed production and increase the threat to the existence of *C. wrightii* populations. The potential for insect predators to become a threat to *C. wrightii* in the future needs to be monitored and evaluated. Therefore, we intend to monitor populations, especially in the Sacramento Mountains, for impact due to insect predation.

D. The Inadequacy of Existing Regulatory Mechanisms

One primary cause of decline of *Cirsium wrightii* is the loss, degradation, and fragmentation of habitat due to human activities. Federal and State laws have been insufficient to prevent past and ongoing losses of the limited habitat of the species, and are unlikely to prevent further declines.

Clean Water Act

Pursuant to section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344), the U.S. Army Corps of Engineers (Corps) regulates the discharge of dredged or fill material into all waters of the United States, including wetlands. In general, the term "wetlands" refers to areas meeting the Corps criteria of having hydric (wet) soils, hydrology (either a defined minimum duration of continuous inundation or saturation of soil during the growing season), and a plant community that is predominantly hydrophytic vegetation (plants specifically adapted for growing in a wetland environment). Much of the habitat occupied by *Cirsium wrightii* qualifies as wetlands.

Any discharge of dredged or fill material into waters of the United States, including wetlands, requires a permit from the Corps. These include individual permits, which would be issued following a review of an individual application, and general permits that authorize a category or categories of activities in a specific geographical location or nationwide (33 CFR parts 320–330). General and special permit conditions may vary among the various general permits. Although the use of any individual or general permit requires compliance with the Act when there are threatened or endangered species present, only three (Santa Rosa, BLNWR, and Silver Springs) of the eight localities co-occur with either *Helianthus paradoxus* or *Cirsium vinaceum,* which are both listed under the Act. Even at these three localities, we are not aware of any protections that have been provided by the CWA.

While the CWA provides a means for the Corps to regulate the discharge of dredged or fill material into waters and wetlands of the United States, it does not always provide adequate protection of wetlands. Private and State landowners of wetlands are often unaware of this permitting requirement, and may fill or drain their lands without requesting determination of wetland status or a permit (Service 2005, p. 22). For example, in 2003, the New Mexico Department of Transportation violated the CWA in the right-of-way of Highway 91 in Santa Rosa within *Helianthus paradoxus* habitat (Service 2008c, p. 12; New Mexico Department of Transportation 2003, pp. 1–2). In 2001, the New Mexico Department of Transportation also mowed *Helianthus paradoxus* in the wetland within the right-of-way of La Pradira Avenue (now Blue Hole Road) and proposed to destroy at least 20 *C. wrightii* plants in conjunction with reconstruction of the road (Metric Corporation 2001, pp. 12, 21). Many applicants are required to provide compensation for wetlands losses (*i.e.,* no net loss), and many smaller impact projects remain largely unmitigated, unless specifically required by other environmental laws such as the Act. Specifically, we found that *C. wrightii* localities are not currently protected from the construction and maintenance of irrigation facilities and functionally related structures, which are exempt from Section 404 of the CWA, and therefore, do not receive any general protections that may have resulted from status determination and permitting process by the Corps (*e.g., see* Corps 2007). Finally, we are not aware of any Corps permits that have been issued for the habitat where this species occurs or historically occurred, indicating that there is little protection provided to *C. wrightii* through the CWA.

Additionally, recent court cases limit the Corps' ability to utilize the CWA to regulate the discharge of fill or dredged material into the aquatic environment within the current range of *Cirsium wrightii* (*Solid Waste Agency of Northern Cook County* v. *U.S. Army Corps of Engineers,* 531 U.S. 159 (2001) (SWANCC)). Additionally, there may be instances where wet marshes occupied by *C. wrightii* lack sufficient connection to waters of the United States for the Corps to assert jurisdiction under the authority of the CWA. For example, the Corps frequently cites the SWANCC decision as their reason for not taking jurisdiction over water bodies that do not meet the definition of waters of the United States. For these reasons, we conclude that regulation of wetland filling by the Corps under the CWA is inadequate to protect *C. wrightii* from further decline.

State of New Mexico

The State of New Mexico lists *Cirsium wrightii* as endangered under the New Mexico Endangered Plant Species Act (9–10–10 NMSA). As such, *C. wrightii* is protected from unauthorized collection, transport, or sale. This law prohibits the taking, possession, transportation and exportation, selling or offering for sale of any listed plant species. Listed species can be collected only under permit from the State of New Mexico for scientific studies and impact mitigation. However, this law does not provide any protection for *C. wrightii* habitat. Moreover, there are no statutory requirements under the jurisdiction of the State of New Mexico that serve as an effective regulatory mechanism for reducing or eliminating the threats (*see* Factors A and C above) that may adversely affect *C. wrightii* or its habitat. Nor are there any requirements under the New Mexico State statutes to develop a recovery plan that will restore and protect existing habitat for the species. Therefore, the species does not have a recovery plan, conservation plan, or conservation agreement. For these reasons, we find that existing New

Mexico State regulatory mechanisms are currently inadequate to protect *C. wrightii.* As noted, these designations provide no regulatory protection for the habitat or the species to prevent further decline.

Other Federal Protections

Under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) and the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*), the Forest Service is directed to prepare programmatic-level management plans to guide long-term resource management decisions. Under this direction, *Cirsium wrightii* is on the Regional Forester's Sensitive Species List (Forest Service 2008a). The Forest Service policy (FSM 2670.3) states that biological evaluations must be completed for sensitive species and signed by a journey-level biologist or botanist. The Lincoln National Forest will continue developing biological evaluation reports and conducting analyses under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) for each project that will affect *Cirsium wrightii* or its habitat. Nevertheless, only 2 of the 8 general localities occur on Forest Service lands, and these are extremely small, composed of less than 70 plants total. Therefore, even if protections were afforded to the species due to its Forest Service sensitive-species status, the number of localities are insufficient to conserve *C. wrightii* rangewide.

Incidental Protections Resulting From Association With Other Listed Species

BLNWR was established in 1937 as wintering and breeding grounds for migratory birds. *Cirsium wrightii* was not known to occur on the refuge until 1998 (Service 1998). Consequently, management was directed primarily at creating dikes so that ponds could be created and their water levels controlled for the benefit of waterfowl. This likely was beneficial to *C. wrightii* by unknowingly creating more habitat. Although current management of BLNWR recognizes and includes Federally listed species in its maintenance and operations, because *C. wrightii* is not a Federally threatened or endangered species, we are aware of only one project that has specifically considered and incorporated measures to limit impacts on the species or specifically analyzed whether actions proposed by the refuge would cause any adverse effects (Service 2010a, p. 7).

Summary of Factor D

In summary, *Cirsium wrightii* receives inadequate protection from the CWA. Similarly, the species lacks adequate regulatory protection from its various designations—a Forest Service sensitive species, or endangered status by the State of New Mexico, because these designations only serve to notify the public of the species' status and do not require conservation or management actions. We are not aware of any other existing regulatory mechanisms. *Cirsium wrightii* is currently threatened by the inadequacy of existing regulatory mechanisms. This will continue into the foreseeable future.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Hybridization

Cirsium wrightii is capable of crossbreeding with other native *Cirsium* species to produce hybrid offspring (Correll and Johnston 1979, p. 1719; NMRPTC 2009, p. 2; Worthington 2002). For example, *Cirsium* species observed at Rattlesnake Springs (Carlsbad Caverns National Park), New Mexico, show characteristics that are intermediate between *C. wrightii* and *C. texanum* (NMRPTC 2009, p. 2). This *Cirsium* population blooms in May rather than in August through October, as is typical of *C. wrightii. C. wrightii* sometimes occurs with the threatened *C. vinaceum* in the Sacramento Mountains, where a few hybrids between these rare taxa have been observed; however, hybrid plants are uncommon (Service 2008a, p. 13; Worthington 2002). While hybridization between *C. wrightii* and other *Cirsium* species has been observed, it is uncommon, and does not appear to be a threat to *C. wrightii.*

Herbicide Use

Cirsium wrightii is likely eliminated from its habitat by individuals that believe it is a noxious weed, due to its large and conspicuous size (Sivinski 1996, p. 10). At least one locality in the Sacramento Mountains is currently susceptible to herbicide application or mowing because it is found in association with an introduced weed (*Arctium minus* (burdock)) within the highway right-of-way that is frequently treated (Sivinski 1996, p. 6). Another locality of *C. wrightii* in the Sacramento Mountains is surrounded by dense stands of *Centaurea melitensis* (Malta star-thistle) that could also potentially be treated with herbicides (Sivinski 1996, p. 6). If herbicides are applied to other localities, *C. wrightii* could be impacted. For example, in June 2007, on Federal Highway 82 in Otero County, a misapplication of herbicide by the State of New Mexico Department of Transportation injured or killed *C. wrightii,* as well as the Federally threatened species *C. vinaceum* and *Argemone pleiacantha* ssp. *pinnatisecta* (Sacramento prickly poppy) (Tonne 2007). Additionally, in June 2010, herbicide was applied to the highway 91 right-of-way in Santa Rosa, likely killing or injuring *C. wrightii* and *Helianthus paradoxus* (Service 2010c, p. 1).

The indirect effects of herbicide application also have the potential to affect the species. For example, in 2002, shortly after application in upland areas, heavy rains washed the common herbicide tebuthiuron into Threemile Draw, a tributary to the Black River, in the vicinity of the Blue Spring locality (NMDGF 2007, p. 24). Farmers downstream in Malaga reported damage to irrigated crops from this herbicide. It is unknown whether this affected *C. wrightii,* but demonstrates that indirect effects from herbicide application on upland areas may also impact riparian vegetation. After reviewing this information, we find that effects from herbicide use have the potential to impact *C. wrightii,* but are currently not known to be impacting most localities.

Oil and Gas Development and Mining

Oil and gas development occurs in some areas occupied by *Cirsium wrightii.* Since 2001, there has been a significant expansion of oil and gas operations in Eddy County, especially within the Black River watershed and, in particular, around Blue Spring (NMDGF 2007, pp. 18–19; NMDGF 2005, p. 35). Several low-water crossings span the Black River. Transit of heavy trucks carrying petroleum-derived products could result in surface water contamination from leakage or accidents (NMDGF 2007a, p. 20). Similarly, oil and gas development in this area of southeastern New Mexico has the potential to impact groundwater (Goodbar 2007, pp. 213–214). As an example, there is a history of oil and gas industry operations on and adjacent to BLNWR, which have resulted in the spillage of oil and brine onto the refuge (Service 2005a; NMDGF 2002, pp. 3–4). Development of oil and gas wells is anticipated to continue into the foreseeable future in the proximity of *C. wrightii* habitat (*e.g., see* Service 2005a, p. 46306). Oil drilling also occurs throughout the Roswell Basin and Eddy County, New Mexico (NMDGF 2002, pp. 2–4, 2005a, pp. 25, 78; Service 2005a, p. 46315; Goodbar 2007). This activity and associated actions can threaten the water quality of the aquifer on which this species depends. Petroleum contamination has also been reported from the Black River and areas adjacent

to BLNWR (NMDGF 2005a, pp. 18–19; Richard 1989).

Additionally, a permit was recently issued by the New Mexico Energy, Minerals and Natural Resources Department for subsurface drilling and exploration of the mineral bertrandite on Sullivan Ranch (New Mexico Mining and Minerals Division 2010), near the *C. wrightii* locality at Alamosa Springs, Socorro County, New Mexico, which has the potential to affect the species (Sivinski 2009c; NMDGF 2000). However, no specific assessment of potential water quality threats has been conducted, and it is unknown whether a decrease in water quality from oil and gas development or contamination from exploration of minerals would affect the growth or reproduction of *C. wrightii* to such an extent as to constitute a widespread threat to the species. Nevertheless, oil and other contaminants from development and drilling activities throughout these areas could enter the aquifer supplying the springs and seeps inhabited by *C. wrightii* when the limestone layers are pierced by drilling activities. An accidental oil spill or groundwater contamination has the potential to pollute water sources that support *C. wrightii* and potentially threaten the species in the foreseeable future, although it is unclear whether these impacts would be localized or widespread threats to the species.

Invasive Plants

The potential impact of *Phragmites australis* on *Cirsium wrightii* habitat has been discussed in threat factor A, above. The following additional invasive terrestrial plant species have the potential to affect *C. wrightii* at most localities: *Lythrum salicaria* (purple loosestrife), *Elaeagnus angustifolia* (Russian olive), *Tamarix* ssp., *Salsola* spp., *Dipsacus fullonum* (teasel), *Carduus nutans, Conium maculatum* (poison hemlock), *Centaurea melitensis, Cirsium arvense* (Canada thistle), and *Cirsium vulgare* (bull thistle). These plants present unique challenges and potential threats to the habitat of *C. wrightii.* However, most of the exotic plants cannot tolerate the continuously saturated substrates that are typical in *C. wrightii* habitats.

For example, *Carduus nutans* infests much of the riparian habitat on Lincoln National Forest (Gardner and Thompson 2008, pp. 1, 4), but does not appear to impact *C. wrightii* through competition. Sivinski (1996, p. 6) reports that *Tamarix* spp. and *E. angustifolia* are becoming dominant in many riparian and wetland areas, but that these species likely do not threaten *C. wrightii* because *C. wrightii* grows in saturated substrates that are not suitable habitat for these exotic trees. Nevertheless, they do invade wetlands when the area dries (*e.g.,* due to severe drought) and, once they become established, can survive in wet habitats when the moisture returns (Sivinski 2007, p. 2). Still, *Tamarix* ssp. may impact spring habitats primarily through the amount of water it consumes, and from the chemical composition of the leaves it drops on the ground and into the springs. *Tamarix* ssp. leaves add salt to the soil through its leaf litter (the leaves contain salt glands) (Di Tomaso 1998). Because *Tamarix* ssp. grow along the edge of water courses, it is possible that this could affect the soil chemistry of areas inhabited by *C. wrightii.* However, no research has been conducted specifically on the effect of *Tamarix* ssp. or *E. angustifolia* on *C. wrightii.*

Salsola spp. (Russian thistle; tumbleweed) is another introduced plant species that has the potential to degrade spring ecosystems. *Salsola* spp. is not a riparian species like *Tamarix* spp. (salt cedar) or *Phragmites australis;* however, the plant can accumulate in spring channels following wind storms. In 2005, BLNWR conducted an emergency Intra-Service consultation under section 7 of the Act for the removal of *Salsola* spp. and *Kochia scoparia* (tumbleweed) from a spring ditch (Service 2005b). Wind had blown these plants into the channel to a depth of 3 to 4 ft (0.9 to 1.2 m), completely shading the water and overloading the small channel with organic material. Noel (1954, p. 124) also reported *Salsola* spp. accumulating in a spring near Roswell. We are not aware of this situation occurring at other localities, but we have not regularly monitored all *Cirsium wrightii* localities for *Salsola* spp. occurrences. Therefore, it is unknown whether this is a threat to the species. Nevertheless, control of *Salsola* spp. is an ongoing management activity at BLNWR, and may occur within areas occupied by *C. wrightii.*

The eight localities of *Cirsium wrightii* generally lack large, aggressive, exotic wetland weeds, such as *Lythrum salicaria* (purple loosestrife), which could dominate *C. wrightii* habitat. *Lythrum salicaria* is a Eurasian species that has been modifying wetlands and outcompeting native species in North America for many decades (Natural Resources Conservation Service 2000, pp. 1–2). *Lythrum salicaria* appeared in New Mexico in the 1990s and is extant in the Mimbres Mountains, Grant County and Sandia Mountains, Bernalillo County. The Sandia Mountains occurrence of this invasive weed covers an alkaline spring seep similar to some of the *C. wrightii* habitats in the Sacramento Mountains (Sivinski 2006b, p. 15). If it also spreads to any of the eight localities, this aggressive wetland weed could impact *C. wrightii* habitat.

We currently have no information that these introduced plants are immediate threats to *Cirsium wrightii.* However, *Carduus nutans* may be serving as a vector for *Rhinocyllus conicus,* the exotic seed head weevil, discussed under Factor C. Based on possible interactions with water availability and climate change, these exotic plants could potentially threaten *C. wrightii* in the future; however, we do not believe they pose a current threat.

Summary of Factor E

In summary for Factor E, we do not currently consider hybridization, herbicide use, oil and gas development and mining as threats to the species; however, these may become threats in the future. Similarly, except for *Phragmites australis,* we do not consider invasive plants as a significant threat to the species now; however, they could potentially threaten *Cirsium wrightii* in the foreseeable future. We do consider *Phragmites australis* to be a threat to *C. wrightii* localities as a result of the increased fire risk, competition, and changes in hydrology its presence causes.

Finding

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to *Cirsium wrightii.* Section 3(6) of the Act defines an endangered species as "any species which is in danger of extinction throughout all or a significant portion of its range," and section 3(20) defines a threatened species as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. The threats to *C. wrightii* occur throughout its range and generally are not restricted to any particular significant portion of that range. Accordingly, our assessment and proposed determination applies to the species throughout its entire range.

Cirsium wrightii faces threats from present or threatened destruction, modification, and curtailment of its habitat, primarily from natural and human-caused modifications of its

habitat due to ground and surface water depletion, drought, and invasion of *Phragmites australis* (Factor A), and from the inadequacy of existing regulatory mechanisms (Factor D). *Cirsium wrightii* occupies relatively small areas of seeps, springs, and wetland habitat in an arid region plagued by drought and ongoing and future water withdrawals. The species' highly specific requirements of saturated soils with surface or subsurface water flow make it particularly vulnerable to these threats to an extent that the species may become endangered within the foreseeable future, depending primarily on how much modification or drying of its limited amount of habitat may occur.

We find that *Cirsium wrightii* is likely to become endangered throughout all or a significant portion of its range within the foreseeable future based on the threats described above. Therefore, on the basis of the best available scientific and commercial information, we find that *Cirsium wrightii* meets the definition of endangered or threatened in accordance with sections 3(6) and 4(a)(1) of the Act and listing is warranted. While we conclude that listing *C. wrightii* is warranted, an immediate proposal to list this species is precluded by other higher priority listings, which we address below.

Listing Priority Number

The Service adopted guidelines on September 21, 1983 (48 FR 43098) to establish a rational system for utilizing available resources for the highest priority species when adding species to the Lists of Endangered or Threatened Wildlife and Plants or reclassifying species listed as threatened to endangered status. These guidelines, titled "Endangered and Threatened Species Listing and Recovery Priority Guidelines" address the immediacy and magnitude of threats, and the level of taxonomic distinctiveness by assigning priority in descending order to monotypic genera (genus with one species), full species, and subspecies (or equivalently, distinct population segments of vertebrates).

As a result of our analysis of the best available scientific and commercial information, we have assigned *Cirsium wrightii* a Listing Priority Number (LPN) of 8, based on our finding that the species faces threats that are of moderate magnitude and are imminent. These threats include the present or threatened destruction, modification or curtailment of its habitat; predation; and the inadequacy of existing regulatory mechanisms. These threats are ongoing and therefore considered imminent.

Under the Service's guidelines, the magnitude of threat is the first criterion we look at when establishing a listing priority. The guidance indicates that species with the highest magnitude of threat are those species facing the greatest threats to their continued existence. These species receive the highest listing priority. We consider the threats that *Cirsium wrightii* faces to be moderate in magnitude because the major threats (habitat loss and degradation due to alteration of the hydrology of its rare wetland habitat), while serious and occurring rangewide, do not collectively rise to the level of high magnitude, relative to other species. The species occurs only in areas that are water-saturated and populations have a high potential for extirpation when habitat dries due to ground and surface water depletion, draining of wetlands, or drought.

Under our LPN guidelines, the second criterion we consider in assigning a listing priority is the immediacy of threats. This criterion is intended to ensure that the species facing actual, identifiable threats are given priority over those for which threats are only potential or that are intrinsically vulnerable but are not known to be presently facing such threats. We consider all of the threats to be imminent because we have factual information that the threats are identifiable and that the species is currently facing them in many portions of its range. Long-term drought, in combination with ground and surface water withdrawal, pose a current and future threat to *C. wrightii* and its habitat. These actual, identifiable threats are covered in greater detail in Factors A and D of this finding. All of the threats are ongoing and therefore imminent. In addition to their current existence, we expect these threats to continue and likely intensify in the foreseeable future.

The third criterion in our Listing Priority Number guidance is intended to devote resources to those species representing highly distinctive or isolated gene pools as reflected by taxonomy. *Cirsium wrightii* is a valid taxon at the species level and, therefore, receives a higher priority than subspecies, but a lower priority than species in a monotypic genus. Therefore, we assigned *Cirsium wrightii* an LPN of 8.

We will continue to monitor the threats to *Cirsium wrightii* and the species' status on an annual basis, and should the magnitude or the imminence of the threats change, we will re-visit our assessment of the LPN.

Work on a proposed listing determination for *Cirsium wrightii* is precluded by work on higher priority listing actions with absolute statutory, court-ordered, or court-approved deadlines and final listing determinations for those species that were proposed for listing with funds from previous fiscal years. This work includes all the actions listed in the tables below under expeditious progress.

Preclusion and Expeditious Progress

Preclusion is a function of the listing priority of a species in relation to the resources that are available and competing demands for those resources. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a proposed listing regulation or whether promulgation of such a proposal is warranted but precluded by higher-priority listing actions.

The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: Proposed and final listing rules; 90-day and 12-month findings on petitions to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists) or to change the status of a species from threatened to endangered; annual determinations on prior "warranted but precluded" petition findings as required under section 4(b)(3)(C)(i) of the Act; critical habitat petition findings; proposed and final rules designating critical habitat; and litigation-related, administrative, and program-management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat). The work involved in preparing various listing documents can be extensive and may include, but is not limited to: Gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. The median cost for preparing and publishing a 90-day finding is $39,276; for a 12-month

finding, $100,690; for a proposed rule with critical habitat, $345,000; and for a final listing rule with critical habitat, the median cost is $305,000.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (*see* 31 U.S.C. 1341(a)(1)(A)). In addition, in FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds which may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that fiscal year. This cap was designed to prevent funds appropriated for other functions under the Act (for example, recovery funds for removing species from the Lists), or for other Service programs, from being used for Listing Program actions (*see* House Report 105–163, 105th Congress, 1st Session, July 1, 1997).

Since FY 2002, the Service's budget has included a critical habitat subcap to ensure that some funds are available for other work in the Listing Program ("The critical habitat designation subcap will ensure that some funding is available to address other listing activities" (House Report No. 107–103, 107th Congress, 1st Session, June 19, 2001)). In FY 2002 and each year until FY 2006, the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat, and consequently none of the critical habitat subcap funds have been available for other listing activities. In FY 2007, we were able to use some of the critical habitat subcap funds to fund proposed listing determinations for high-priority candidate species. In FY 2009, while we were unable to use any of the critical habitat subcap funds to fund proposed listing determinations, we did use some of this money to fund the critical habitat portion of some proposed listing determinations so that the proposed listing determination and proposed critical habitat designation could be combined into one rule, thereby being more efficient in our work. In FY 2010, we are using some of the critical habitat subcap funds to fund actions with statutory deadlines.

Thus, through the listing cap, the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have in effect determined the amount of money available for other listing activities. Therefore, the funds in the listing cap, other than those needed to address court-mandated critical habitat for already-listed species, set the limits on our determinations of preclusion and expeditious progress.

Congress identified the availability of resources as the only basis for deferring the initiation of a rulemaking that is warranted. The Conference Report accompanying Public Law 97–304, which established the current statutory deadlines and the warranted-but-precluded finding, states that the amendments were "not intended to allow the Secretary to delay commencing the rulemaking process for any reason other than that the existence of pending or imminent proposals to list species subject to a greater degree of threat would make allocation of resources to such a petition [that is, for a lower-ranking species] unwise." Although that statement appeared to refer specifically to the "to the maximum extent practicable" limitation on the 90-day deadline for making a "substantial information " finding, that finding is made at the point when the Service is deciding whether or not to commence a status review that will determine the degree of threats facing the species, and therefore the analysis underlying the statement is more relevant to the use of the warranted-but-precluded finding, which is made when the Service has already determined the degree of threats facing the species and is deciding whether or not to commence a rulemaking.

In FY 2010, expeditious progress is that amount of work that can be achieved with $10,471,000, which is the amount of money that Congress appropriated for the Listing Program (that is, the portion of the Listing Program funding not related to critical habitat designations for species that are already listed). However these funds are not enough to fully fund all our court-ordered and statutory listing actions in FY 2010, so we are using $1,114,417 of our critical habitat subcap funds in order to work on all of our required petition findings and listing determinations. This brings the total amount of funds we have for listing actions in FY 2010 to $11,585,417. Our process is to make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. The $11,585,417 is being used to fund work in the following categories: compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 (of the Act) listing actions with absolute statutory deadlines; essential litigation-related, administrative, and listing program-management functions; and high-priority listing actions for some of our candidate species. In 2009, the responsibility for listing foreign species under the Act was transferred from the Division of Scientific Authority, International Affairs Program, to the Endangered Species Program. Starting in FY 2010, a portion of our funding is being used to work on the actions described above as they apply to listing actions for foreign species. This has the potential to further reduce funding available for domestic listing actions. Although there are currently no foreign species issues included in our high-priority listing actions at this time, many actions have statutory or court-approved settlement deadlines, thus increasing their priority. The allocations for each specific listing action are identified in the Service's FY 2010 Allocation Table (part of our administrative record).

Based on our September 21, 1983, guidance for assigning an LPN for each candidate species (48 FR 43098), we have a significant number of species with an LPN of 2. Using this guidance, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats (high vs. moderate to low), immediacy of threats (imminent or nonimminent), and taxonomic status of the species (in order of priority: monotypic genus (a species that is the sole member of a genus); species; or part of a species (subspecies, distinct population segment, or significant portion of the range)). The lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority). Because of the large number of high-priority species, we have further ranked the candidate species with an LPN of 2 by using the following extinction-risk type criteria: International Union for the Conservation of Nature and Natural Resources (IUCN) Red list status/rank, Heritage rank (provided by NatureServe), Heritage threat rank (provided by NatureServe), and species currently with fewer than 50 individuals, or 4 or fewer populations. Those species with the highest IUCN rank (critically endangered), the highest Heritage rank (G1), the highest Heritage threat rank (substantial, imminent threats), and currently with fewer than 50 individuals, or fewer than 4 populations, originally comprised a group of approximately 40 candidate species ("Top 40"). These 40 candidate species have had the highest priority to receive funding to work on a proposed listing determination. As we work on

proposed and final listing rules for those 40 candidates, we apply the ranking criteria to the next group of candidates with an LPN of 2 and 3 to determine the next set of highest priority candidate species.

To be more efficient in our listing process, as we work on proposed rules for the highest priority species in the next several years, we are preparing multi-species proposals when appropriate, and these may include species with lower priority if they overlap geographically or have the same threats as a species with an LPN of 2. In addition, available staff resources are also a factor in determining high-priority species provided with funding. Finally, proposed rules for reclassification of threatened species to endangered are lower priority, since as listed species, they are already afforded the protection of the Act and implementing regulations. However, for efficiency reasons, we may choose to work on a proposed rule to reclassify a species to endangered if we can combine this with work that is subject to a court-determined deadline.

As explained above, a determination that listing is warranted but precluded must also demonstrate that expeditious progress is being made to add and remove qualified species to and from the Lists of Endangered and Threatened Wildlife and Plants. As with our "precluded" finding, the evaluation of whether progress in adding qualified species to the Lists has been expeditious is a function of the resources available for listing and the competing demands for those funds. (Although we do not discuss it in detail here, we are also making expeditious progress in removing species from the list under the Recovery program in light of the resource available for delisting, which is funded by a separate line item in the budget of the Endangered Species Program. During FY 2010, we have completed two proposed delisting rules and two final delisting rules.) Given the limited resources available for listing, we find that we made expeditious progress in FY 2010 in the Listing Program. This progress included preparing and publishing the following determinations:

FY 2010 COMPLETED LISTING ACTIONS

Publication date	Title	Actions	FR pages
10/08/2009	Listing *Lepidium papilliferum* (Slickspot Peppergrass) as a Threatened Species Throughout Its Range.	Final Listing Threatened	74 FR 52013–52064
10/27/2009	90-day Finding on a Petition to List the American Dipper in the Black Hills of South Dakota as Threatened or Endangered.	Notice of 90-day Petition Finding, Not substantial.	74 FR 55177–55180
10/28/2009	Status Review of Arctic Grayling (*Thymallus arcticus*) in the Upper Missouri River System.	Notice of Intent To Conduct Status Review for Listing Decision.	74 FR 55524–55525
11/03/2009	Listing the British Columbia Distinct Population Segment of the Queen Charlotte Goshawk Under the Endangered Species Act.	Proposed Listing Threatened	74 FR 56757–56770
11/03/2009	Listing the Salmon-Crested Cockatoo as Threatened Throughout Its Range with Special Rule.	Proposed Listing Threatened	74 FR 56770–56791
11/23/2009	Status Review of Gunnison Sage-grouse (*Centrocercus minimus*).	Notice of Intent to Conduct Status Review for Listing Decision.	74 FR 61100–61102
12/03/2009	12-Month Finding on a Petition To List the Black-tailed Prairie Dog as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	74 FR 63343–63366
12/03/2009	90-Day Finding on a Petition To List Sprague's Pipit as Threatened or Endangered.	Notice of 90-day Petition Finding, Substantial	74 FR 63337–63343
12/15/2009	90-Day Finding on Petitions To List Nine Species of Mussels From Texas as Threatened or Endangered With Critical Habitat.	Notice of 90-day Petition Finding, Substantial	74 FR 66260–66271
12/16/2009	Partial 90-Day Finding on a Petition To List 475 Species in the Southwestern United States as Threatened or Endangered With Critical Habitat.	Notice of 90-day Petition Finding, Not substantial and Substantial.	74 FR 66865–66905
12/17/2009	12-month Finding on a Petition To Change the Final Listing of the Distinct Population Segment of the Canada Lynx To Include New Mexico.	Notice of 12-month petition finding, Warranted but precluded.	74 FR 66937–66950
1/05/2010	Listing Foreign Bird Species in Peru and Bolivia as Endangered Throughout Their Range.	Proposed Listing Endangered	75 FR 605–649
1/05/2010	Listing Six Foreign Birds as Endangered Throughout Their Range.	Proposed Listing Endangered	75 FR 286–310
1/05/2010	Withdrawal of Proposed Rule To List Cook's Petrel.	Proposed rule, withdrawal	75 FR 310–316
1/05/2010	Final Rule To List the Galapagos Petrel and Heinroth's Shearwater as Threatened Throughout Their Ranges.	Final Listing Threatened	75 FR 235–250
1/20/2010	Initiation of Status Review for *Agave eggersiana* and *Solanum conocarpum*.	Notice of Intent to Conduct Status Review for Listing.	75 FR 3190–3191

FY 2010 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR pages
2/09/2010	12-month Finding on a Petition To List the American Pika as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	75 FR 6437–6471
2/25/2010	12-Month Finding on a Petition To List the Sonoran Desert Population of the Bald Eagle as a Threatened or Endangered Distinct Population Segment.	Notice of 12-month petition finding, Not warranted.	75 FR 8601–8621
2/25/2010	Withdrawal of Proposed Rule To List the Southwestern Washington/Columbia River Distinct Population Segment of Coastal Cutthroat Trout (*Oncorhynchus clarki clarki*) as Threatened.	Withdrawal of Proposed Rule To List	75 FR 8621–8644
3/18/2010	90-Day Finding on a Petition To List the Berry Cave Salamander as Endangered.	Notice of 90-day Petition Finding, Substantial	75 FR 13068–13071
3/23/2010	90-Day Finding on a Petition To List the Southern Hickorynut Mussel (*Obovaria jacksoniana*) as Endangered or Threatened.	Notice of 90-day Petition Finding, Not substantial.	75 FR 13717–13720
3/23/2010	90-Day Finding on a Petition To List the Striped Newt as Threatened.	Notice of 90-day Petition Finding, Substantial	75 FR 13720–13726
3/23/2010	12-Month Findings for Petitions To List the Greater Sage-Grouse (*Centrocercus urophasianus*) as Threatened or Endangered.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 13910–14014
3/31/2010	12-Month Finding on a Petition To List the Tucson Shovel-Nosed Snake (*Chionactis occipitalis klauberi)* as Threatened or Endangered with Critical Habitat.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 16050–16065
4/5/2010	90-Day Finding on a Petition To List Thorne's Hairstreak Butterfly as Endangered.	Notice of 90-day Petition Finding, Substantial	75 FR 17062–17070
4/6/2010	12-month Finding on a Petition To List the Mountain Whitefish in the Big Lost River, Idaho, as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	75 FR 17352–17363
4/6/2010	90-Day Finding on a Petition To List a Stonefly (*Isoperla jewetti*) and a Mayfly (*Fallceon eatoni*) as Threatened or Endangered with Critical Habitat.	Notice of 90-day Petition Finding, Not substantial.	75 FR 17363–17367
4/7/2010	12-Month Finding on a Petition To Reclassify the Delta Smelt From Threatened to Endangered Throughout Its Range.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 17667–17680
4/13/2010	Determination of Endangered Status for 48 Species on Kauai and Designation of Critical Habitat.	Final Listing Endangered	75 FR 18959–19165
4/15/2010	Initiation of Status Review of the North American Wolverine in the Contiguous United States.	Notice of Initiation of Status Review for Listing Decision.	75 FR 19591–19592
4/15/2010	12-Month Finding on a Petition To List the Wyoming Pocket Gopher as Endangered or Threatened with Critical Habitat.	Notice of 12-month petition finding, Not warranted.	75 FR 19592–19607
4/16/2010	90-Day Finding on a Petition To List a Distinct Population Segment of the Fisher in Its United States Northern Rocky Mountain Range as Endangered or Threatened with Critical Habitat.	Notice of 90-day Petition Finding, Substantial	75 FR 19925–19935
4/20/2010	Initiation of Status Review for Sacramento Splittail (*Pogonichthys macrolepidotus).*	Notice of Initiation of Status Review for Listing Decision.	75 FR 20547–20548
4/26/2010	90-Day Finding on a Petition To List the Harlequin Butterfly as Endangered.	Notice of 90-day Petition Finding, Substantial	75 FR 21568–21571
4/27/2010	12-Month Finding on a Petition To List Susan's Purse-making Caddisfly (*Ochrotrichia susanae*) as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	75 FR 22012–22025
4/27/2010	90-day Finding on a Petition To List the Mohave Ground Squirrel as Endangered with Critical Habitat.	Notice of 90-day Petition Finding, Substantial	75 FR 22063–22070
5/4/2010	90-Day Finding on a Petition To List Hermes Copper Butterfly as Threatened or Endangered.	Notice of 90-day Petition Finding, Substantial	75 FR 23654–23663
6/1/2010	90-Day Finding on a Petition To List *Castanea pumila* var. *ozarkensis*.	Notice of 90-day Petition Finding, Substantial	75 FR 30313–30318
6/1/2010	12-month Finding on a Petition To List the White-tailed Prairie Dog as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	75 FR 30338–30363

FY 2010 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR pages
6/9/2010	90-Day Finding on a Petition To List van Rossem's Gull-billed Tern as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial	75 FR 32728–32734
6/16/2010	90-Day Finding on Five Petitions To List Seven Species of Hawaiian Yellow-faced Bees as Endangered.	Notice of 90-day Petition Finding, Substantial	75 FR 34077–34088
6/22/2010	12-Month Finding on a Petition To List the Least Chub as Threatened or Endangered.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 35398–35424
6/23/2010	90-Day Finding on a Petition To List the Honduran Emerald Hummingbird as Endangered.	Notice of 90-day Petition Finding, Substantial	75 FR 35746–35751
6/23/2010	Listing *Ipomopsis polyantha* (Pagosa Skyrocket) as Endangered Throughout Its Range, and Listing *Penstemon debilis* (Parachute Beardtongue) and *Phacelia submutica* (DeBeque Phacelia) as Threatened Throughout Their Range.	Proposed Listing Endangered Proposed Listing Threatened.	75 FR 35721–35746
6/24/2010	Listing the Flying Earwig Hawaiian Damselfly and Pacific Hawaiian Damselfly As Endangered Throughout Their Ranges.	Final Listing Endangered	75 FR 35990–36012
6/24/2010	Listing the Cumberland Darter, Rush Darter, Yellowcheek Darter, Chucky Madtom, and Laurel Dace as Endangered Throughout Their Ranges.	Proposed Listing Endangered	75 FR 36035–36057
6/29/2010	Listing the Mountain Plover as Threatened	Reinstatement of Proposed Listing Threatened.	75 FR 37353–37358
7/20/2010	90-Day Finding on a Petition To List *Pinus albicaulis* (Whitebark Pine) as Endangered or Threatened with Critical Habitat.	Notice of 90-day Petition Finding, Substantial	75 FR 42033–42040
7/20/2010	12-Month Finding on a Petition To List the Amargosa Toad as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	75 FR 42040–42054
7/20/2010	90-Day Finding on a Petition To List the Giant Palouse Earthworm (*Driloleirus americanus*) as Threatened or Endangered.	Notice of 90-day Petition Finding, Substantial	75 FR 42059–42066
7/27/2010	Determination on Listing the Black-Breasted Puffleg as Endangered Throughout its Range; Final Rule.	Final Listing Endangered	75 FR 43844–43853
7/27/2010	Final Rule to List the Medium Tree-Finch (*Camarhynchus pauper*) as Endangered Throughout Its Range.	Final Listing Endangered	75 FR 43853–43864
8/3/2010	Determination of Threatened Status for Five Penguin Species.	Final Listing Threatened	75 FR 45497–45527
8/4/2010	90-Day Finding on a Petition To List the Mexican Gray Wolf as an Endangered Subspecies With Critical Habitat.	Notice of 90-day Petition Finding, Substantial	75 FR 46894–46898
8/10/2010	90-Day Finding on a Petition To List *Arctostaphylos franciscana* as Endangered with Critical Habitat.	Notice of 90-day Petition Finding, Substantial	75 FR 48294–48298
8/17/2010	Listing Three Foreign Bird Species from Latin America and the Caribbean as Endangered Throughout Their Range.	Final Listing Endangered	75 FR 50813–50842
8/17/2010	90-Day Finding on a Petition To List Brian Head Mountainsnail as Endangered or Threatened with Critical Habitat.	Notice of 90-day Petition Finding, Not substantial.	75 FR 50739–50742
8/24/2010	90-Day Finding on a Petition To List the Oklahoma Grass Pink Orchid as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial	75 FR 51969–51974
9/1/2010	12-Month Finding on a Petition To List the White-Sided Jackrabbit as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	75 FR 53615–53629
9/8/2010	Proposed Rule To List the Ozark Hellbender Salamander as Endangered.	Proposed Listing Endangered	75 FR 54561–54579
9/8/2010	Revised 12-Month Finding To List the Upper Missouri River Distinct Population Segment of Arctic Grayling as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 54707–54753
9/9/2010	12-Month Finding on a Petition To List the Jemez Mountains Salamander (*Plethodon neomexicanus)* as Endangered or Threatened with Critical Habitat.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 54822–54845

FY 2010 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR pages
9/15/2010	12-Month Finding on a Petition To List Sprague's Pipit as Endangered or Threatened Throughout Its Range.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 56028–56050
9/22/2010	12-Month Finding on a Petition To List *Agave eggersiana* (no common name) as Endangered.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 57720–57734
9/28/2010	Determination of Endangered Status for the African Penguin.	Final Listing Endangered	75 FR 59645–59656
9/28/2010	Determination for the Gunnison Sage-grouse as a Threatened or Endangered Species.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 59803–59863
9/30/2010	12-Month Finding on a Petition To List the Pygmy Rabbit as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	75 FR 60515–60561

Our expeditious progress also includes work on listing actions that we funded in FY 2010 but have not yet been completed to date. These actions are listed below. Actions in the top section of the table are being conducted under a deadline set by a court. Actions in the middle section of the table are being conducted to meet statutory timelines, that is, timelines required under the Act. Actions in the bottom section of the table are high-priority listing actions. These actions include work primarily on species with an LPN of 2, and selection of these species is partially based on available staff resources, and when appropriate, include species with a lower priority if they overlap geographically or have the same threats as the species with the high priority. Including these species together in the same proposed rule results in considerable savings in time and funding, as compared to preparing separate proposed rules for each of them in the future.

ACTIONS FUNDED IN FY 2010 BUT NOT YET COMPLETED

Species	Action
Actions Subject to Court Order/Settlement Agreement	
6 Birds from Eurasia	Final listing determination.
Flat-tailed horned lizard	Final listing determination.
Mountain plover [4]	Final listing determination.
6 Birds from Peru	Proposed listing determination.
Sacramento splittail	12-month petition finding.
Pacific walrus	12-month petition finding.
Wolverine	12-month petition finding.
Solanum conocarpum	12-month petition finding.
Desert tortoise—Sonoran population	12-month petition finding.
Thorne's Hairstreak butterfly [3]	12-month petition finding.
Hermes copper butterfly [3]	12-month petition finding.
Actions with Statutory Deadlines	
Casey's June beetle	Final listing determination.
Georgia pigtoe, interrupted rocksnail, and rough hornsnail	Final listing determination.
7 Bird species from Brazil	Final listing determination.
Southern rockhopper penguin—Campbell Plateau population	Final listing determination.
5 Bird species from Colombia and Ecuador	Final listing determination.
Queen Charlotte goshawk	Final listing determination.
5 species southeast fish (Cumberland darter, rush darter, yellowcheek darter, chucky madtom, and laurel dace).	Final listing determination.
Salmon crested cockatoo	Proposed listing determination.
CA golden trout	12-month petition finding.
Black-footed albatross	12-month petition finding.
Mount Charleston blue butterfly	12-month petition finding.
Mojave fringe-toed lizard [1]	12-month petition finding.
Kokanee—Lake Sammamish population [1]	12-month petition finding.
Cactus ferruginous pygmy-owl [1]	12-month petition finding.
Northern leopard frog	12-month petition finding.
Tehachapi slender salamander	12-month petition finding.
Coqui Llanero	12-month petition finding.
Dusky tree vole	12-month petition finding.
3 MT invertebrates (mist forestfly (*Lednia tumana*), *Oreohelix* sp. 3, *Oreohelix* sp. 31) from 206 species petition.	12-month petition finding.
5 UT plants (*Astragalus hamiltonii, Eriogonum soredium, Lepidium ostleri, Penstemon flowersii, Trifolium friscanum*) from 206 species petition.	12-month petition finding.
2 CO plants (*Astragalus microcymbus, Astragalus schmolliae*) from 206 species petition	12-month petition finding.

ACTIONS FUNDED IN FY 2010 BUT NOT YET COMPLETED—Continued

Species	Action
5 WY plants (*Abronia ammophila, Agrostis rossiae, Astragalus proimanthus, Boechere (Arabis) pusilla, Penstemon gibbensii*) from 206 species petition.	12-month petition finding.
Leatherside chub (from 206 species petition)	12-month petition finding.
Frigid ambersnail (from 206 species petition)	12-month petition finding.
Gopher tortoise—eastern population	12-month petition finding.
Wrights marsh thistle	12-month petition finding.
67 of 475 southwest species	12-month petition finding.
Grand Canyon scorpion (from 475 species petition)	12-month petition finding.
Anacroneuria wipukupa (a stonefly from 475 species petition)	12-month petition finding.
Rattlesnake-master borer moth (from 475 species petition)	12-month petition finding.
3 Texas moths (*Ursia furtiva, Sphingicampa blanchardi, Agapema galbina*) (from 475 species petition)	12-month petition finding.
2 Texas shiners (*Cyprinella* sp., *Cyprinella lepida*) (from 475 species petition)	12-month petition finding.
3 South Arizona plants *(Erigeron piscaticus, Astragalus hypoxylus, Amoreuxia gonzalezi*) (from 475 species petition).	12-month petition finding.
5 Central Texas mussel species (3 from 475 species petition)	12-month petition finding.
14 parrots (foreign species)	12-month petition finding.
Berry Cave salamander [1]	12-month petition finding.
Striped newt [1]	12-month petition finding.
Fisher—Northern Rocky Mountain Range [1]	12-month petition finding.
Mohave ground squirrel [1]	12-month petition finding.
Puerto Rico harlequin butterfly	12-month petition finding
Western gull-billed tern	12-month petition finding.
Ozark chinquapin (*Castanea pumila* var. *ozarkensis*)	12-month petition finding.
HI yellow-faced bees	12-month petition finding.
Giant Palouse earthworm	12-month petition finding.
Whitebark pine	12-month petition finding.
OK grass pink (*Calopogon oklahomensis*) [1]	12-month petition finding.
Southeastern pop snowy plover & wintering pop. of piping plover [1]	90-day petition finding.
Eagle Lake trout [1]	90-day petition finding.
Smooth-billed ani [1]	90-day petition finding.
Bay Springs salamander [1]	90-day petition finding.
32 species of snails and slugs [1]	90-day petition finding.
42 snail species (Nevada & Utah)	90-day petition finding.
Red knot *roselaari* subspecies	90-day petition finding.
Peary caribou	90-day petition finding.
Plains bison	90-day petition finding.
Spring Mountains checkerspot butterfly	90-day petition finding.
Spring pygmy sunfish	90-day petition finding.
Bay skipper	90-day petition finding.
Unsilvered fritillary	90-day petition finding.
Texas kangaroo rat	90-day petition finding.
Spot-tailed earless lizard	90-day petition finding
Eastern small-footed bat	90-day petition finding.
Northern long-eared bat	90-day petition finding.
Prairie chub	90-day petition finding.
10 species of Great Basin butterfly	90-day petition finding.
6 sand dune (scarab) beetles	90-day petition finding.
Golden-winged warbler	90-day petition finding.
Sand-verbena moth	90-day petition finding.
404 Southeast species	90-day petition finding.
High-Priority Listing Actions [3]	
19 Oahu candidate species [2] (16 plants, 3 damselflies) (15 with LPN = 2, 3 with LPN = 3, 1 with LPN = 9).	Proposed listing.
19 Maui-Nui candidate species [2] (16 plants, 3 tree snails) (14 with LPN = 2, 2 with LPN = 3, 3 with LPN = 8).	Proposed listing.
Dune sagebrush lizard (formerly Sand dune lizard) [3] (LPN = 2)	Proposed listing.
2 Arizona springsnails [2] (*Pyrgulopsis bernadina* (LPN = 2), *Pyrgulopsis trivialis* (LPN = 2))	Proposed listing.
New Mexico springsnail [2] (*Pyrgulopsis chupaderae* (LPN = 2)	Proposed listing.
2 mussels [2] (rayed bean (LPN = 2), snuffbox No LPN)	Proposed listing.
2 mussels [2] (sheepnose (LPN = 2), spectaclecase (LPN = 4))	Proposed listing.
Altamaha spinymussel [2] (LPN = 2)	Proposed listing.
8 southeast mussels (southern kidneyshell (LPN = 2), round ebonyshell (LPN = 2), Alabama pearlshell (LPN = 2), southern sandshell (LPN = 5), fuzzy pigtoe (LPN = 5), Choctaw bean (LPN = 5), narrow pigtoe (LPN = 5), and tapered pigtoe (LPN = 11)).	Proposed listing.

[1] Funds for listing actions for these species were provided in previous FYs.
[2] Although funds for these high-priority listing actions were provided in FY 2008 or 2009, due to the complexity of these actions and competing priorities, these actions are still being developed.
[3] Partially funded with FY 2010 funds; also will be funded with FY 2011 funds.
[4] Funded with FY 2010 funds.

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, these actions described above collectively constitute expeditious progress.

Cirsium wrightii will be added to the list of candidate species upon publication of this 12-month finding. We will continue to monitor the status of this species as new information becomes available. This review will determine if a change in status is warranted, including the need to make prompt use of emergency listing procedures.

We intend that any proposed listing action for *Cirsium wrightii* will be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

References Cited

A complete list of all references cited in this finding is available on the Internet at *http://www.regulations.gov* or upon request from the Field Supervisor, New Mexico Ecological Services Office (*see* **ADDRESSES** section).

Authors

The primary authors of this rule are the staff members of the New Mexico Ecological Services Office.

Authority

The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 13, 2010.

Daniel M. Ashe,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2010–27740 Filed 11–3–10; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 75, No. 213

Thursday, November 4, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2010–0047]

Monsanto Company and KWS SAAT AG; Availability of an Environmental Assessment for Supplemental Request for Partial Deregulation of Sugar Beets Genetically Engineered To Be Tolerant to the Herbicide Glyphosate

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service (APHIS) has prepared a draft environmental assessment as part of its decisionmaking process to address a supplemental request for partial deregulation of sugar beets genetically engineered (GE) for tolerance to the herbicide glyphosate, or for similar administrative action to authorize the continued cultivation of the GE sugar beets subject to carefully tailored interim measures proposed by APHIS. This environmental assessment will be available for public comment for 30 days. Comments received by the end of the 30-day period will be analyzed and used to inform APHIS' decision on whether to grant the supplemental request for "partial deregulation" of the GE sugar beets or to grant some similar administrative action to authorize the continued cultivation of the GE sugar beets subject to carefully tailored interim measures proposed by APHIS.

DATES: We will consider all comments that we receive on or before December 6, 2010.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0047* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS-2010-0047, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2010–0047.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Rick Coker, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–5720. To obtain copies of the environmental assessment, contact Ms. Cynthia Eck at (301) 734–0667; e-mail: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

On October 8, 2010, the Animal and Plant Health Inspection Service (APHIS) published a notice [1] in the **Federal Register** (75 FR 62365–62366, Docket No. APHIS–2010–0047) announcing receipt of a supplemental petition from the Monsanto Company (Monsanto) and KWS SAAT AG (KWS) requesting "partial deregulation" or some similar administrative action under 7 CFR part 340 for sugar beets (*Beta vulgaris* ssp. *vulgaris*) designated as event H7–1 to authorize its continued cultivation subject to carefully tailored interim measures proposed by APHIS. APHIS has prepared a draft environmental assessment (EA) for event H7–1 sugar beets, which have been genetically engineered for tolerance to the herbicide glyphosate and are considered regulated articles under the regulations in 7 CFR part 340.

The supplemental petition is related to a petition submitted by Monsanto and KWS on November 19, 2003, seeking a determination of nonregulated status for event H7–1 sugar beets (Petition 03–323–01). On October 19, 2004, APHIS published a notice in the **Federal Register** (69 FR 61466–61467, Docket No. 04–075–1) announcing that the Monsanto/KWS petition and an EA were available for public review. On March 17, 2005, we published a notice in the **Federal Register** (70 FR 13007–13008, Docket No. 04–075–2) advising the public of our determination, effective March 4, 2005, that event H7–1 sugar beets were no longer considered a regulated article under APHIS regulations in 7 CFR part 340. On September 21, 2009, the U.S. District Court for the Northern District of California issued a ruling in a lawsuit challenging APHIS' decision to deregulate event H7–1 sugar beets. The Court's September 21, 2009, ruling invalidated APHIS' decision to grant nonregulated status to event H7–1 sugar beets until APHIS prepares a full environmental impact statement (EIS) supporting its decision. Accordingly, event H7–1 sugar beets are once again a regulated article and subject to APHIS' regulatory oversight under 7 CFR part 340.

The draft EA analyzes the alternatives available to APHIS for its decision regarding this supplemental request for "partial deregulation" or for similar administrative action to authorize the cultivation of event H7–1 sugar beets subject to carefully tailored interim measures proposed by APHIS. Based on the scope of the draft EA, the specific decisions to be made are:

[1] To review the notice and the supplemental petition, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0047.*

• Should APHIS grant the supplemental request for "partial deregulation" or similar administrative action to authorize the continued cultivation of event H7–1 sugar beets subject to the interim measures proposed by APHIS in Federal District Court?

• Should APHIS continue to regulate the environmental release and movement of event H7–1 sugar beets under 7 CFR part 340?

• What conditions (interim regulatory measures) should be imposed to prevent any potential plant pest risk from planted event H7–1 sugar beets that remain under regulation, to minimize disruptions to U.S. sugar beet production, and to minimize the likelihood of impacts of concern to the Court until APHIS can complete an EIS before making a determination on whether or not to grant nonregulated status to event H7–1 sugar beets?

• Would the preferred alternative, if selected (see alternative 2 below), have significant impacts on the quality of the human environment requiring preparation of an EIS?

The draft EA has been prepared to analyze the alternatives available to APHIS for responding to this supplemental request and to provide the public with documentation of APHIS' review and analysis of any potential individual and cumulative environmental impacts associated with the "partial deregulation" or for similar administrative action to authorize the cultivation of event H7–1 sugar beets subject to carefully tailored interim measures proposed by APHIS.

The draft EA considers and evaluates three reasonable alternatives. The alternatives analyzed in the draft EA include:

• *Alternative 1—APHIS Denies Petition Request for Partial Deregulation/No Further Actions To Authorize Cultivation of Event H7–1 Sugar Beets (No Action).* This alternative would deny the request for "partial deregulation" or any similar administrative action under 7 CFR part 340 for the cultivation of event H7–1 sugar beets, thereby halting any consideration of authorizing commercial production until the completion of the EIS.

• *Alternative 2—Event H7–1 Sugar Beet Production (Seed/Root) Under APHIS 7 CFR Part 340 (Preferred Alternative).* APHIS' preferred alternative is to authorize the commercial production of event H7–1 sugar beets under APHIS permits, in accordance with 7 CFR part 340, subject to mandatory conditions to prevent any potential plant pest risks from such cultivation. These conditions are intended both to minimize any potential for the escape and dissemination of plant pests and the likelihood of impacts of concern raised by the Court in the lawsuit challenging APHIS' decision to deregulate event H7–1 sugar beets.

• *Alternative 3—Partial Deregulation of Event H7–1 Sugar Beets (Seed/Root).* This alternative would grant the petition request for partial deregulation to allow the commercial production of event H7–1 sugar beets. The supplemental request that APHIS received from Monsanto/KWS did not clearly explain what the petitioners mean or envision by a "partial deregulation." The petitioner did not identify any specific mechanism(s) that would be used to impose the conditions to prevent any potential plant pest risks, which parties would be subject to the conditions, or how compliance with the conditions would be ensured. APHIS has interpreted this petition to mean that Monsanto/KWS is requesting that event H7–1 sugar beets would no longer be regulated under 7 CFR part 340 provided that they are cultivated under the conditions and interim measures that APHIS proposed to the Court. APHIS further interprets the request to mean that Monsanto/KWS would be the responsible party for overseeing implementation and monitoring of conditions for cultivation of event H7–1 sugar beets. Under this alternative, APHIS would grant the petition for partial deregulation; APHIS would no longer regulate event H7–1sugar beets under 7CFR Part 340; and the cultivation of event H7–1 sugar beets would be allowed under conditions imposed by Monsanto/KWS through technology stewardship agreements, contracts, or other legal instruments.

Alternatives considered but rejected in the draft EA include: (1) Deregulating root production under conditions imposed by APHIS while prohibiting seed production, (2) deregulating root production under conditions imposed by APHIS while authorizing continued seed production under APHIS permits or notification, (3) deregulating seed production under conditions imposed by APHIS while prohibiting root production, and (4) deregulating seed production under conditions imposed by APHIS while authorizing continued root production under APHIS permits or notification.

The draft EA was prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The draft EA may be viewed on the Regulations.gov Web site or in our reading room. (Instructions for accessing Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this notice.) In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC this 1st day of November 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–27970 Filed 11–2–10; 11:15 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Gallatin County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Gallatin National Forest's Gallatin County Resource Advisory Committee will meet in Bozeman, Montana. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose is of the meeting is to determine parameters and timeframes for the first round of projects and Public Comments.

DATES: The meeting will be held on November 17, 2010, and will begin at 12:30 p.m.

ADDRESSES: The meeting will be held at the Bozeman Public Library, Large Meeting Room, 626 East Main, Bozeman, MT. Written comments should be sent to Babete Anderson, Custer National Forest, 1310 Main Street, Billings, MT 59105. Comments may also be sent via e-mail to *branderson@fs.fed.us,* or via facsimile to 406–657–6222.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Custer

National Forest, 13 10 Main Street, Billings, MT 59105. Visitors are encouraged to call ahead to 406–657–6205 ext 239.

FOR FURTHER INFORMATION CONTACT: Babete Anderson, RAG coordinator, USDA, Custer National Forest, 1310 Main Street, Billings, MT 59105; (406) 657–6205 ext 239; E-mail *branderson@fs.fed.us.*

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

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: Review first round of project proposals and Public Comments. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written request by November 12th will have the opportunity to address the Committee at those sessions.

Dated: October 28, 2010.

Chris Worth,

Deputy Forest Supervisor.

[FR Doc. 2010–27734 Filed 11–3–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Idaho Panhandle Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 110–343) the Idaho Panhandle Resource Advisory Committee will meet Friday, November 12, 2010, at 9 a.m. in Coeur d'Alene, Idaho for a business meeting. The business meeting is open to the public.

DATES: November 12, 2010.

ADDRESSES: The meeting location is the Idaho Panhandle National Forests' Supervisor's Office, located at 3815 Schreiber Way, Coeur d'Alene, Idaho 83815.

FOR FUTHER INFORMATION CONTACT: Ranotta K. McNair, Forest Supervisor and Designated Federal Official, at (208) 765–7369.

SUPPLEMENTARY INFORMATION: The meeting agenda will focus on reviewing proposals for forest projects and recommending funding during the business meeting. The public forum begins at 11 a.m.

Dated: October 27, 2010.

Ranotta K. Mcnair,

Forest Supervisor.

[FR Doc. 2010–27738 Filed 11–3–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: Bureau of Industry and Security (BIS).

Title: Triangular Transactions Covered by a U.S. Import Certificate.

OMB Control Number: 0694–0009.

Form Number(s): N/A.

Type of Request: Regular submission.

Burden Hours: 1.

Number of Respondents: 1.

Average Hours per Response: 30 minutes.

Needs and Uses: Section 15(b) of the Export Administration Act (EAA) of 1979, as amended, authorizes the President and the Secretary of Commerce to issue regulations to implement the EAA including those provisions authorizing the control of exports of U.S. goods and technology to all foreign destinations, as necessary for the purpose of national security, foreign policy and short supply, and the provision prohibiting U.S. persons from participating in certain foreign boycotts.

The triangular symbol is stamped on the U.S. import certificate as notification that the importer does not intend to import or retain the items in the country issuing the certificate, but that, in any case, the items will not be delivered to any other destination except in accordance with the Export Administration Regulations. If this procedure were not followed, strategic commodities could be delivered to unauthorized destinations.

Affected Public: Business and other for-profit organizations; and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain benefits.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer, via e-mail *Jasmeet_K._Seehra@omb.eop.gov,* or fax to (202) 395–5167.

Dated: October 29, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–27843 Filed 11–3–10; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Alaska Region Gear Identification Requirements.

OMB Control Number: 0648–0353.

Form Number(s): None.

Type of Request: Regular submission (extension of a currently approved information collection).

Number of Respondents: 1,692.

Average Hours per Response: 15 minutes.

Burden Hours: 3,138.

Needs and Uses: This request is for renewal of an existing information collection.

Participants in the groundfish fisheries in the Exclusive Economic Zone off the coast of Alaska are required to mark identification information on marker buoys for hook-and-line, longline pot, and pot-and-line gear. The information is needed for fishery enforcement purposes. The cooperating fishermen also use the gear identification to report placement or occurrence of gear in unauthorized areas. Fishermen marking their gear correctly ultimately benefit, as unauthorized and illegal fishing is deterred and more burdensome regulations are avoided. Regulations

describing the requirements are at 50 CFR 679.24.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov*.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov*.

Dated: November 1, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–27874 Filed 11–3–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; U.S.-Canada Albacore Treaty Reporting System

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before January 3, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Chris Fanning, (562) 980–4198 or *Chris.Fanning@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS), Southwest Region (SWR), manages the United States (U.S.)-Canada Albacore Tuna Treaty of 1981 (Treaty). Owners of vessels that fish from U.S. West Coast ports for albacore tuna will be required to notify NMFS SWR of their desire to be on the list of vessels provided to Canada each year indicating vessels eligible to fish for albacore tuna in waters under the jurisdiction of Canada. Additionally, vessel operators are required to report in advance their intention to fish in Canadian waters prior to crossing the maritime border as well as to mark their fishing vessels to facilitate enforcement of the effort limits under the Treaty. Vessel operators are also required to maintain and submit a logbook of all catch and fishing effort. The regulations implementing the reporting and vessel marking requirements under the Treaty are at 50 CFR part 300.172–300.176.

II. Method of Collection

Requests to be placed on the vessel eligibility list may be made in writing via mail, fax, by e-mail, or by telephone. Communications to comply with 'hail in' and 'hail out' requirements are made via ship to shore radio or via telephone and are compiled in an electronic database by Canada Department of Fisheries and Oceans. Summaries of hail reports are provided to NMFS on a periodic basis. Vessel marking requirements entail painting the letter 'U' immediately after the U.S. Coast Guard documentation identification number already on the vessel. Logbooks are maintained in pre-printed paper format and submitted via mail.

III. Data

OMB Control Number: 0648–0492.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time per Response: 5 minutes to make the request to be placed on the eligible list per year; 10 minutes for each set of two hail reports for border crossings per year, 5 minutes to make the required vessel markings per year, and an estimated 2 and one half hours for logbook maintenance and submission.

Estimated Total Annual Burden Hours: 283.

Estimated Total Annual Cost to Public: $3,955.

IV. Request for Comments

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

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

Dated: November 1, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–27859 Filed 11–3–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Marine Recreational Information Program (Marine Recreational Fisheries Statistics Survey)

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before January 3, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the information collection instrument(s) and instructions should be directed to Rob Andrews, (301) 713–2328 or *Rob.Andrews@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This submission is a renewal of an existing information collection.

Marine recreational anglers are surveyed for catch and effort data, fish biology data, and angler socioeconomic characteristics. These data are required to carry out provisions of the Magnuson-Stevens Fishery Conservation and Management Act (MSA, 16 U.S.C. 1801 *et seq.*), as amended, regarding conservation and management of fishery resources.

Marine recreational fishing catch and effort data are currently collected through a combination of telephone surveys and on-site intercept surveys with recreational anglers and for-hire vessel operators. Recent amendments to the MSA require the development of an improved data collection program for recreational fisheries. To address these requirements, NOAA Fisheries has implemented the Marine Recreational Information Program (MRIP) to replace the Marine Recreational Fisheries Statistics Survey. MRIP is testing alternative approaches for surveying recreational anglers in an effort to improve the quality, resolution and timeliness of recreational fishing statistics.

II. Method of Collection

Information will be collected through telephone, mail, online (Web), and face-to-face interviews.

III. Data

OMB Control Number: 0648–0052.

Form Number: None.

Type of Review: Regular submission (renewal of an existing information collection).

Affected Public: Individuals or households, business or other for-profit organizations.

Estimated Number of Respondents: 1,098,647.

Estimated Time per Response: 1.5 minutes for household telephone interviews, 6 minutes for telephone interviews with licensed anglers, 5 minutes for telephone interviews with party/charter boat operators, 6 minutes for face-to-face interviews with intercepted anglers, 4 minutes for household mail surveys, 7 minutes for mail surveys of licensed anglers, 60 minutes for face-to-face economic surveys with party/charter boat operators, 30 minutes for economic mail surveys of party/charter boat operators, 3 minutes for economic mail surveys of licensed anglers, 20 minutes for mail expenditure surveys, 20 minutes for mail stated preference surveys, 1.5 minutes for verification calls.

Estimated Total Annual Burden Hours: 91,296.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

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

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

Dated: October 29, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–27826 Filed 11–3–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before November 24, 2010. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 10–046. Applicant: University of Connecticut, Purchasing Department, 3 North Hillside Road, Unit 6076, Storrs, CT 06269–6076. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument will be used for many experiments, such as studying the mechanism of the growth of nano particles of TiO2 from solution for dye-sensitized solar cell. The instrument has unique features that allow operation in ESEM and in-situ modes. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: September 22, 2010.

Docket Number: 10–060. Applicant: The University of Texas at Arlington, 7300 Jack Newell Blvd. S., Fort Worth, TX 76118. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument will be used for automated manipulation of nanoscale components and their assembly/integration into a micro/meso scale device. The instrument is the only instrument that can provide ultra-high resolution images in both high and low vacuum pressure ranges. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: October 5, 2010.

Dated: October 29, 2010.

Gregory Campbell,

Acting Director, IA Subsidies Enforcement Office.

[FR Doc. 2010–27885 Filed 11–3–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and

be postmarked on or before November 24, 2010. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 10–064. Applicant: The University of Texas at Austin, Center for Electromechanics, Pickle Research Campus 10100 Burnet Road, Bldg. 133, Austin, Texas 78758–4497. Instrument: Hexapod Actuators. Manufacturer: ADS International, S.r.l., Italy. Intended Use: The instrument will be used on the Hobby-Eberly Telescope for the study of "Dark Energy." The instrument is unique because of its ability to achieve the desired accuracy of +/− 2 microns, the stiffness of 400 N/micron, the end mounts ability to rotate up to +/− 20 degrees in two axes and a stiffness of 250 N/micron, is actively cooled, and is able to generate 30kN of continuous force for extended periods of time. Justification for Duty-Free Entry: There are no instruments of the same general category being manufactured in the United States. *Application accepted by Commissioner of Customs:* October 20, 2010.

Dated: October 29, 2010.

Gregory Campbell,

Acting Director, IA Subsidies Enforcement Office.

[FR Doc. 2010–27887 Filed 11–3–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

National Institutes of Health, *et al.;* Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 10–055. *Applicant:* National Institutes of Health, Bethesda, MD 20892. *Instrument:* Electron Microscope. *Manufacturer:* JEOL Limited, Japan. *Intended Use: See* notice at 75 FR 57738, September 22, 2010.

Docket Number: 10–056. *Applicant:* University of Notre Dame, Procurement Services, Notre Dame, IN 46556. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, the Netherlands. *Intended Use: See* notice at 75 FR 57738, September 22, 2010.

Docket Number: 10–057. *Applicant:* Curators of the University of Missouri, Rolla, MO 56049. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, the Netherlands. *Intended Use: See* notice at 75 FR 57738, September 22, 2010.

Docket Number: 10–058. *Applicant:* SUNY Upstate Medical University, Syracuse, NY 13210. *Instrument:* Electron Microscope. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use: See* notice at 75 FR 57738, September 22, 2010.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: October 29, 2010.

Gregory W. Campbell,

Acting Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. 2010–27889 Filed 11–3–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

The University of Georgia (UGA), *et al.;* Notice of Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 06–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC.

Docket Number: 10–054. *Applicant:* The University of Georgia (UGA), Athens, GA 30602–7229. *Instrument:* HV Pneumatic Quadrant Beam Position Monitor with I404 Quad Current Integrator. *Manufacturer:* FMB Oxford Limited, United Kingdom. *Intended Use: See* notice at 75 FR 57738, September 22, 2010. *Comments:* None received. *Decision:* Approved. *Reasons:* The instrument must meet the following specifications: an 11 mm diameter beam aperture, a He leak rate of $< 2 \times 10\wedge - 8$ mbar l/sec, HV compatible to $< 5 \times 10 - 7$ mbar vacuum, an operational range of 2 bar to 7 bar, a 6 mm pneumatic air connection, and a 24 VCD (1.2W) at 50 mA solenoid with flying leads. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of its order.

Docket Number: 10–059. *Applicant:* University of Chicago, LLC, Lemont, IL 60439. *Instrument:* Micropitting Test Machine. *Manufacturer:* Primelia Consulting Services Limited, United Kingdom. *Intended Use: See* notice at 75 FR 57738, September 22, 2010. *Comments:* None received. *Decision:* Approved. *Reasons:* The instrument has capabilities that are tailored for the specific micropitting analysis, specifically the accelerometer measurement to monitor for onset of fatigue failure. The instrument also has three points of contact which will increase the speed at which tests are made. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of its order.

Dated: October 29, 2010.

Gregory W. Campbell,

Acting Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. 2010–27888 Filed 11–3–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Designation of the Lake Superior National Estuarine Research Reserve in Wisconsin

AGENCY: Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of Designation and availability of Notice of Record of Decision.

SUMMARY: Notice is hereby given that the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, has

designated certain lands and waters of the St. Louis River freshwater estuary in Wisconsin as the Lake Superior National Estuarine Research Reserve.

On October 19, 2010, Under Secretary of Commerce for Oceans and Atmosphere Dr. Jane Lubchenco signed a record of decision pursuant to the National Environmental Policy Act and a findings of designation for the Lake Superior National Estuarine Research Reserve in Wisconsin pursuant to Section 315 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. Section 1461, and its implementing regulations at 15 CFR Part 921. The Reserve duly received certification from the State of Wisconsin Coastal Program that Reserve designation is consistent to the maximum extent practicable with its program. A copy of the official Record of Decision is available for public review from NOAA's Office of Ocean and Coastal Resource Management at the address below.

FOR FURTHER INFORMATION CONTACT: Laurie McGilvray (301) 713–3155 x158, Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1305 East West Highway, N/ORM5, Silver Spring, MD 20910. A copy of the Record of Decision for each Reserve is available upon request.

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Research Reserves.

Dated: October 22, 2010.

Donna Wieting,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 2010–27878 Filed 11–3–10; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RIN 0648–XZ78]

Takes of Marine Mammals Incidental to Specified Activities; Piling and Structure Removal in Woodard Bay Natural Resources Conservation Area, Washington

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

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: In accordance with regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to derelict creosote piling and structure removal within the Woodard Bay Natural Resources Conservation Area (NRCA) has been issued to the Washington State Department of Natural Resources (DNR).

DATES: This authorization is effective from November 1, 2010–February 28, 2011.

ADDRESSES: A copy of the application, IHA, and a list of references used in this document may be obtained by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, by telephoning the contact listed here, or visiting NMFS Web site at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 713–2289.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On June 9, 2010, NMFS received an application from the WA DNR requesting authorization to take, by harassment, small numbers of marine mammals incidental to derelict creosote piling and structure removal associated with a habitat restoration project within the Woodard Bay NRCA, Washington. The specified activity includes removal of approximately 615 timber pilings and a trestle located in Woodard Bay and a portion of pier superstructure located at the mouth of Chapman Bay. Pilings will be removed by vibratory hammer extraction methods and structures will be removed via cable lifting. In addition, approximately 25 nest boxes for purple martins will be relocated from removed pilings to pilings that are retained for seal habitat and buffer, using a small boat if necessary and will require a battery powered drill.

Harbor seals have been utilizing the remnant log boom structures at Woodard Bay NRCA as haul-out habitat for resting, pupping and molting for more than 30 years. These booms are situated among the piles and structure planned for removal. The WA DNR anticipates harbor seals will flush into the water upon crew arrival and onset of pile and structure removal activities; hence, harbor seals may be harassed during pile removal activities. Since the activity has the potential to take marine mammals, a marine mammal take authorization under the MMPA is warranted.

Description of the Specified Activity

The Woodard Bay NRCA, located within Henderson Inlet in southern Puget Sound, was designated by the Washington State Legislature in 1987 to

protect a large, intact complex of nearshore habitats and related biological communities, and to provide opportunities for low-impact public use and environmental education for the people of Washington. The site includes the former Weyerhaeuser South Bay Log Dump, which operated from the 1920s until the 1980s. The remnant structures from the log dump, including several hundred creosoted pilings, and a trestle and pier, continue to negatively impact nearshore ecosystems protected by the conservation area. Therefore, the DNR will remove these dilapidated structures to enhance the processes, functions, and structures of the nearshore ecosystems. A few of the remnant log booms from dumping operations have supported a healthy population of harbor seals for more than 30 years by providing haulout habitat. However, seals concentrate themselves and primarily haul out at only two locations within the NRCA (*see* Figure 4 in application).

Approximately 615 (average 12 inch diameter) pilings will be removed near but not directly adjacent to haulouts. An average of 30 pilings per day will be removed via vibratory hammer extraction methods. Operations will begin on the pilings and structures that are furthest from the seal haul-out so that there is an opportunity for the seals to adjust to the presence of the contractors and their equipment. In addition, no pilings within 30 yards (27 m) of booms used as seal haulout habitat will be removed. The DNR estimates it will take approximately 1 minute to vibrate the piling free from the substrate, after which a crane will be used to lift the pile out of the water. Therefore, the vibratory hammer will operate for only 30 intermittent minutes daily. Vibratory extraction operations will occur for approximately 21 days over the 4-month work window (November 1 and February 28). Other work days will be spent removing pilings associated with the trestle, which is over 850 m from the closest haulout, and pier superstructure, which does not involve vibratory extraction. A complete description of the specified activity can be found in the proposed IHA notice for this action (75 FR 48941; August 12, 2010).

Approximately 25 purple martin nest boxes will be relocated from the removed piles to the pilings that support or surround the haul-out area. This activity will only require a battery powered drill, is expected to take 2 days, and could also result in flushing the seals from the haulout. Crew will be required to complete this activity during the days when they are already working within 100 yards (91 m) of the haulout, possibly using a separate boat, so that no additional work days near the haulout are necessary. Presence of crew relocating nest boxes may result in behavioral harassment of seals. However, because this will be completed in tandem with pile removal, no substantial additional harassment is anticipated.

Comments and Responses

A notice of receipt and request for public comment on the **Federal Register** notice of proposed authorization was published on August 12, 2010 (75 FR 48941). During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission) on the proposed IHA. No comments were received by any other members of the public.

Comment 1: The Commission recommended that NMFS require that the applicant provide consistent monitoring beginning 30 minutes before all daily activities are initiated and ending 30 minute after all daily activities cease.

Response: NMFS does not agree that monitoring need be conducted at all times during this low-level activity as there is no potential serious injury or mortality and the probability of an animal being physically injured from the equipment is extremely low if not discountable. In addition, no other marine mammal species are present within the action area, and are therefore not likely to be affected by DNR's activities. Marine mammal monitoring will be required at the start of the project, twice a week when pile removal is occurring within 100 yards of the haul out area, for two days when activities move to a new location within the NRCA, during five of the days of work on the Chapman Bay Pier, and for at least six other days during the 40 day work period to be decided when the project schedule is provided by the contractor. Similar to scientific research studies, when correcting for effort, the DNR and NMFS should be able to adequately determine the number of animals taken and impacts of the project on marine mammals based on the monitoring plan. Should extreme reactions of seals occur (*e.g.,* abandonment of the haulout) at any time during the project, DNR will stop removal activities and consult with NMFS. However, as described in the proposed IHA notice, based on previous scientific disturbance studies at NRCA, extreme reactions are not anticipated.

Comment 2: The Commission recommended that NMFS require the applicant to measure sound pressure levels associated with vibratory extraction to ensure source levels do not have the potential to cause injury.

Response: There are no known acoustic data available on source levels for timber pile extraction using a vibratory hammer. Based on discussion later in this document (*see* Effects on Marine Mammals), NMFS is confident that sound produced by the vibratory extraction of derelict timber piles will not approach 190 dB re: 1 microPa (rms), the threshold for Level A (injurious) harassment of pinnipeds. As such, NMFS is not requiring a sound verification study be conducted.

Comment 3: The Commission recommended that NMFS condition the IHA to give the protected species observer (PSO) the authority to shut down the proposed activity if he or she believes that a seal is at risk from direct strike.

Response: Vibratory pile removal is a technique that does not require "strikes", as stated in the Commission's comment. 'Striking' is associated with impact pile driving; however, PSOs and equipment operators will be alert to any potential marine mammal strike from equipment use in general. Should the PSO determine that seals could become injured via this form of strike (which would require an extremely close approach by an animal), he or she is responsible for alerting the equipment operator to the potential close approach. The operator is then required to shut-down the equipment as necessary to avoid direct strike. The DNR will instruct the hammer operator to abide by the PSO's recommendations. In addition, no activity will be initiated until or unless seals are at a sufficient distance (*i.e.,* 50 feet (15 m)) from the activity so as to minimize the risk of direct injury from the equipment, piling or structure breaking free or from equipment. In summary, PSOs will have the authority to instruct operators to shut equipment down in the event that a seal is at risk from direct strike by equipment; however, due to the implementation of proposed mitigation measures this is an extremely remote possibility.

Comment 4: The Commission recommended that NMFS continue to require ramp-up or soft-starts.

Response: As described in the proposed IHA notice, DNR is required to initiate soft-starts at the onset of pile removal if the hammer has the capability to do so.

Description of Marine Mammals in the Area of the Specified Activity

Harbor seals are the only marine mammal found within the action area.

Harbor seals within the Woodard Bay NRCA belong to the Washington Inland Waters stock, which was estimated around 14,612 individuals in 2003 (NMFS, 2003). Although the stock assessment report for this stock has not been updated since 2003, based on trends of other harbor seal stocks, this is likely an underestimate. Based on the analyses of Jeffries *et al.* (2003) and Brown *et al.* (2005), both the Washington and Oregon coastal harbor seal stock have likely reached carrying capacity and are no longer increasing. Harbor seals are not listed as depleted under the MMPA or as endangered or threatened under the ESA. They are considered the most abundant resident pinniped species in Puget Sound (Lance and Jeffries, 2009).

The harbor seal population within the NRCA is considered one of the healthier ones in southern Puget Sound. Seal numbers have been monitored at the site since 1977, when there were less than 50 seals. In 1996, the highest count year, there were 600 seals. The average maximum annual count between 1977 and 2008 was 315 seals with 410 counted in August of 2008 (Buettner *et al.,* 2008). Seal numbers peak during the pupping season and decline in the winter (when work will be conducted). A complete description of harbor seal behavior and habitat use within the NRCA can be found in the proposed IHA notice for this action (75 FR 48941; August 12, 2010).

Effects on Marine Mammals

Past disturbance observations at Woodard Bay NRCA have shown that seal harassment occurs from non-motorized boats (*e.g.,* recreational kayaks and canoes), motorized vessels (*e.g.,* fishing boats), and people walking by the haulout (Calambokidis *et al.,* 1991; Buettner *et al.,* 2008). Results of these studies are described in the proposed IHA notice for this action. Based on these studies, NMFS anticipates that the presence of crew and use of a vibratory hammer will result in behavioral harassment, primarily flushing off log booms, avoiding the area, or similar short-term behavioral disturbance.

The portion of the Chapman Bay Pier that will be removed is more than 100 yards (91 m) from the closest haul-out area. This activity is expected to take a maximum of 10 days and, although does not involve vibratory extraction, has the potential to result in behavioral harassment due to the pier's proximity to the haulout. In contrast, the Woodard Bay trestle is located on the other side of a peninsula that separates Woodard and Chapman Bays and is a distance of more than 850 yards (777 m) from the closest haulout area. Work here is expected to take a maximum of 10 days to complete. Because of the distance from the haul-outs, the WA DNR anticipates structure removal at the Woodard Bay trestle will not disturb the seals. As such, 10 out of the 40 work days are not expected to result in harbor seal harassment.

Though disturbance of harbor seals is expected to occur primarily through physical presence (*i.e.,* crew and vessel presence in vicinity of harbor seals), hammer operations may disturb seals in-water. NMFS' general in-water harassment thresholds for pinnipeds exposed to non-pulse noise, such as those produced by vibratory pile extraction, are 190 dB rms re: 1 microPa as the potential onset of Level A (injurious) harassment and 120 dB rms re: 1 microPa as the potential onset of Level B (behavioral) harassment. These levels are considered precautionary and NMFS is currently revising these thresholds to better reflect the most recent scientific data.

In general, there is a paucity of data on airborne and underwater noise levels associated with pile extraction, and there is no known information on sound levels produced by vibratory extraction of derelict timber piles (as opposed to steel piles used temporarily). In addition, there is little data on the vibratory driving of timber piles, primarily because it is a seldom-used technique. Though it is reasonable to assume that vibratory extraction of timber piles would be somewhat quieter than vibratory driving of timber piles of the same size, NMFS will not make this assumption in the absence of data. The California Department of Transportation (Caltrans) has published data showing that vibratory pile driving of 12–24 inch steel piles typically results in sound pressure levels (SPLs) around 155–165 dB re: 1 microPa (root mean square) ten meters from the source (Caltrans, 2007). Driving of steel piles is typically considered to produce higher SPLs than driving timber piles. As such, NMFS anticipates that in-water source levels for vibratory driving of timber piles would not exceed 165 dB (the maximum source SPL for driving 12–24 inch steel piles). Considering that (a) vibratory driving of 12–24 inch timber piles would not produce SPLs in excess of 165 dB; (b) vibratory extraction may produce lower SPLs than vibratory driving, and would not produce higher SPLs; and (c) the piles to be extracted are approximately 12 inches in diameter (the low end of the size range that produced the 165 dB estimate for vibratory driving of timber piles), NMFS concludes conservatively that vibratory extraction will not result in sound levels near or above 190 dB re: 1 microPa. Therefore, injury will not occur, though noise from vibratory extraction will likely exceed 120 dB re: 1 microPa near the source and may induce responses in-water such as avoidance or alteration of behavioral states at time of exposure.

There are limited data available on the effects of non-pulse noise on pinnipeds in-water; however, field and captive studies to date collectively suggest that pinnipeds do not strongly react to exposures between 90–140 dB re: 1 microPa; no data exist from exposures at higher levels (Southall *et al.,* 2007). Jacobs and Terhune (2002) observed wild harbor seal reactions to high frequency acoustic harassment devices (ADH) around nine sites. Seals came within 44 m of the active ADH and failed to demonstrate any behavioral response when received SPLs were estimated at 120–130 dB re: 1 microPa. In a captive study (Kastelein, 2006), a group of seals were collectively subjected to data collection and communication network (ACME) non-pulse sounds at 8–16 kHz. Exposures between 80–107 dB re: 1 microPa did not induce strong behavioral responses; however, a single observation at 100–110 dB re: 1 microPa indicated an avoidance response at this level. The group returned to baseline conditions shortly following exposure. Southall *et al.* (2007) notes contextual differences between these two studies noting that the captive animals were not reinforced with food for remaining in the noise fields, whereas free-ranging subjects may have been more tolerant of exposures because of motivation to return to a safe location or approach enclosures holding prey items. Recall that the hammer would only operate for approximately 1 min to break the pile free from the substrate, after which the hammer would stop and a crane would remove the pile from the water. Therefore, seals will not be exposed to extended in-water noise.

Hearing Impairment

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very loud sounds. Hearing impairment is measured in two forms: temporary threshold shift (TTS) and permanent threshold shift (PTS). PTS is considered injurious whereas TTS is not as it is temporary and hearing is fully recoverable. There are no empirical data for onset of PTS in any marine mammal; therefore, PTS-onset must be estimated from TTS-onset measurements and from the rate of TTS growth with increasing

exposure levels above the level eliciting TTS-onset. PTS is presumed to be likely if the hearing threshold is reduced by ≥40 dB (*i.e.,* 40 dB of TTS). Due to the low source levels produced by vibratory extraction and short duration of vibration (1 min), marine mammals will not be exposed to levels that could elicit PTS; therefore, it will not be discussed further.

Temporary Threshold Shift (TTS)

TTS is the mildest form of hearing impairment that can occur during exposure to a loud sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises and a sound must be louder in order to be heard. TTS can last from minutes or hours to, in cases of strong TTS, days. For sound exposures at or somewhat above the TTS-onset threshold, hearing sensitivity recovers rapidly after exposure to the noise ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals. Southall *et al.* (2007) considers a 6 dB TTS (*i.e.,* baseline thresholds are elevated by 6 dB) sufficient to be recognized as an unequivocal deviation and thus a sufficient definition of TTS-onset. Because it is non-injurious, NMFS considers TTS as Level B harassment that is mediated by physiological effects on the auditory system; however, NMFS does not consider onset TTS to be the lowest level at which Level B harassment may occur.

Harbor seals within the action area are considered resident and may therefore be continually exposed to habitat restoration activities. Sound exposures that elicit TTS in pinnipeds underwater have been measured in harbor seals, California sea lions, and northern elephant seals for broadband or octaveband (OBN) non-pulse noise ranging from approximately 12 minutes to several hours (Kastak and Schusterman, 1996; Finneran *et al.,* 2003; Kastak *et al.,* 1999; Kastak *et al.,* 2005). Collectively, Kastak *et al.* (2005) analyzed these data to indicate that in the harbor seal, a TTS of *ca.* 6 dB occurred with 25 minute exposure to 2.5 kHz OBN with SPL of 152 dB re:1 microPa; the California sea lion showed TTS-onset at 174 dB re: 1 microPa (as summarized in Southall *et al.,* 2007). Source levels emitted by vibratory pile extraction are low (likely below 155 dB) and would only occur for approximately 1 minute before stopping. The studies referenced above indicate that sound pressure levels at similar levels must be continuous to induce TTS. Furthermore, the studies above exposed animals to sounds with frequency ranges closer to their peak hearing frequency whereas vibratory hammers produce low frequency sounds, towards the lower end of seal hearing capabilities and therefore they must be louder in order to be heard. For these reasons, NMFS does not anticipate TTS will be induced.

In summary, it is anticipated that seals will be initially disturbed by crew and vessels associated with the habitat restoration project; however, given the short duration and low energy of vibratory extraction, PTS will not occur and TTS is not likely. Those animals hauled out on the log booms will likely flush into the water. To avoid inducing strong reactions, the DNR will conduct activities such that the piles farthest from the hauled out seals will be removed first; thereby avoiding a sudden disturbance and allowing seals time to acclimate to human activity. The DNR will also not remove piles within 30 yards (27 m) of haulouts, avoiding extreme close approaches. Throughout the day, seals are expected to become accustomed to crew presence of construction activities, as seen in previous disturbance studies within the Woodard Bay NRCA and other harbor seal populations. For these reasons, harbor seals are not expected to abandon the haulout or demonstrate extreme behaviors in response to crew and habitat restoration activities.

Anticipated Effects on Habitat

Marine mammal habitat will be temporarily ensonified by low sound levels resulting from habitat restoration effort. The piles designated to be removed have been treated with creosote, a wood preservative that is toxic to the environment. Removing these piles will have beneficial impacts to the NRCA, including marine mammal habitat, by preventing the leaching of creosote chemicals, including polycyclic aromatic hydrocarbons, into the marine environment. No log booms will be removed; therefore, no impacts to the physical availability of haulout structure will occur.

Mitigation

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

The DNR has proposed mitigation measures designed to minimize disturbance to harbor seals within the action area in consideration of timing, location, and equipment use. Foremost, pile and structure removal will only occur between November and February, well outside harbor seal pupping and molting seasons. Therefore, no impacts from the specified activity during these sensitive time periods will occur. The DNR will approach the action area slowly to alert seals to their presence from a distance and will begin pulling piles at the farthest location from the log booms used as harbor seal haulout areas. Pilings directly associated with harbor seal haulouts (*i.e.,* those within 30 yards (27 m) of the booms) will not be removed. The contractor will be required to survey the operational area for seals before initiating activities and to wait until the seals are at a sufficient distance (*i.e.,* 50 ft (15 m)) from the activity so as to minimize the risk of direct injury from the piling or structure breaking free or from equipment. The DNR will also require the contractor to initiate a vibratory hammer "soft start" at the beginning of each work day. The "soft-start" method includes a reduced energy vibration from the hammer for the first 15 seconds and then a one minute waiting period. This method will be repeated twice before commencing with regular energy operations. Finally, the vibratory hammer power pack will be outfitted with a muffler to reduce in-air noise levels.

NMFS has carefully evaluated the applicant's proposed mitigation measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals; (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation, including consideration of personnel safety, and practicality of implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS or recommended by the public, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impacts on marine

mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

Harbor seal research has been conducted at Woodard Bay since the 1970's and has included seal ecology, population dynamics and disturbance behavior (Newby, 1970; Calambokidis *et al.,* 1991; Buettner *et al.,* 2008; Lambourn *et al.,* 2009). The DNR's monitoring plan adheres to protocols already established for Woodard Bay research and, in coordination with NMFS, has been tailored for the specified activity. Monitoring of both haul-outs will be performed by at least one NMFS approved protected species observer (PSOs), who will monitor the haulouts the first two days of the project, when the contractors are mobilizing to a new location, during two days of every week when activities are occurring within 100 yards of the haul out area, during five of the days of work on the Chapman Bay Pier, and for at least six other days during the 40 day work period to be decided when the project schedule is provided by the contractor. Therefore, there will be at least 15 days where a designated observer will be on site over the course of 40 days of work. The PSO will be onsite prior to crew and vessel arrival to determine the number of seals present pre-disturbance. The PSO will maintain a low profile during this time to minimize disturbance from monitoring.

Observational data collected will include monitoring dates, times and conditions, estimated number of take, which will be recorded as number of seals flushed from the haulout, and type of activity occurring at time of disturbance. This information will be determined by recording the number of seals using the haul-out on each monitoring day prior to the start of restoration activities for that day, recording the number of seals that flush from the haulout or, for animals already in the water, display adverse behavioral reactions to vibratory extraction. A description of the disturbance source, the proximity in meters of the disturbance source, and reactions will be noted. Within 90 days of the completion of the project, DNR will submit a monitoring report to NMFS that will include a summary of findings and copies of field data sheets and relevant daily logs from the contractor.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

During previous surveys, seal counts for the month of October, the last month (and closest to the months when the project will be carried out) that data is recorded each year, averaged 171 and ranged between 79 and 275 individuals from 2006 to 2009 (Lambourn, 2010). Although there is no data for the months from November through February, when the project is scheduled to take place, the number of seals is expected to decline during these months, as compared with the summer/fall pupping season. Additionally, the seal counts for the month of October, from 2006–2009, are an aggregate of both haul-out sites from which seals may be disturbed. Given that the seals are likely to be relatively evenly split between the two haul-out sites, only a portion of the seals present on any given day would be subject to Level B harassment (*i.e.,* those seals present at the haul-out closest to the area where work is occurring). Therefore, the DNR rejected the use of the most conservative approach to take estimation (using the maximum of 275 seals), and used a more moderate approach (using the mean number of 171 seals). Using this moderate approach, the DNR considers that 171 seals could potentially be affected by the project per day. Woodard Bay trestle removal operations are not expected to harass marine mammals as the trestle is located approximately 850 yards (777 m) from the closest haulout. Therefore, days spent removing the trestle have been removed from take calculations. In addition, the DNR has proposed that removal of pilings located at greater than 100 yards (91 m) from the harbor seal haulout will not result in harassment as NMFS has indicated that people at Woodard Bay should remain 100 yards from the seals to prevent disturbance. Therefore, the DNR is estimating only nine days of pile removal will result in harassment to seals within the action area. Seals may be disturbed due to crew presence of pile removal operations. Given the mean of 171 animals on a haulout at any given day, the DNR is authorized to take, by Level B harassment, 1539 seals (171×9) during the habitat restoration project with the inference that the individual number of seals harassed will be low but may be taken multiple times. This take estimation reflects a change in methodology from that presented in the **Federal Register** notice of proposed authorization (75 FR 48941, August 12, 2010). In that document, the DNR proposed to use the more conservative methodology for take estimation (*i.e.,* 275×9); however, for reasons discussed previously in this section, the DNR has determined a more moderate approach to take estimation is appropriate.

Negligible Impact and Small Numbers Analysis and Determination

NMFS has defined "negligible impact" in 50 CFR 216.103 as " * * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." In making a negligible impact determination, NMFS considers a number of factors associated with the proposed action and affected species and stocks including, but not limited to, the number of anticipated mortalities; number and nature of anticipated injuries; number, nature, intensity, and duration of Level B harassment; and temporal and spatial scale of the proposed action with respect to the ecology and life history of potentially affected marine mammals (*e.g.,* will harassment occur on prime foraging grounds, during critical reproductive times, *etc.*).

For reasons described previously in this document, there is no potential for serious injury or mortality from the specified activity. Further, although the potential for injury could be discountable to begin with, mitigation and monitoring measures will ensure seals are not physically injured from equipment (auditory injury is not possible due to low source levels and intermittent hammer operation). However, it is likely seals will react to the presence of crew and equipment and vibratory extraction noise (*e.g.,* by flushing, avoiding the area). The DNR will not conduct habitat restoration

operations during the pupping and molting season; therefore, no pups will be affected by the proposed action and no impacts to any seals will occur as a result of the specified activity during these sensitive time periods. Mitigation measures (*e.g.* beginning work at the farthest distance to the haulout as possible, use of a muffler pack, *etc.*) will minimize onset of sudden, acute reactions and overall disturbance during project activities. In addition, it is not likely that seals at multiple haulouts will be disturbed simultaneously as work, for example, may affect the southern haulout but not the northern haulout based on location of the crew and barge. Although seals may initially flush into the water, based on previous disturbance studies and maintenance activity at the haulouts, the DNR expects seals will quickly habituate to piling and structure removal operations. For these reasons no long term or permanent abandonment of the haulout is anticipated.

The seals at Woodard Bay are considered resident and make small daily movements to forage; however, exactly how far they transit is unknown. The mean count of the localized seal population from 1977–2008 was 315 animals during the pupping season with a maximum of 400 individuals counted in 2008 during this time. However, as described above, these numbers drop over the late fall and winter. The DNR has scheduled the project to occur from November–February, a time outside of sensitive reproductive periods and during a time seal numbers are lowest. The DNR is authorized to take approximately 171 seals multiple times. The number of individual seals harassed may be considered small (10.5%) when compared to the Inland Washington stock size (n=14,612). The fact that only temporary Level B, or behavioral, harassment would occur, and that the activity has been scheduled outside of sensitive reproduction periods, ensures that the least practicable adverse impact will occur.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that piling and structure removal associated with the WA DNR's habitat restoration project will result in the incidental take of small numbers of marine mammals by Level B harassment only, and that the total taking from the specified activity will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Endangered Species Act (ESA); thus, there will not be an unmitigable adverse impact on the availability for taking marine mammals for subsistence uses.

No marine mammals listed under the ESA have the potential to be taken incidental to the proposed action as none occur within the action area. Therefore, Section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, NMFS has prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to pinnipeds and other applicable environmental resources resulting from issuance of the IHA. On October 27, 2010, NMFS issued a Finding of No Significant Impact on the EA.

Dated: October 29, 2010.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–27883 Filed 11–3–10; 8:45 am]

BILLING CODE 3510–22–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Extension of Time To Supplement Hearing Record

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Extension of time to supplement hearing record.

SUMMARY: The Defense Nuclear Facilities Safety Board (Board) published a document in the **Federal Register** of July 26, 2010, (75 FR 43495), as amended, (75 FR 56080), concerning notice of a public hearing and meeting on October 7 and 8, 2010, with regard to the safety-related aspects of the design and construction of the Department of Energy's Waste Treatment and Immobilization Plant at the Hanford Site. The Board stated in that notice that the Board would hold the hearing record open until November 7, 2010, for the receipt of additional materials. The Board made the same representation at the conclusion of the hearing on October 8, 2010.

Extension of Time: The Board now extends the period of time for which the hearing record will remain open an additional sixty (60) days until January 6, 2011. The Board has become aware of information which indicates that the public interest will be best served by extending the deadline for submission of materials into the hearing record. The Board will consider any such additional material in the course of evaluating its response to information collected at the hearing.

Contact Person for More Information: Brian Grosner, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

Dated: November 1, 2010.

Peter S. Winokur,

Chairman.

[FR Doc. 2010–27900 Filed 11–3–10; 8:45 am]

BILLING CODE 3670–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations Executive Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice of Partially Closed Meeting.

SUMMARY: The Chief of Naval Operations (CNO) Executive Panel will report on the findings and recommendations of the Latin America and the Caribbean, 2010 Subcommittee study. The meeting will consist of open and closed discussions. Closed discussions will include national and naval intelligence analysis, as well as consider major challenges which the United States will face over the next five years and implications of the regional security environment on the prospective role of U.S. naval forces. Open discussions will include the political, social and economic environment of Latin America and the Caribbean, focusing on crime (particularly narcotics trafficking), regional ethnic conflicts, and analysis of regional democratic processes. The discussion will concentrate on Central and South America and the Caribbean; considering issues also effecting Mexico as appropriate.

DATES: The meeting will be held on December 14, 2010, from 9 a.m. to 11:30 a.m. The session from 9 a.m.–10 a.m. will be open to the public; the session from 10 a.m.–11:30 a.m. will be closed to the public.

ADDRESSES: The meeting will be held in the Boardroom at CNA, 4825 Mark Center Drive, Alexandria, VA 22311–1846.

FOR FURTHER INFORMATION CONTACT: Commander Eric Taylor, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311–1846, 703–681–4909.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that the portion of this meeting from 10 a.m.–11:30 a.m. be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Individuals or interested groups may submit written statements for consideration by the CNO Executive Panel at any time or in response to the agenda of a scheduled meeting. All requests must be submitted to the Designated Federal Officer at the address detailed below.

If the written statement is in response to the agenda mentioned in this meeting notice then the statement, if it is to be considered by the Panel for this meeting, must be received at least five days prior to the meeting in question.

The Designated Federal Officer will review all timely submissions with the CNO Executive Panel Chairperson, and ensure they are provided to members of the CNO Executive Panel before the meeting that is the subject of this notice.

To contact the Designated Federal Officer, write to Executive Director, CNO Executive Panel (N00K), 4825 Mark Center Drive, 2nd Floor, Alexandria, VA 22311–1846.

Dated: October 28, 2010.

D.J. Werner,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–27928 Filed 11–3–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment Request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. 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 January 3, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. 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: October 29, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Planning, Evaluation and Policy Development

Type of Review: New.

Title of Collection: Equitable Distribution of Effective Teachers: State and Local Responses to Federal Initiatives.

OMB Control Number: 1875–NEW.

Agency Form Number(s): N/A.

Frequency of Responses: Once.

Affected Public: State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 42.

Total Estimated Number of Annual Burden Hours: 126.

Abstract: The most recent reauthorization of the Elementary and Secondary Education Act in 2002 required that States provide assurances and develop plans to "ensure that poor and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out of field teachers" (Section 1111(b)(8)(C)). In 2009, American Recovery and Reinvestment Act (ARRA) requirements reinforced the focus on equitable distribution of teachers by requiring States applying for education stimulus funds to provide updated assurances and to publicize their most recent "equity plans." ARRA also establishes competitive grants to help States build their pool of effective teachers and address inequities in the distribution of teachers. In addition to their focus on the equitable distribution of teacher quality, Federal programs also have been promoting shifts in how teacher quality is measured, away from teacher qualifications and toward measures of instructional practice and effectiveness at raising student achievement. Federal programs such as the Teacher Incentive Fund and Race to the Top have provided incentives for States and districts to move in this direction, including funds to support some of the technical aspects of development.

Federal policymakers need to know whether the policies and programs they sponsor under these laws contribute to teacher quality for disadvantaged students. Hence, the U.S. Department of Education requires a study documenting the State and local actions to (a) develop new measures of teacher quality, (b) analyze the distribution of teacher quality, and (c) develop and implement plans to ensure teacher quality for disadvantaged students. To inform

Federal policymakers, the study will examine the implementation of these activities with attention to implementation challenges, the role of State and local context, and the roles of the Federal programs designed to foster these activities.

The planned data collection will serve four objectives:

1. To examine how States and districts analyze the distribution of teacher quality, plan actions to address inequities, and monitor progress.

2. To examine how States and districts are changing their measures of teacher quality, and to understand their experiences in doing so.

3. To examine State and local actions to improve teacher quality for disadvantaged students (*i.e.,* students in high-poverty or high-minority schools).

4. To describe the perceived contributions of Federal programs to State and local actions aimed at improving the quality of teachers for disadvantaged students, and how State and local contexts mediate these contributions.

To address these objectives, our design includes telephone interviews with State education agencies and local education agencies.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4426. 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 and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–27898 Filed 11–3–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Blue Ribbon Commission on America's Nuclear Future

AGENCY: Office of Nuclear Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Blue Ribbon Commission on America's Nuclear Future (the Commission). The Commission was organized pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) (the Act). This notice is provided in accordance with the Act.

This notice is being published less that 15 days from the date of the meeting due to logistical circumstances and the inability to delay and reschedule the meeting in a timely fashion. In addition, the dates for this meeting and the location, Washington, DC, were made public during the September 2010 open meeting of the Commission and posted on *http://www.brc.gov.*

DATES: Monday, November 15, 2010, 8:30 a.m.–4:30 p.m. Tuesday, November 16, 2010, 8:30 a.m.–12:15 p.m.

ADDRESSES: Washington Marriott Metro Center, 775 12th Street, NW., Washington, DC 20005, Telephone: (202) 737–2200.

FOR FURTHER INFORMATION CONTACT: Timothy A. Frazier, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone (202) 586–4243 or facsimile (202) 586–0544; e-mail *CommissionDFO@nuclear.energy.gov.* Additional information will be available at *http://www.brc.gov.*

SUPPLEMENTARY INFORMATION:

Background: The President directed that the Commission be established to conduct a comprehensive review of policies for managing the back end of the nuclear fuel cycle. The Commission will provide advice and make recommendations on issues including alternatives for the storage, processing, and disposal of civilian and defense spent nuclear fuel and nuclear waste. The Commission is scheduled to submit a draft report to the Secretary of Energy in July 2011 and a final report in January 2012.

This is the fifth full Commission meeting. Previous meetings were held in March, May, July, and September 2010. Webcasts of the previous meetings along with meeting transcripts and presentation are available at *http://www.brc.gov.*

Purpose of the Meeting: One purpose of this meeting is to better understand the fuel cycle policies that have been established by other leading nuclear energy nations. The Commission will hear from a series of speakers who can provide insights on the views of State and Tribal governments and members of the public.

Tentative Agenda: The meeting is expected to start at 8:30 a.m. on Monday, November 15, 2010. The schedule for the 15th will include presentations and statements to the Commission. The meeting will resume at 8:30 a.m. on Tuesday, November 16, 2010, with presentations and statements to the Commission and Commission discussions lasting until about 11 a.m. The meeting will conclude with public statements and will end at approximately 12:15 p.m.

Public Participation: Individuals and representatives of organizations who would like to offer comments and suggestions may do so at the end of the public session on Tuesday, November 16, 2010. Approximately 1 hour will be reserved for public comments from 11:15 a.m. to 12:15 p.m. Time allotted per speaker will depend on the number who wish to speak but will not exceed 5 minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should register to do so beginning at 8 a.m. on November 16, 2010, at the Washington Marriott at Metro Center. Registration to speak will close at 10 a.m., November 16, 2010.

Those not able to attend the meeting or have insufficient time to address the subcommittee are invited to send a written statement to Timothy A. Frazier, U.S. Department of Energy 1000 Independence Avenue, SW., Washington DC 20585, e-mail to *CommissionDFO@nuclear.energy.gov,* or post comments on the Commission Web site at *http://www.brc.gov.*

Additionally, the meeting will be available via live video webcast. The link will be available at *http://www.brc.gov.*

Minutes: The minutes of the meeting will be available at *http://www.brc.gov* or by contacting Mr. Frazier. He may be reached at the postal address or e-mail address above.

Issued in Washington, DC on October 29, 2010.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2010–27902 Filed 11–3–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13871–000]

Wagon Wheel Associates; Notice of Application Tendered for Filing With the Commission, Notice of Application Accepted for Filing, Ready for Environmental Analysis, and Soliciting Motions To Intervene and Protests, Comments, Final Terms and Conditions, Recommendations, and Prescriptions

October 28, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Filing:* Exemption From Licensing.

b. *Project No.:* P–13871–000.

c. *Dated Filed:* October 18, 2010.

d. *Submitted by:* Wagon Wheel Associates (WWA).

e. *Name of Project:* Humphreys Hydroelectric Project.

f. *Project Description:* WWA is proposing to install a penstock and powerhouse below the existing Lake Humphreys to house a 310 kilowatt hydroelectric turbine, generator, and appurtenant facilities. Electricity generated by the facility will be sold to the San Luis Valley Rural Electric Cooperative. This project will be able to produce approximately 1,200 megawatt hours of renewable energy annually which could meet the annual electricity needs of approximately 240 households.

g. *Location:* The proposed project would be located on Goose Creek (in the Rio Grande River basin) in Mineral County, Colorado. The proposed project would not occupy any Federal lands.

h. *Filed Pursuant to:* Public Utilities Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

i. *Applicant Contact:* Ms. Ruth Brown, Wagon Wheel Associates, 7.5 Goose Creek Road, South Fork, CO 81154; (970) 925–6071; *ruthiebrown@comcast.net.*

j. *FERC Contact:* Carolyn Templeton at (202) 502–8785; or e-mail at *carolyn.templeton@ferc.gov.*

k. A copy of the license application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document (P–13871). For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, of for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph (h).

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

l. This application has been accepted for filing and is now ready for environmental analysis.

m. *Cooperating Agencies:* Federal, State, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions in item (n) below.

n. *Deadline for Filing Motions To Intervene and Comments:* Due to the small size and particular location of this project as well as the applicant's close coordination with the Federal and State agencies in the preparation of the application, the 60-day timeframe in 18 CFR 4.34(b) for filing motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions is shortened. Instead, motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions will be due 30 days from the issuance date of this notice. All reply comments must be filed with the Commission within 45 days from the date of this notice.

All documents may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "e-Filing" link. For a simpler method of submitting text only comments, click on "Quick Comment". For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

o. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," or "REPLY COMMENTS," (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. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

p. With this notice, we are initiating consultation with the COLORADO STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR pt. 800.4.

q. Procedural Schedule and Final Amendments: We intend to accept the consultation that has occurred on this project during the pre-filing period as satisfying our requirements for the standard 3-stage consultation process under 18 CFR 4.38 and for National Environmental Policy Act scoping. Based on a review of the application, resource agency consultation letters, and comments filed to date, Commission staff intends to prepare a single environmental assessment (EA) for the proposed project.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–27792 Filed 11–3–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM06–16–011]

North American Electric Reliability Corporation; Notice of Compliance Filing

October 28, 2010.

Take notice that on October 25, 2010, the North American Electric Reliability Corporation (NERC), submitted a compliance filing in response to the Federal Energy Regulatory Commission's (Commission) Order Granting Rehearing for Further Consideration and Scheduling Technical Conference, issued on May 13, 2010.[1]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 15, 2010.

[1] *Order Granting Rehearing for Further Consideration and Scheduling Technical Conference,* 131 FERC ¶61,136 (May 13, 2010).

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–27793 Filed 11–3–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF11–1–000]

Southeastern Power Administration; Notice of Filing

October 28, 2010.

Take notice that on October 6, 2010, the Southeastern Power Administration, pursuant to Order No. 714,[1] submitted its Baseline Filing, to be effective October 6, 2010.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 5, 2010.

[1] *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–27794 Filed 11–3–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9221–1]

Notice of Availability of Draft National Pollutant Discharge Elimination System (NPDES) General Permits for Small Municipal Separate Storm Sewer Systems (MS4)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of Draft NPDES General Permits.

SUMMARY: The Director of the Office of Ecosystem Protection, Environmental Protection Agency-Region 1 (EPA), is issuing this Notice of Availability of Draft NPDES general permits for discharges from small MS4s to certain waters of the Commonwealth of Massachusetts. These draft NPDES general permits establish Notice of Intent (NOI) requirements, prohibitions, and management practices for stormwater discharges from small MS4s. EPA is proposing to issue three general permits. Throughout this document the terms "this permit" and "the permit" will refer to all three general permits.

Owner and/or operators of small MS4s that discharge stormwater will be required to submit a NOI to EPA-Region

1 to be covered by the general permit. Following a review and public notice of the NOI, MS4s will receive a written notification from EPA regarding permit coverage and authorization to discharge under the general permit. The eligibility requirements are discussed in the draft permit. The small MS4 must meet the eligibility requirements of the permit prior to the submission of the NOI.

The draft general permit, appendices, and fact sheet are available at: *http://www.epa.gov/region1/npdes/stormwater.*

DATES: The public comment period is from November 4, 2010 to December 30, 2010. Interested persons may submit comments on the draft general permit as part of the administrative record to the EPA-Region 1, at the address given below, no later than midnight December 30, 2010. The general permit shall be effective on the date specified in the **Federal Register** publication of the Notice of Availability of the final general permit. The final general permit will expire five years from the effective date.

ADDRESSES: Submit comments by one of the following methods:

- *E-mail: Renahan.Kate@epa.gov.*
- *Mail:* Kate Renahan, U.S. EPA-Region 1, Office of the Regional Administrator, 5 Post Office Square—Suite 100, Mail Code—ORA01–1, Boston, MA 02109–3912.

No facsimiles (faxes) will be accepted.

The draft permit is based on an administrative record available for public review at EPA-Region 1, Office of Ecosystem Protection, 5 Post Office Square—Suite 100, Boston, Massachusetts 02109–3912. The following **SUPPLEMENTARY INFORMATION** section sets forth principal facts and the significant factual, legal, and policy questions considered in the development of the draft permit. A reasonable fee may be charged for copying requests.

Public Meeting Information: EPA-Region 1 will hold a public meeting to provide information about the draft general permit and its requirements. The public meeting will include a brief presentation on the draft general permits and a brief question and answer session. Written, but not oral, comments for the official draft permit record will be accepted at the public meeting. The public meeting will be held at the following time and location: Thursday–December 2, 2010, Lakeville Public Library (Large Meeting Room), 4 Precinct Street, Lakeville, MA 02347, 10:15 a.m.–11:15 a.m.

The dates and times of any additional public meetings will be posted on EPA-Region 1's Web site at: *http://www.epa.gov/region1/topics/water/stormwater.html.*

Public Hearing Information: Following the public meeting, a public hearing will be conducted in accordance with 40 CFR 124.12 and will provide interested parties with the opportunity to provide written and/or oral comments for the official draft permit record. The public hearing will be held at the following time and location: Thursday–December 2, 2010, Lakeville Public Library (Large Meeting Room), 4 Precinct Street, Lakeville, MA 02347, 11:30 a.m.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the draft permit may be obtained between the hours of 9 a.m. and 5 p.m. Monday through Friday excluding holidays from: Kate Renahan, Office of the Regional Administrator, Environmental Protection Agency, 5 Post Office Square—Suite 100, Mail Code: ORA01–1, Boston, MA 02109–3912; *telephone:* 617–918–1491; *e-mail: Renahan.Kate@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background of Proposed Permit

As stated previously, the Director of the Office of Ecosystem Protection, EPA-Region 1, is proposing to reissue three NPDES general permits for the discharge of stormwater from small MS4s to certain waters within the Commonwealth of Massachusetts. The three permits are:

MAR041000—Systems owned by traditional cities and towns.

MAR042000– Systems owned by state or Federal entities.

MAR04000I—Systems located on Indian Country Land within the Commonwealth of Massachusetts.

The conditions in the draft permit are established pursuant to Clean Water Act (CWA) section 402(p)(3)(iii) to ensure that pollutant discharges from small MS4s are reduced to the maximum extent practicable (MEP), protect water quality, and satisfy the appropriate requirements of the CWA. The regulations at 40 CFR 122.26(b)(16) define a small municipal separate storm sewer system as "* * * all separate storm sewers that are:

(1) Owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian Tribe or an authorized Indian Tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.

(2) Not defined as 'large' or 'medium' municipal separate storm sewer systems pursuant to paragraphs (b)(4) or (b)(7) or designated under paragraph (a)(1)(v) of this section [40 CFR 122.26].

(3) This term includes systems similar to separate storm sewer systems in municipalities such as systems at military bases, large hospital or prison complexes, and highways or other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings."

For example, an armory located in an urbanized area would not be considered a regulated small MS4.

The draft general permit sets forth the requirements for the small MS4 to "reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques, and system, design and engineering methods * * *" (*See* section 402(p)(3)(B)(iii) of the CWA). MEP is the statutory standard that establishes the level of pollutant reductions that MS4 operators must achieve, but also includes recognition that other provisions in addition to MEP may be required under some circumstances. EPA believes implementation of best management practices (BMPs) designed to control stormwater runoff from the MS4 is generally the most appropriate approach for reducing pollutants to satisfy the MEP standard. Pursuant to 40 CFR 122.44(k), the draft permit requires permittees to control stormwater discharges through BMPs, including development and implementation of a comprehensive stormwater management program (SWMP) as the mechanism to achieve the required pollutant reductions.

Section 402(p)(3)(B)(iii) of CWA also authorizes EPA to include in an MS4 permit "such other provisions as [EPA] determine appropriate for control of * * * pollutants." EPA believes that this provision forms a basis for imposing water quality-based effluent limitations (WQBELs), consistent with the authority in Section 301(b)(1)(C) of the CWA. *See Defenders of Wildlife* v. *Browner.* 191 F.3d 1159 (9th Cir. 1999); *see also* EPA's preamble to the Phase II regulations, 64 FR 68722, 68753, 68788 (Dec. 8, 1999). Accordingly, the draft permits contain the water quality-based effluent limitations, expressed in terms of BMPs, which EPA determined are

necessary and appropriate under the CWA.

EPA-Region 1 issued a final general permit to address stormwater discharges from small MS4s on May 1, 2003. The 2003 general permit required small MS4s to develop and implement a SWMP designed to control pollutants to the maximum extent practicable and protect water quality. This draft permit builds on the requirements of the previous general permit.

EPA views the MEP standard in the CWA as an iterative process. MEP should continually adapt to current conditions and BMP effectiveness. EPA believes that compliance with the requirements of this general permit will meet the MEP standard. The iterative process of MEP consists of a municipality developing a program consistent with specific permit requirements, implementing the program, evaluating the effectiveness of the BMPs included as part of the program, then revising those parts of the program that are not effective at controlling pollutants, then implementing the revisions, and evaluating again. The changes contained in the draft general permits reflect the iterative process of MEP. Accordingly, the draft general permits contain more specific tasks and details than the 2003 general permit.

Summary of Permit Conditions

Obtaining Authorization

In order for a small MS4 to obtain authorization to discharge, it must submit a complete and accurate NOI containing the information in Appendix F of the draft general permit. The NOI must be submitted within 90 days of the effective date of the final permit. The effective date of the final permit will be specified in the **Federal Register** publication of the Notice of Availability of the final permit. A small MS4 must meet the eligibility requirements of the general permit found in Part 1.2 and Part 1.9 prior to submission of its NOI. A small MS4 will be authorized to discharge under the permit upon the effective date of coverage. The effective date of coverage is upon receipt of written notice from EPA following a public notice of the NOI.

The draft general permit provides interim coverage for permittees covered by the previous permit and whose coverage was effective upon the expiration date of that permit (May 1, 2008). For those discharges covered by the previous permit, authorization under the previous permit is continued automatically on an interim basis for up to 180 days from the effective date of the final permit. Interim authorization will terminate earlier than the 180 days when a complete and accurate NOI has been submitted by the small MS4 and authorization is either granted or denied. If a permittee was authorized under the previous permit and submitted a complete and accurate NOI in a timely manner, and notification of authorization under the final permit has not occurred within 180 days of the effective date of the final permit, the permittee's authorization under the previous permit can be continued beyond 180 days on an interim basis. Interim coverage will terminate after authorization under this general permit, an alternative permit, or denial of permit coverage.

EPA—Region 1 will provide an opportunity for the public to comment on each NOI that is submitted. Following the public notice, EPA—Region 1 will either authorize the discharge, request additional information, or require the small MS4 to apply for an alternative permit or an individual permit.

Water Quality-Based Effluent Limitations

The draft permit includes provisions designed to protect water quality standards. The provisions in Parts 2.1, 2.2, and 2.3 of the general permit constitute the water quality-based effluent limitations of the permit. The purpose of this part of the permit is to include water quality-based effluent limitations for those discharges requiring additional controls in order to achieve water quality standards and other water quality related objectives. EPA invites comments on its approach to addressing water quality standards in this draft permit.

Non-Numeric Effluent Limitations

When EPA has not promulgated effluent limitations for a category of discharges, or if an operator is discharging a pollutant not covered by an effluent limitation guideline, effluent limitations may be based on the best professional judgment (BPJ) of the agency or permit writer. The BPJ limits in the general permit are in the form of non-numeric control measures, commonly referred to as best management practices (BMPs). Non-numeric limits are employed under limited circumstances, as described in 40 CFR 122.44(k). EPA has interpreted the CWA to allow BMPs to take the place of numeric effluent limitations under certain circumstances. 40 CFR 122.44(k) provides that permits may include BMPs to control or abate the discharge of pollutants when: "(1) [a]uthorized under section 304(e) of the CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities; (2) [a]uthorized under section 402(p) of the CWA for the control of stormwater discharges; (3) [n]umeric effluent limitations are infeasible; or (4) [t]he practices are reasonable to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA." The permit regulates stormwater discharges using BMPs. Due to the variability associated with stormwater, EPA believes the use of BMPs is the most appropriate method to regulate discharges of stormwater from municipal systems in accordance with the above referenced regulation.

The draft permit requires small MS4s to continue to control stormwater discharges from the municipal system in a manner designed to reduce the discharge of pollutant to the maximum extent practicable and to protect water quality. The small MS4s are required to implement a SWMP consisting of control measures. These control measures include the following: Public education and outreach; public participation; illicit discharge detection and elimination; construction stormwater management; stormwater management in new development and redevelopment; and good housekeeping in municipal operations. Implementation of the SWMP involves the identification of BMPs and measurable goals for BMPs. The draft permit identifies an objective for each control measure. The small MS4 must implement the control measures required by the general permit and document actions in the SWMP that demonstrate progress toward achievement of the objective of the control measure. The permit also contains outfall monitoring requirements that are associated with implementation of the illicit discharge detection and elimination program, as well as record keeping and reporting requirements.

Dated: October 27, 2010.

H. Curtis Spalding,

Regional Administrator, Region 1.

[FR Doc. 2010–27904 Filed 11–3–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9220–2]

Availability of Draft NPDES General Permits MAG580000 and NHG580000 for Discharges From Publicly Owned Treatment Works Treatment Plants (POTW Treatment Plants) and Other Treatment Works Treating Domestic Sewage in the Commonwealth of Massachusetts and the State of New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Director of the Office of Ecosystem Protection, EPA–New England, is issuing a notice of availability for public comment of the draft National Pollutant Discharge Elimination System (NPDES) general permits for certain Publicly Owned Treatment Works Treatment Plants (POTW treatment plants) and Other Treatment Works Treating Domestic Sewage (collectively, "facilities") in the Commonwealth of Massachusetts (including both Commonwealth and Indian country lands) and the State of New Hampshire. Throughout this document, these two permits are collectively referred to as the "Publicly Owned Treatment Works General Permit" ("POTW GP" or the "General Permit"). The draft General Permits, upon final issuance, will replace the prior POTW GP which expired on September 23, 2010.

The draft POTW GP establishes Notice of Intent (NOI) requirements as well as effluent limitations, standards, and prohibitions for facilities that discharge to fresh and marine waters. Coverage under these General Permits is available to facilities in Massachusetts classified as minor facilities and to facilities in New Hampshire classified as major or minor facilities. Owners and/or operators of these facilities, including those facilities authorized to discharge under the current General Permit, will be required to submit an NOI to be covered by the reissued POTW GP to both EPA-New England and the appropriate State agency, in accordance with the notification requirements of the General Permit. Following EPA and the State review of the NOI, the facility will receive a written notification from EPA of permit coverage and authorization to discharge under the General Permit. The eligibility requirements for permit coverage, including the requirement that a facility have a receiving water dilution factor equal to or greater than 50, are provided in the General Permit. The General Permit does not cover new sources as defined under 40 CFR 122.2.

The purpose of this document is to solicit public comments on the proposed General Permits.

Public Comment Period: The public comment period is from November 4, 2010 to December 6, 2010. Interested persons may submit written comments on the draft General Permit to the EPA-Region I at the address listed below. Within the comment period, interested persons may also request, in writing, that EPA hold a public hearing pursuant to 40 CFR Section 124.12, concerning the draft General Permits. Such requests shall state the nature of the issues proposed to be raised at the hearing. A public hearing may be held at least thirty days after public notice whenever the Regional Administrator finds that response to this notice indicates significant public interest. In reaching a final decision on this draft permit, the Regional Administrator will respond to all significant comments and make responses available to the public at EPA's Boston office. All comments and requests for public hearings must be postmarked or delivered before midnight December 6, 2010, the close of the public comment period. All public comments or requests for a public hearing must be submitted to the address below.

ADDRESSES: Written comments on the draft General Permit may be hand delivered or mailed to Meridith Timony, EPA-Region 1, Office of Ecosystem Protection, OEP06–1, 5 Post Office Square-Suite 100, Boston, Massachusetts 02109–3912; or sent via e-mail to *Timony.meridith@epa.gov.* No facsimiles (faxes) will be accepted.

FOR FURTHER INFORMATION CONTACT: For further information contact Meridith Timony at 617–918–1533, between the hours of 9 a.m. and 5 p.m., Monday through Friday, excluding holidays. The draft General Permits are based on an administrative record available for public review at EPA-Region 1, Office of Ecosystem Protection, 5 Post Office Square-Suite 100, Boston, Massachusetts 02109–3912, Monday through Friday from 9 a.m.–5 p.m., excluding holidays. The draft General Permit and a Fact Sheet may also be viewed over the Internet via the EPA-Region I Web site at *http://www.epa.gov/region1/npdes/potw-gp.html.* To obtain a paper copy of the documents, please contact Meridith Timony using the contact information provided above. A reasonable fee may be charged for copying requests.

Dated: October 19, 2010.

Ira W. Leighton,

Acting Regional Administrator, Region 1.

[FR Doc. 2010–27763 Filed 11–3–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2010–0877; FRL–8849–8]

Endocrine Disruptor Screening Program (EDSP); Announcing the Availability of a Draft for Weight-of-Evidence Guidance Document: Evaluating Results of EDSP Tier 1 Screening To Identify Candidate Chemicals for Tier 2 Testing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability for public review and comment of a draft guidance document titled, "Weight-of-Evidence Guidance Document: Evaluating Results of EDSP Tier 1 Screening to Identify Candidate Chemicals for Tier 2 Testing." This action is in compliance with a directive from the House Appropriations Committee FY 2010 Report directing the EPA to develop and publish criteria by October 30, 2010, for evaluating results of Tier 1 screening and determining whether a chemical should undergo Tier 2 analysis. The purpose of the weight-of-evidence (WoE) document is to set forth some of the general principles, criteria, and considerations EPA generally believes to be relevant under a WoE approach for evaluating data submitted as part of EPA's two-tiered paradigm for screening and testing chemicals for endocrine activity (i.e., estrogen, androgen, and thyroid hormonal systems; E, A, and T) under the EDSP. This document provides a transparent scientific approach for broadly evaluating Tier 1 screening data to detect an interaction with E, A, and/or T hormonal systems and determine if additional Tier 2 testing is necessary.

DATES: Comments must be received on or before January 3, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2010–0877, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2010–0877. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2010–0877. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Don Bergfelt, Office of Science Coordination and Policy (7203M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8472; e-mail address: *bergfelt.don@epa.gov.*

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; e-mail address: *TSCA–Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. You may be potentially affected by this action if you produce, manufacture, use, consume, work with, or import industrial or pesticide chemicals. To determine whether you or your business may be affected by this action, you should carefully examine section 408(p) of the Federal Food, Drug, and Cosmetic Act (FDCA) (21 U.S.C. 346a(p)) and the Safe Drinking Water Act (42 U.S.C. 300j–17). Potentially affected entities may include, but are not limited to:

• Chemical manufacturers, importers and processors (NAICS code 325), *e.g.,* persons who manufacture, import, or process chemical substances.

• Pesticide, fertilizer, and other agricultural chemical manufacturers (NAICS code 3253), *e.g.,* persons who manufacture, import or process pesticide, fertilizer, and agricultural chemicals.

• Scientific research and development services (NAICS code 5417), *e.g.,* persons who conduct testing of chemical substances for endocrine effects.

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What action is the agency taking?

EPA is announcing the availability of a draft guidance document titled, "Weight-of-Evidence Guidance Document: Evaluating Results of EDSP Tier 1 Screening to Identify Candidate Chemicals for Tier 2 Testing." This document invites the public to review and comment on the guidance document, which is available electronically at regulations.gov (*http://www.regulations.gov*) using docket ID number EPA–HQ–OPPT–2010–0877 and the EDSP Web site *http://www.epa.gov/endo.*

This document was prepared to provide a transparent, scientific approach to set forth some general principles, criteria, and considerations EPA generally believes to be relevant using a WoE approach to evaluate data submitted as part of EPA's EDSP involving a battery of validated Tier 1 screening assays as described in a notice published in the **Federal Register** issue of October 21, 2009 (74 FR 54415) (FRL–8432–6). The criteria discussed in this document are based, in part, on EPA's experience in developing and applying risk assessment guidelines involving cancer, reproductive and developmental toxicity, and ecological toxicity. Important considerations include the use of expert judgment formed through the scientific process, current understanding of endocrine mechanisms of toxicity, and knowledge of other fields of toxicology (*e.g.,* developmental, reproductive, neurological and immunological toxicology, and toxicokinetics). Principles articulated in this document are equally applicable to a WoE evaluation of data from individual assays with multiple endpoints, as well as across the whole suite of assays in the EDSP Tier 1 screening battery. In addition, these principles would be generally applicable to the review of other scientifically relevant information (OSRI) submitted in response to test orders that request OSRI to be considered in lieu of designated screening assays in the Tier 1 battery.

In general, the EDSP is a two-tiered paradigm for screening and testing chemicals with the potential to interact with the endocrine system. Tier 1 screening consists of a battery of complementary *in vitro* and short term *in vivo* assays designed to maximize sensitivity for detecting interactions with the E, A, and/or T hormonal systems; whereas, Tier 2 testing consists of a group of individual *in vivo* tests designed to include males and females with an intact hypothalamic-pituitary-gonadal axis, multiple pathways of exposure and life-stages, and various taxa to further identify and characterize chemical-induced interactions with E, A, and/or T for risk assessment. The diversity in endocrine endpoints within and among the Tier 1 screening assays is expected to provide corroborating information and support a WoE evaluation to yield a decision as to whether or not the chemical indentified in Tier 1 requires additional testing in Tier 2.

B. What is the agency's authority for taking this action?

Section 408(p) of FFDCA requires EPA to "develop a screening program, using appropriate validated test systems and other scientifically relevant information, to determine whether certain substances may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect as [EPA] may designate." (21 U.S.C. 346a(p)). The statute generally requires EPA to "provide for the testing of all pesticide chemicals." (21 U.S.C. 346a(p)(3)). "Pesticide chemical" is defined as "any substance that is a pesticide within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), including all active and inert ingredients of such pesticide." (21 U.S.C. 321(q)(1)).

List of Subjects

Environmental protection, Endocrine disruptors, Screening assays, Weight-of-evidence.

Dated: October 27, 2010.

Stephen A. Owens,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2010–27897 Filed 11–3–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9220–9]

Announcement of Local Government Advisory Committee Members

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency announces that Administrator Lisa P. Jackson has appointed 29 local, State, and Tribal elected and appointed officials from across the country to serve on the EPA's Local Government Advisory Committee (LGAC). The Committee's purpose will be to give advice and recommendations on a broad range of environmental issues affecting local governments. These new appointments include:

Mayors (Large Cities)

Phil Gordon, Mayor, Phoenix, Arizona.

John W. Hickenlooper, Mayor, Denver, Colorado.

Mayors (Moderate Sized Cities)

Jennifer Hosterman, Mayor, Pleasanton, California.

Terry Bellamy, Mayor, Asheville, North Carolina.

Elizabeth Kautz, Mayor, Burnsville, Minnesota.

Teresa Coons, Mayor, Grand Junction, Colorado.

Dana L. Redd, Mayor, Camden, New Jersey.

Mayors (Small Cities and Towns)

Bob Dixson, Mayor, Greensburg, Kansas.

Marilyn Murrell, Mayor, Arcadia, Oklahoma.

Ronald K. Davis, Mayor, Prichard, Alabama.

Adam Ortiz, Mayor, Edmonston, Maryland.

Heather McTeer Hudson, Mayor, Greenville, Mississippi.

Carolyn Peterson, Mayor, Ithaca, New York.

Lisa A.Wong, Mayor, Fitchburg, Massachusetts.

David W. Smith, Mayor, Newark, California.

Tribal (Elected and Appointed)

Steve Ortiz, Chairman Prairie Band Potawatomi Nation, Kansas.

Aaron Miles, Manager at Nez Perce Tribe, Idaho.

Commonwealth

Evelyn Delereme Camacho, Mayor, Municipality of Vieques, Puerto Rico.

County Executive

Tom Hickner, County Executive, Bay County, Michigan.

County Commissioners

*Dave Somers, Councilor, Snohomish County, Washington.

Robert Cope, Commissioner, Lemhi County, Idaho.

Salud Carbajal, Supervisor, Santa Barbara County, California.

Conservation Districts

Jeffrey Tiberi, Director of Montana Association of Conservation Districts, Helena, Montana.

City Councilmember

Jill Duson, Councilor, Portland, Maine.

State Elected Officials

Mary Margaret Whipple, State Senator, Commonwealth of Virginia.

Chris Ross, State Representative 158th District, Harrisburg, Pennsylvania.

County Judge

Edward M. Emmett, Harris County Judge, Houston, Texas.

Appointed Officials

Dr. Hector Gonzalez, Director, Laredo, Texas Health Dept.

Susan Hann, Deputy City Manager, Palm Bay, Florida

(*Formerly served one term on LGAC).

If you desire further information go to: at *http://www.epa.gov/ocir/scas* or contact the Designated Federal Officer (DFO), *Eargle.Frances@epa.gov*.

Dated: October 29, 2010.

Frances Eargle,

Designated Federal Officer, Local Government Advisory Committee.

[FR Doc. 2010–27877 Filed 11–3–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9220–4]

Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Town of Taos, NM

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Regional Administrator of EPA Region 6 is hereby granting a project waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to the Town of Taos ("Taos") for the purchase of 40 lb/yd American Society of Civil Engineers (ASCE) crane railing, which is part of the overhead bridge crane, proposed for the expansion of its existing Wastewater Treatment Plant (WWTP). The 40 lb/yd ASCE crane railing is manufactured by companies located in foreign countries and no United States manufacturer produces an alternative that meets Taos' technical specifications. This is a project specific waiver and only applies to the use of the specified product for the ARRA funded project being proposed. Any other ARRA project that may wish to use the same product must apply for a separate waiver based on the specific project circumstances. The Regional Administrator is making this determination based on the review and recommendations of the EPA Region 6, Water Quality Protection Division. Taos has provided sufficient documentation to support its request.

The Assistant Administrator of the EPA's Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605 of ARRA. This action permits the purchase of 40 lb/yd ASCE crane railing not manufactured in America, for the proposed project being implemented by Taos.

DATES: *Effective Date:* October 18, 2010.

FOR FURTHER INFORMATION CONTACT: Nasim Jahan, Buy American Coordinator, (214) 665–7522, SRF & Projects Section, Water Quality Protection Division, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c), EPA hereby provides notice that it is granting a project waiver of the requirements of Section 1605(a) of Public Law 111–5, Buy American requirements, to Taos for the acquisition of 40 lb/yd ASCE crane railing that will be part of the overhead bridge crane for the WWTP.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States unless a waiver is provided to the recipient by EPA. A waiver may be provided if EPA determines that (1) applying these requirements would be inconsistent with public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

Taos' waiver request is to allow the purchase of a 40lb/yd ASCE crane railing that will be part of the overhead bridge crane for the WWTP in Taos, New Mexico. Taos has provided information to the EPA demonstrating that there is no 40 lb/yd ASCE crane railing manufactured in the United States in sufficient and reasonable quantity and of a satisfactory quality to meet the required technical specification. The United States stopped producing 40lb/yd rail at the turn of 20th Century due to increases in weight demand on railroads. The ASCE designed a load limit for railroad tracks that severely limited the quantity of rail less than 80 lb/yd being produced. Taos has also indicated that Steel of West Virginia is a steel mill that produces rails for the mining industry and this manufacturer's product does not meet ASCE standards and therefore cannot be used in this project.

Based on additional research conducted by EPA Region 6, there does not appear to be any domestic crane rail manufacturer that would meet Taos' technical specifications. EPA's national contractor prepared a technical assessment report based on the waiver request submittal. The report confirmed the waiver applicant's claim that there is no American-made 40 lb/yd crane railing available for the overhead bridge crane for use in the proposed WWTP.

EPA has determined that the City's waiver request may be treated as timely even though the request was made after the construction contract was signed. Consistent with the direction of the OMB Guidance at 2 CFR 176.120, EPA has evaluated the City's request to determine if the request constitutes a late request. EPA will generally regard waiver requests with respect to components that were specified in the bid solicitation or in a general/primary construction contract as "late" if submitted after the contract date. However, in this case EPA has determined that the City's request, though made after the contract date, may be treated as timely. This request is submitted after the contract date because the crane rail, according to the project specifications, must be designed by a qualified supplier. The supplier provided this information through contractor submittals. The need for a waiver was not determined until after the supplier of the overhead bridge crane confirmed that there was no domestically made 40 lb/yd crane railing available to meet the project specifications. Accordingly, EPA will evaluate the request as a timely request.

The April 28, 2009 EPA HQ Memorandum, Implementation of Buy American provisions of Public Law 111–5, the "American Recovery and Reinvestment Act of 2009", defines reasonably available quantity as "the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design." Taos has

incorporated specific technical design requirements for installation of crane rail at its WWTP. Therefore, it meets the requirements of the "satisfactory quality" criterion for requesting a waiver from the Buy American provisions of Public Law 111–5.

The purpose of the ARRA is to stimulate economic recovery in part by funding current infrastructure construction, not to delay projects that are "shovel ready" by requiring utilities, such as Taos, to revise their standards and specifications, institute a new bidding process, and potentially choose a more costly, less efficient project. The imposition of ARRA Buy American requirements on such projects otherwise eligible for State Revolving Fund assistance would result in unreasonable delay and thus displace the "shovel ready" status for this project. To further delay construction is in direct conflict with a fundamental economic purpose of the ARRA, which is to create or retain jobs.

The Region 6 Water Quality Protection Division has reviewed this waiver request, and has determined that the supporting documentation provided by Taos is sufficient to meet the criteria listed under ARRA, Section 1605(b), Office of Management and Budget (OMB) regulations at 2 CFR 176.60–176.170, and in the April 28, 2009 memorandum, "Implementation of Buy American provisions of Public Law 111–5, the American Recovery and Reinvestment Act of 2009. The basis for this project waiver is the authorization provided in ARRA, Section 1605(b) (2). Due to the lack of production of this product in the United States in sufficient and reasonably available quantities and of a satisfactory quality in order to meet Taos' technical specifications, a waiver from the Buy American requirement is justified.

EPA headquarters' March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients. Having established both a proper basis to specify the particular good required for this project, and that this manufactured good was not available from a producer in the United States, Taos is hereby granted a waiver from the Buy American requirements of ARRA, Section 1605(a) of Public Law 111–5 for the purchase of "40 lb/yd crane railing" using ARRA funds, as specified in Taos' request. This supplementary information constitutes the detailed written justification required by ARRA, Section 1605(c), for waivers "based on a finding under subsection (b)."

Authority: Pub. L. 111–5, section 1605.

Dated: October 18, 2010.

Al Armendariz,

Regional Administrator, U.S. Environmental Protection Agency, Region 6.

[FR Doc. 2010–27879 Filed 11–3–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9221–3]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("CAA" or the "Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree to address a lawsuit filed by WildEarth Guardians in the United States District Court for the District of Colorado: *WildEarth Guardians* v. *Jackson,* No. 10–cv–01218–REB–BNB (D. CO.). On May 26, 2010, Plaintiff filed a complaint alleging that EPA failed to perform a mandatory duty under section 110(k)(2) of the CAA, 42 U.S.C. 7410(k)(2) to take action on two State Implementation Plan ("SIP") submissions from the State of Utah with the time frame required. The proposed consent decree establishes deadlines for EPA to take action.

DATES: Written comments on the proposed consent decree must be received by December 6, 2010.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2010–0901, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Sara Laumann, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone:* (303) 312–6443; fax number (202) 564–5603; *e-mail address: laumann.sara@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

The proposed consent decree would resolve a lawsuit seeking to compel action by the Administrator to take final action under section 110(k) of the CAA on the Utah SIP submissions. The proposed consent decree requires EPA to sign for publication in the **Federal Register** no later than December 1, 2011, a final action in which it either approves in whole, approves in part and disapproves in part, or disapproves in whole, the State of Utah's request to re-designate Salt Lake and Utah Counties and Ogden City to attainment for the National Ambient Air Quality Standard ("NAAQS") for particulate matter having an aerodynamic diameter of a nominal 10 micrometers ("PM–10"), along with Utah's maintenance plan for Salt Lake and Utah Counties and Ogden City for the PM–10 NAAQS, that Utah submitted to EPA on September 2, 2005, and which EPA previously proposed to disapprove in whole on December 1, 2009.

The proposed consent decree also requires EPA to sign for publication in the **Federal Register** no later than April 30, 2012, a notice of proposed action in which it proposes either to approve in whole, approve in part and disapprove in part, or disapprove in whole, the State of Utah's Regional Haze SIP submission that Utah submitted to EPA on September 9, 2008. In addition, the proposed consent decree requires EPA to sign for publication in the **Federal Register** no later than October 31, 2012, a final action in which it either approves in whole, approves in part and disapproves in part, or disapproves in whole, the State of Utah's Regional Haze SIP submission that Utah submitted to EPA on September 9, 2008.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice

determines that consent to this consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree.

A. How can I get a copy of the consent decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2010–0901) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., 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 Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select "search".

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov,* your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: October 28, 2010.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. 2010–27884 Filed 11–3–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. EPA–RO4–SFUND–2010–0892, FRL–9220–5]

Arkwright Dump Site, Spartanburg, Spartanburg County, SC; Notice of Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of Settlement.

SUMMARY: Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement for reimbursement of past response costs concerning the Arkwright Dump Site located in Spartanburg, Spartanburg County, South Carolina for publication.

DATES: The Agency will consider public comments on the settlement until December 6, 2010. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from Ms. Paula V. Painter. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2010–0892 or Site name Arkwright Dump Site by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *http://www.epa.gov/region4/waste/sf/enforce.htm.*
- *E-mail. Painter.Paula@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887.

Dated: October 22, 2010.

Anita L. Davis,

Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. 2010–27882 Filed 11–3–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS10–9]

Appraisal Subcommittee Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of meeting.

Description: In accordance with Section 1104(b) of Title XI of the

Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in closed session:

Location: FDIC Building, 1776 F Street, NW., Room 4085, Washington, DC 20429.

Date: November 10, 2010.

Time: Immediately following the ASC open session beginning at 10:30 a.m.

Status: Closed.

Matters To Be Considered

October 13, 2010 minutes—Closed Session.

Preliminary discussion of State Compliance Reviews.

Dated: October 29, 2010.

Deborah S. Merkle,

Chairman.

[FR Doc. 2010–27909 Filed 11–3–10; 8:45 am]

BILLING CODE P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS10–8]

Appraisal Subcommittee Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of meeting.

Description: In accordance with Section 1104(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting:

Location: FDIC Building, 1776 F Street, NW., Room 4085, Washington, DC 20429.

Date: November 10, 2010.

Time: 10:30 a.m.

Status: Open.

Matters To Be Considered

Summary Agenda

October 13, 2010 minutes—Open Session.

(No substantive discussion of the above items is anticipated. These matters will be resolved with a single vote unless a member of the ASC requests that an item be moved to the discussion agenda.)

Discussion Agenda

Maryland Compliance Review Report and letter,

Massachusetts Compliance Review Report and letter,

Minnesota Compliance Review Report and letter.

How To Attend and Observe an ASC Meeting

E-mail your name, organization and contact information to *meetings@asc.gov.*

You may also send a written request via U.S. Mail, fax or commercial carrier to the Executive Director of the ASC, 1401 H Street, NW., Ste. 760, Washington, DC 20005. Your request must be received no later than 4:30 p.m., ET, on the Monday prior to the meeting. If that Monday is a Federal holiday, then your request must be received 4:30 p.m., ET, on the previous Friday. Attendees must have a valid government-issued photo ID and must agree to submit to reasonable security measures. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis.

Dated: October 29, 2010.

Deborah S. Merkle,

Chairman.

[FR Doc. 2010–27911 Filed 11–3–10; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

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 shares of 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 offices 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 November 19, 2010.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement), 101 Market Street, San Francisco, California 94105–1579:

1. *Henry Liebman, Gail Katz, and Sodo Builders,* all of Seattle, Washington, acting as a group in concert; to retain voting shares of Regal Financial Bancorp, Inc., and thereby indirectly retain voting shares of Regal Financial Bank, both of Seattle, Washington.

Board of Governors of the Federal Reserve System, November 1, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–27868 Filed 11–3–10; 8:45 am]

BILLING CODE 6210–01–P

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 application 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.

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 November 29, 2010.

A. **Federal Reserve Bank of Minneapolis** (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Bigfork Bancshares, Inc.,* Bigfork, Minnesota; to merge with Kelliher Bancshares Inc., and thereby indirectly acquire Citizens State Bank of Kelliher, both of Kelliher, Minnesota.

B. **Federal Reserve Bank of Dallas** (E. Ann Worthy, Vice President) 2200

North Pearl Street, Dallas, Texas 75201–2272:

1. *Veritex Holdings, Inc.,* Dallas, Texas; to acquire 100 percent of the voting shares of Fidelity Resources Company, and thereby indirectly acquire voting shares of Fidelity Bank, Plano, Texas.

2. *WCM Holdings, Inc., and WCM–Parkway, Ltd.,* both of Dallas, Texas; to acquire at least 5 percent of the voting shares of Veritex Holdings, Inc., and thereby indirectly acquire voting shares of Professional Bank, NA, both of Dallas, Texas.

C. **Federal Reserve Bank of San Francisco** (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *SKBHC Holdings, LLC, and SKBHC Hawks Nest Acquisition Corp.,* both of Corona del Mar, California; to acquire 100 percent of the voting shares of AmericanWest Bank, Spokane, Washington.

Board of Governors of the Federal Reserve System, November 1, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–27867 Filed 11–3–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL MARITIME COMMISSION

Notice of Inquiry; An Analysis of the European Union Repeal of the Liner Conference Block Exemption

AGENCY: Federal Maritime Commission.

ACTION: Notice of Inquiry.

SUMMARY: The Federal Maritime Commission ("FMC" or "Commission") is issuing this inquiry to solicit information and comments concerning the effects on international liner shipping of the European Union's ("E.U.") repeal of the liner block exemption from competition laws that took effect on October 18, 2008. This information will assist the Commission in its identification, analysis and evaluation of any consequences of the E.U.'s policy decision on U.S. trades, and will be incorporated into the Commission's research for *An Analysis of the E.U. Repeal of the Liner Conference Block Exemption* ("E.U. Study") which is scheduled to be completed in late 2011.

DATES: Responses are due on or before January 18, 2011.

ADDRESSES: Submit all comments concerning this Inquiry to: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1046, Washington, DC 20573–0001.

Or e-mail non-confidential comments to: *secretary@fmc.gov.* (e-mail comments as attachments in Microsoft Word)

FOR FURTHER INFORMATION CONTACT: Dr. Austin L. Schmitt, Director, Bureau of Trade Analysis, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, Telephone: (202) 523–5796, E-mail: *aschmitt@fmc.gov.*

SUPPLEMENTARY INFORMATION:

Submit Comments: Non-confidential filings may be submitted in hard copy or by e-mail as an attachment (Microsoft Word) addressed to *secretary@fmc.gov* on or before January 18, 2011. Include in the subject line: "FMC EU Study—Response to NOI". Responses to this inquiry that seek confidential treatment must be submitted in hard copy by U.S. mail or courier. Confidential filings must be accompanied by a transmittal letter that identifies the filing as "confidential," describes the nature and extent of the confidential treatment requested, and states the reason for the request (*e.g.,* commercially sensitive data). When submitting documents in response to the NOI that contain confidential information, the confidential copy of the filing must consist of the complete filing and be marked by the filer as "Confidential-Restricted," with the confidential material clearly marked on each page. When a confidential filing is submitted, an original and one additional copy of the public version of the filing must be submitted. The public version of the filing should exclude confidential materials, and be clearly marked on each affected page, "confidential materials excluded." Questions regarding filing or treatment of confidential responses to this inquiry should be directed to the Commission's Secretary, Karen V. Gregory, at the telephone number or e-mail provided above.

The Federal Maritime Commission is seeking information and comments from interested parties regarding the impacts of the E.U. repeal of the liner conference block exemption, Regulation (EEC) No. 4056/86,[1] on the performance of liner shipping in U.S. trades. The adoption by the European Union of Regulation 1419/2006 ("Repeal"), on September 25, 2006, removed the previous block exemption from E.U. competition laws as of October 18, 2008. Under European Commission Regulation No. 906/2009, liner shipping consortia with market shares up to 30% retain an exemption for certain activities.

Background

As the expert agency responsible for regulating liner shipping in U.S. trades, the Commission has an on-going responsibility to keep abreast of changes in foreign laws and regulations that may impact liner activities in U.S. trades. The Commission developed the E.U. Study as a means of meeting that responsibility, and of determining whether or not any impacts on U.S. trades that could be related to the E.U.'s Repeal warranted Commission action with respect to its existing regulations and oversight activities under the Shipping Act of 1984 as amended by the Ocean Shipping Reform Act of 1998.

In doing so, the Commission was cognizant of recommendations made by the National Industrial Transportation League ("NITL") to the Antitrust Modernization Commission ("AMC") in their October 18, 2006 comments. NITL told the AMC that, in light of the E.U.'s repeal of the liner conference block exemption, it would be appropriate for the United States government to undertake a review of the antitrust immunity granted under the Shipping Act. NITL stated, in particular, that such a review should include an analysis of the impact that the changes adopted in Europe will have on the shipment of goods in U.S. trades.[2]

On November 23, 2009, in a public address to several industry groups, FMC Chairman Richard A. Lidinsky, Jr. announced the Commission's intention to undertake a comprehensive study of the impact of the E.U.'s repeal of the liner block exemption on U.S. trades. He noted that the E.U. study would cover a five-year period, from January 2006 through December 2010, and that it would include an analysis of changes in liner market structure, competition, services offered, vessel capacity, rates and surcharges. He also advised that the Commission staff was consulting key industry and customer groups concerning the parameters of the study, the proposed research methods, and the possibility of future interviews with industry representatives. Chairman Lidinsky declared that the Commission intended to publish a Notice of Inquiry ("NOI") in late 2010, and stressed the importance he attached to participation by the shipper community in both the

[1] Regulation (EEC) No. 4056/86 included a block exemption from E.U. competition laws for liner shipping conferences, which allowed them, under certain conditions, to fix prices and regulate capacity.

[2] *See* Comments Submitted on Behalf of the National Industrial Transportation League, by Attorneys Nicholas J. DiMichael and Karyn A. Booth, Thompson Hine LLP, October 18, 2006, page 9.

E.U. Study in general and the proposed NOI in particular.

NOI Participation

The Commission's research efforts, under the E.U. Study, are intended to support a detailed analysis of the impact of the E.U. repeal on U.S. trades. The Commission is currently collecting, and will be evaluating data and other information on the three main East/West trades during the pre- and post-repeal periods. The E.U. Study analysis will involve comparing changes in the E.U./U.S. trade lane (North Europe/U.S.) [3] over time and, to the extent that useful comparative data is available, across two Asia-based trade lanes (Far East/U.S. and Far East/Europe). The NOI questions below—several of which solicit information by specific trade lane—are intended to help inform the Commission of the experiences and views of all industry sectors, groups and individuals willing to participate. It is anticipated that the comments provided could prove useful in the Commission's evaluation of the data it is currently collecting.

If participating respondents believe that there is a topic related to the issue of the impact of the E.U. repeal of the liner conference block exemption on U.S. liner trades that is not adequately addressed in the NOI questions, they are encouraged to identify and address that topic in their comments to the NOI.

To promote maximum participation by individual shippers, vessel-operating common carriers, ocean transportation intermediaries, public port authorities, marine terminal operators, etc., the NOI questions will be made available via the **Federal Register** and on the Commission's Web site at *http://www.fmc.gov* in a downloadable text file. They can also be obtained by contacting the Commission's Secretary, Karen V. Gregory, by telephone at (202) 523–5725 or by e-mail at *secretary@fmc.gov.* Please indicate whether you would prefer a hard copy or an e-mail copy of the NOI questions. Non-confidential comments may be sent to *secretary@fmc.gov* as an attachment to an e-mail submission. Such attachments must be in Microsoft Word.

The Commission intends that the E.U. Study be as thorough as possible, and therefore encourages prospective NOI participants to address all relevant questions with detailed comments. There is, however, no requirement that participants answer all the NOI questions. Participants, if they wish, are free to limit their responses to questions where they have direct experience or specific views. In addition, although many of the NOI questions are designed to elicit responses from a broad range of industry participants, the eight final questions are addressed specifically to vessel-operating common carriers.

The Commission anticipates that most filed NOI comments will be made publicly available. The Commission believes that public availability of NOI comments is to be encouraged because it could improve public awareness of the issues being addressed in the E.U. Study, and of the various perspectives of all interested parties. Nevertheless, some commenting parties may wish to include commercially sensitive information as relevant or necessary in their responses by way of explaining their liner shipping experiences or detailing their responses in practical terms. To help assure that all potential respondents will provide usefully detailed information in their submissions, the Commission will provide confidential treatment to the extent allowed by law for those submissions, or parts of submissions, for which the parties request confidentiality.

FMC E.U. Study Notice of Inquiry Questions

Identifying Information (Please provide the information requested below with your NOI response.)

Name of Respondent: (individual)
Respondent's Title/Position:
Contact Information: Telephone and E-mail
Name and Address of Company or Other Entity:
Type of Company or Other Entity:
- Beneficial Cargo Owner (BCO)
- Ocean Transportation Intermediary (OTI)
- Shippers' Association
- Vessel-Operating Ocean Carrier (VOCC)
- Public Port Authority
- Other, please describe (e.g., marine terminal operator, trade association, government agency, etc.)

Section A: General Questions

1. Based on your experience since September 2006 (when the European Union announced its decision to terminate the block exemption for liner shipping conferences to take effect October 2008), what impacts, if any, have you identified on your company's commercial activities, in any trade lane, that you would *attribute to the termination of the E.U. conference block exemption?* Please explain. If you believe there have been such impacts, please indicate when that impact first occurred.

2. Based on your experience *since* October 2008 (when the E.U. exemption for liner conferences was terminated) has any class of shipper or class of vessel-operating common carrier received a competitive advantage or been put at a competitive disadvantage as a result of the E.U. decision to terminate the exemption? If so, please explain.

3. Based on your experience *since* October 2008 (when the E.U. exemption for liner conferences was terminated), have differences between U.S. and E.U. liner shipping competition regulations created any problems for your company? If so, please explain.

4. Does your company view cooperation among ocean carriers in *operational agreements* (e.g., vessel sharing agreements, alliances, consortia, etc.) as generally having a positive, neutral or negative impact on the availability or cost of liner shipping services? Please explain. Does the E.U. market share threshold of 30% for such operational agreements have any effect with respect to that impact? If so, please explain.

Section B: Questions about the North Atlantic Trade (North Europe/U.S.)

5. Approximately what percent of your company's freight earnings (lines, OTIs) or shipping expenses (shippers) involves international shipping in the North Europe/U.S. trade? Does your company's business involve US imports (westbound service) only, U.S. exports (eastbound service) only, or both? Please explain briefly.

6. How, and to what extent, did the recent economic recession (2008–2009) affect your company's liner shipping-related business in the North Europe/U.S. trade? Please explain.

7. Based on your experience *prior* to July 2008, when the Trans-Atlantic Conference Agreement (TACA) disbanded, did the existence of TACA have any impact on your liner shipping-related business in the North Europe/U.S. trade? If so, please explain.

8. Based on your experience in the period from October 2008 to the present (i.e., since the E.U. block exemption was terminated), has there been any significant change(s) in liner services in the North Europe/U.S. trade *that you attribute to the E.U. terminating the*

[3] The Europe/U.S. trades are typically separated into two sub-groups: (1) The North Atlantic trade, and (2) the Mediterranean trade. There has been no conference in the U.S./Mediterranean trade since February 2006. Consequently there was no conference for almost all of the 5-year test period (January 2006–December 2010). Further, the U.S./Mediterranean trade involved a good deal of trans-shipment. For those reasons, the Bureau has decided to focus its U.S./Europe research on the North Atlantic trade.

block exemption? For example, changes in:

a. the level of freight rates and surcharges;

b. the frequency with which rates or surcharges are adjusted upward or downward (rate volatility);

c. the assessment of surcharges;

d. the level of competition among ocean carriers;

e. the service contracting practices or terms offered by ocean carriers;

f. the availability of vessel capacity and container equipment; or

g. the level or quality of liner services (including customer service, billing accuracy, etc.)

If so, please identify and explain those changes.

9. For CY 2010 to date, please estimate the percentage of your annual business (by volume) *in the North Europe/U.S. liner trade* that moved under (a) annual (or longer) service contracts, (b) shorter-term freight agreements, (c) spot rates, and (d) other (please specify). Has that changed significantly since October 2008? If so, please explain.

10. Following repeal of the E.U. block exemption, ocean carriers created a global information system under *Container Trade Statistics, Ltd.* (CTS) in which a majority of ocean carriers serving the North Europe/U.S. trade participate. CTS provides certain data free on its Web site, including indices of the carriers' aggregated average revenue per TEU by month. CTS also sells other data. To what extent, if at all, does your company access and use CTS Europe/U.S. trade data, and (if it does so) for what purpose(s)?

Section C: Questions about the Transpacific Trade (Far East/U.S.)

11. Approximately what percent of your company's freight earnings (lines, OTIs) or shipping expenses (shippers) involve international shipping in the Far East/U.S. trade? Does your company's business involve U.S. imports (eastbound service) only, U.S. exports (westbound service) only, or both? Please explain.

12. How, and to what extent, did the recent economic recession (2008–2009) affect your company's liner shipping-related business in the Far East/U.S. trade? Please explain.

13. Based on your experience from January 2006 to the present, have the activities of the Trans-Pacific Stabilization Agreement (TSA) or the Westbound Trans-Pacific Stabilization Agreement (WTSA) had any significant impact on your company's liner shipping-related business in the Far East/U.S. trades? If so, please explain.

14. Based on your experience in the period from October 2008 to the present, have there been any significant characteristics of liner services in Far East/U.S. trades that you attribute to actions taken by TSA or WTSA member lines acting collectively? For example:

a. the level of freight rates and surcharges;

b. the frequency with which rates or surcharges are adjusted upward or downward (rate volatility);

c. the assessment of surcharges;

d. the level of competition among ocean carriers;

e. the service contracting practices or terms offered by ocean carriers;

f. the availability of vessel capacity and container equipment; and

g. the level or quality of liner services (including customer service, billing accuracy, etc.)

If so, please identify and explain those characteristics.

15. For CY 2010 to date, please estimate the percentage of your annual business (by volume) in the Far East/U.S. liner trade that moves under (a) annual (or longer) service contracts, (b) shorter-term freight agreements, (c) spot rates, and (d) other (please specify)? Has that changed significantly since October 2008? If so, please explain.

Section D: Questions About the Europe—Asia Trade (Far East/Europe)

16. Approximately what percent of your company's freight earnings (lines, OTIs) or shipping expenses (shippers) involve international shipping in the Far East/Europe trade? Does your company's business involve European imports (westbound service) only, European exports (eastbound service) only, or both? Please explain briefly.

17. How, and to what extent, did the recent economic recession (2008–2009) affect your company's liner shipping-related business in the Far East/Europe trade? Please explain.

18. Based on your experience prior to October 2008 (i.e., before the Far East Freight Conference (FEFC) disbanded), did the existence of FEFC have any impact on your liner shipping-related business in the Far East/Europe trade? Please explain.

19. Based on your experience in the period from October 2008 to the present (i.e., since the E.U. block exemption was terminated), has there been any significant change(s) in liner services in the Far East/Europe trade that you attribute to the E.U.'s ending of the block exemption? For example, changes in:

a. the level of freight rates and surcharges;

b. the frequency with which rates or surcharges are adjusted upward or downward (rate volatility);

c. the assessment of surcharges;

d. the level of competition among ocean carriers;

e. the service contracting practices or terms offered by ocean carriers;

f. the availability of vessel capacity and container equipment: and

g. the level or quality of liner services (including customer service, billing accuracy, etc.)

If so, please identify and explain those changes.

20. For CY 2010 to date, please estimate the percentage of your annual business (by volume) in the Far East/Europe liner trade that moved under (a) annual (or longer) service contracts, (b) shorter-term freight agreements, (c) spot rates, and (d) other (please specify)? Has that changed significantly since October 2008? If so, please explain.

21. Following repeal of the E.U. block exemption, ocean carriers created a global information system under Container Trade Statistics, Ltd. (CTS), in which a majority of ocean carriers serving the Far East/Europe trade participate. CTS makes certain data free on its Web site, including indices of the carriers' aggregated average revenue per TEU by month. CTS also sells other data. To what extent, if at all, does your company access and use Far East/Europe trade data, and (if it does so) for what purpose(s)?

Section E: Comparisons Among Trades

22. Based on your experience since October 2008 (since the E.U. block exemption was terminated) are there differences in the characteristics of the Far East/U.S. trade versus the Far East/Europe or North Europe/U.S. trades that you attribute to differences between U.S. and European liner competition regulations? For example, differences in:

a. the level of freight rates and surcharges;

b. the frequency with which rates or surcharges are adjusted upward or downward (rate volatility);

c. the assessment of surcharges;

d. the level of competition among ocean carriers;

e. the service contracting practices or terms offered by ocean carriers;

f. the availability of vessel capacity and container equipment; and

g. the level or quality of liner services (including customer service, billing accuracy, etc.)

If so, please explain those differences.

23. Please identify any significant similarities and dissimilarities (for example, cargo volumes, scope or scale of operations, shipper mix, geography,

market concentration levels, contracting practices, legal requirements, etc.) that existed in liner shipping markets in the (1) Far East/U.S. trade and the (2) Far East/Europe trade during the period 2006–2010. In your opinion, how (if at all) would those similarities and dissimilarities likely impact a comparison of liner pricing and service behavior across those two trades?

Section F: Additional Questions for Vessel-Operating Common Carriers

FOR VOCCs ONLY:

24. Please estimate the percentage of your liner revenues (globally) that were earned in each of the following trade lanes during CY 2010 to date:

a. North Europe/U.S. liner trade ____%
b. Far East/U.S. liner trade ____%
c. Far East/Europe liner trade ____%
d. All other liner trades ____%
e. Total (all liner trades combined) 100%

If those percentages changed significantly during the 2006 through 2010 period, please describe and explain the change.

25. In each of the three major East-West trades, please estimate the percent of cargo your company carried for beneficial cargo owners (BCO) accounts, (b) OTI accounts, (c) other accounts (if any, please explain) during CY 2010 to date:

	BCO	OTI	Other
f. North Europe/U.S. liner trade	____%	____%	____%
g. Far East/U.S. liner trade	____%	____%	____%
h. Far East/Europe liner trade	____%	____%	____%

Has the relative ranking of shipper types in these trade lanes changed significantly during the 2006 through 2010 period? If so, please describe and explain the change.

26. In each of the three major East-West trade lanes, please indicate which lanes have tended to be the relatively *most* profitable and which was the relatively *least* profitable for each year between 2006 and 2010 (inclusive). [Write M for most, and L for least.]

	Far East/U.S.	Far East/Europe	North Europe/U.S.
a. 2006	_____	_____	_____
b. 2007	_____	_____	_____
c. 2008	_____	_____	_____
d. 2009	_____	_____	_____
e. 2010	_____	_____	_____

If those rankings changed significantly during the 2006 through 2010 period, please explain the reason(s) for the change.

27. Based on your experience during the period from January 2006 to the present, have there been any significant changes in the nature of your business in the North Europe/U.S. liner shipping market related to changes in:

a. Seasonality of cargo movements;
b. Commodity values;
c. Directional cargo imbalances (imports vs. exports);
d. Number of carriers serving the trade; or
e. Minimum scale (# and size of vessels) needed to serve the trade efficiently

If so, please identify and explain those changes.

28. Based on your company's experience in the North Europe/U.S. trade, please identify any substantial changes that occurred in your liner business (operations, marketing, pricing, etc.) in the two years following repeal of the E.U. liner conference exemption (CY 2009 and 2010) as compared with the two years preceding the repeal (2006–2007)? If any, please explain.

29. Based on your experience during the period from January 2006 to the present, have there been any significant changes in the nature of your business in the Far East/U.S. liner shipping market related to changes in:

a. Seasonality of cargo movements;
b. Commodity values;
c. Directional cargo imbalances (imports vs. exports);
d. Number of carriers serving the trade; or
e. Minimum scale (# and size of vessels) needed to serve the trade efficiently

If so, please identify and explain those changes.

30. Based on your experience during the period from January 2006 to the present, have there been any significant changes in the nature of your business in the Far East/E.U. liner shipping market related to changes in:

a. Seasonality of cargo movements;
b. Commodity values;
c. Directional cargo imbalances (imports vs. exports);
d. Number of carriers serving the trade; or
e. Minimum scale (# and size of vessels) needed to serve the trade efficiently

If so, please identify and explain those changes.

Now Therefore, it is ordered that Notice of this Inquiry be published in the **Federal Register**.

By the Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–27891 Filed 11–3–10; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

AAA Cargo, Inc. dba AAA Cargo Express Inc. (OFF), 14536 Roscoe Blvd., Suite 99 & 101, Panorama City, CA 91402. Officers: Jake J. Son, President, (Qualifying Individual), Belen Mercano,

Financial Officer, Application Type: New OFF License.

A & M Ocean Machinery, Inc. (OFF), 9725 Fontainebleau Blvd., #103, Miami, FL 33172. Officers: Alexandra Parra, Vice President/Secretary, (Qualifying Individual), Daniel Gelpi, President, Application Type: New OFF License.

Canei Group Corporation (NVO & OFF), 1602 Adams Street, Hollywood, FL 33020. Officers: Graziella M. Lobato, Director, (Qualifying Individual), Daniel D. Ferraz, Director, Application Type: New NVO & OFF License.

Cargocare Logistics USA Inc. (NVO), 4501 Baldwin Avenue, El Monte, CA 91731. Officers: Lam (Sue) S. Lao, Director/Secretary/Treasurer/CFO, (Qualifying Individual), Joy V. Pareckattil, President/Director, Application Type: New NVO License.

CJC Logistics Limited Liability Company dba CJC Container Line (NVO & OFF), 186 Alps Road, Wayne, NJ 07470. Officers: Oliver Rosca, President, (Qualifying Individual), Maria L. Rosca, CFO, Application Type: Trade Name Change.

Dandino, Inc. dba Danielli & Winston (NVO & OFF), 626 E. 62nd Street, Los Angeles, CA 90001. Officers: Carlos Gonzales, Vice President, (Qualifying Individual), Yaniv Daniel, President, Application Type: New NVO & OFF License.

Ever Best Logistics USA Inc. (OFF), 135–18 37th Avenue, Flushing, NY 11354. Officers: QiJie Sun, Operation Officer, (Qualifying Individual), Andy Wang, President/Secretary/Treasurer, Application Type: New OFF License.

General Noli USA Inc. dba General Freight (NVO & OFF), 148–08 Guy R. Brewer Blvd., 2nd Floor, Jamaica, NY 11434. Officers: Wei Hu, Vice President, (Qualifying Individual), Gianluca Pirrotta, President, Application Type: QI Change.

GRIP Inc. (OFF), 2328 Throckmorton Street, Dallas, TX 75219. Officers: Ryan M. Keintz, President, (Qualifying Individual), David Braginsky, Board Member/Technology Lead, Application Type: New OFF License.

Heat Logistics Inc. (NVO & OFF), 428 Promos Avenue, Folcroft, PA 19032. Officers: Kenneth Cloud, Vice President, (Qualifying Individual), Michael Gerace, President, Application Type: New NVO & OFF License.

Hermes International Movers Corp. (NVO & OFF), 2383 31st Street, Astoria, NY 11105. Officers: Ioannis Ladis, Vice President, (Qualifying Individual), Antonia Ladis, Secretary, Application Type: QI Change.

International Shipping Lines Incorporated (NVO), 2 Thorncliffe Park Drive, Unit #28, Toronto, ON Canada. Officer: Kamran Shaikh, Operations Manager/Director, Application Type: New NVO License.

Leschaco, Inc. (NVO & OFF), One Evertrust Plaza, Suite 304, Jersey City, NJ 07302. Officers: Michael G. Lovis, President/CEO, (Qualifying Individual), Joerg C. Conrad, Director, Application Type: QI Change.

RDD Freight International (Atlanta), Inc. (NVO & OFF), 510 Plaza Drive, Suite 1880, Atlanta, GA 30349. Officers: Bill Lou, President, (Qualifying Individual), Yiwen Hu, Treasurer, Application Type: New NVO & OFF License.

Summit Logistics International, Inc. (NVO & OFF), 800 Federal Blvd., Carteret, NJ 07008. Officers: Myles O'Brien, CEO, (Qualifying Individual), Robert Agresti, CFO/Treasurer, Application Type: Add OFF Service.

Dated: October 29, 2010.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–27837 Filed 11–3–10; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
002213NF	Staudt International Services Corp., 1028 E. 14th Street, Los Angeles, CA 90021	September 16, 2010.
018309N	Gunter Shipping, Inc., 1565 Bergen Street, Brooklyn, NY 11213	September 17, 2010.
020934N	D.L. International Logistics Inc., 2020 NW. 129th Avenue, #208, Miami, FL 33182	August 23, 2010.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2010–27839 Filed 11–3–10; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 1393N.

Name: McLean Cargo Specialists, Incorporated dba Texas Overseas Shipping.

Address: 16680 Central Green Blvd, Houston, TX 77032.

Date Revoked: September 23, 2010.

Reason: Failed to maintain a valid surety bond.

License Number: 15242N.

Name: United Freight Consolidators, Inc. dba United Freight Lines.

Address: 8365 NW. 66th Street, Miami, FL 33136.

Date Revoked: October 14, 2010.

Reason: Failed to maintain a valid surety bond.

License Number: 016300NF.

Name: Rical Air Express, Inc. dba Rical Logistics.

Address: One Cross Island Plaza, Suite 227, Rosedale, NY 11422.

Date Revoked: October 15, 2010.

Reason: Failed to maintain valid surety bonds.

License Number: 16849NF.

Name: Foreign Cargo Management Corp.

Address: 1764 Quarter Street, West Babylon, NY 11704.

Date Revoked: October 18, 2010.

Reason: Failed to maintain valid surety bonds.

License Number: 18561N.

Name: One World Logistics LLC.

Address: 381 Blair Road, Avenel, NJ 07001.

Date Revoked: October 21, 2010.

Reason: Failed to maintain a valid surety bond.

License Number: 019237N.

Name: AERO DOC, Inc.

Address: 1790 NW. 82nd Avenue, Miami, FL 33126.

Date Revoked: October 17, 2010.

Reason: Failed to maintain a valid surety bond.

License Number: 019779N.
Name: Francisca Envios Inc.
Address: 1749 NW. 21st Terrace, Miami, Fl 33142.
Date Revoked: October 16, 2010.
Reason: Failed to maintain a valid surety bond.

License Number: 019871N.
Name: WLG (USA) LLC Dba Kay O'Neill (USA) LLC Dba WLG Line.
Address: 920 East Algonquin Road, Suite 120, Schaumburg, IL 60173.
Date Revoked: October 22, 2010.
Reason: Failed to maintain a valid surety bond.

License Number: 020178N.
Name: LCL Shipping USA, Inc. Dba Cargo Planet Logistics.
Address: 15117 South Broadway Street, Gardena, CA 090248.
Date Revoked: October 15, 2010.
Reason: Failed to maintain a valid surety bond.

License Number: 020208F.
Name: Ghanem Forwarding, LLC.
Address: 3327 Hollins Ferry Road, Halethorpe, MD 21227.
Date Revoked: October 20, 2010.
Reason: Failed to maintain a valid surety bond.

License Number: 020253NF.
Name: Concord International Transport, Inc.
Address: 10100 NW. 116th Way, Suite 14, Medley, FL 33178.
Date Revoked: October 22, 2010.
Reason: Failed to maintain valid surety bonds.

License Number: 020660F.
Name: GAL International Inc.
Address: 5070 Parkside Avenue, Suite 3104, Philadelphia, PA 19131.
Date Revoked: October 17, 2010.
Reason: Failed to maintain a valid surety bond.

License Number: 020675N.
Name: Service Galopando Corp.
Address: 3190 South State Road 7, Bay 5, Miramar, FL 33023.
Date Revoked: October 23, 2010.
Reason: Failed to maintain a valid surety bond.

License Number: 021466F.
Name: FJ Logistics Services, LLC.
Address: 1307 West Sixth Street, Corona, CA 92882.
Date Revoked: October 23, 2010.
Reason: Failed to maintain a valid surety bond.

License Number: 022152N
Name: Alpha Global Cargo Inc.
Address: 9990 NW. 14th Street, Suite 110, Miami, FL 33172.
Date Revoked: October 4, 2010.
Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,
Director, Bureau of Certification and Licensing.

[FR Doc. 2010–27840 Filed 11–3–10; 8:45 am]
BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–0243; 30-Day Notice]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

Proposed Project: The Civil Rights Information Request Form—OMB No. 0990–0243—Reinstatement without Change—Office for Civil Rights (OCR).

Abstract: The Office of Civil Rights (OCR) is requesting a 3-year extension of the Civil Rights Information Request Form. The Civil Rights Information Request Form is designed to collect data from health care providers who have requested certification to participate in the Medicare Part A program. As part of the Medicare certification process, health care facilities must receive a civil rights clearance from the OCR. The information is used to determine compliance with civil rights statutes and regulations. The civil rights information is requested only when a health care provider applies for Medicare Part A certification; it is *not* necessary on a regular yearly basis. Entities that are affected by the Civil Rights Information Request Form are: Health care providers applying for Medicare certification, and individuals who, as a result of civil rights clearances, should be granted equal access to quality health care, regardless of race, color, national origin, disability, and age.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden (in hours) per response	Total burden hours
Medicare Certification	Health care providers	2,900	1	8	23,200

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2010–27838 Filed 11–3–10; 8:45 am]

BILLING CODE 4153–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–NEW; 30-Day Notice]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

Proposed Project: Communities Putting Prevention to Work Cost Study Instrument—OMB No. 0990–NEW—Office of the Assistant Secretary for Planning and Evaluation (ASPE).

Abstract: The American Recovery and Reinvestment Act of 2009 was signed into law on February 17, 2009, Public Law 11.5 ("Recovery Act"). Communities Putting Prevention to Work (CPPW) is a $650 million program funded by the Recovery Act. The purpose of the proposed data collection is to collect quarterly cost information from all community-level CPPW awardees. This will allow HHS to receive reports on direct awardee costs associated with carrying out the selected evidence-based strategies that are required by the Funding Opportunity Announcement (FOA) and Notice of Grant Award (NGA). This requirement is in addition to the financial reporting requirements of Section 512 of the Recovery Act, set forth by the Office of Management and Budget (OMB) under the data collection instrument titled "Standard Data Elements for Reports under Section 1512 of the American Recovery and Reinvestment Act of 2009, Public Law 111–5 (Grants, Cooperative Agreements, and Loans)."

The CPPW objective-based cost data submitted by the 51 respondents will provide the basis for HHS to assess the costs of the various program strategies, identify factors that impact average cost, and perform cost-effectiveness analysis of the program. Performing an assessment of the resources expended on each CPPW interventions will provide valuable information to HHS and other agencies within the Department for improving program efficiency within the various strategies of the program. There are no costs to respondents except their time to participate in the survey.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
CPPW Cost Study Instrument	CPPW Awardees	51	4	11	2,244

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2010–27842 Filed 11–3–10; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Adoption and Foster Care Analysis Reporting System for title IV–B and title IV–E (AFCARS).

OMB No.: 0980–0267.

Description: Section 479 of title IV–E of the Social Security Act (the Act) directs States to establish and implement an adoption and foster care reporting system. Federal regulations at 45 CFR 1355.40 sets forth the requirements of section 479 of the Social Security Act for the collection of uniform, reliable information on children who are under the responsibility of the State title IV–B/IV–E agency for placement, care, and adoption. The respondents are child welfare agencies in the 50 States, the District of Columbia, and Puerto Rico.

The data collected will inform State/Federal policy decisions, program management, and responses to Congressional and Departmental inquiries. Specifically, the data are used for short/long-term budget projections, trend analysis, child and family service reviews, and to target areas for improved technical assistance. The data will provide information about foster care placements, adoptive parents, length of time in care, delays in termination of parental rights and placement for adoption.

Respondents: State Child Welfare Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
AFCARS	52	2	2,581	268,424
Estimated Total Annual Burden Hours				268,424

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: October 29, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–27836 Filed 11–3–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Developmental Disabilities Program Independent Evaluation Project.

OMB No.: 0970–0372.

Description: The National Independent Study of the State Developmental Disabilities Programs (National Study) is an independent (non-biased) study to examine through rigorous and comprehensive research procedures the three programs funded under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act): (1) State Councils on Developmental Disabilities (SCDDs); (2) State Protection and Advocacy Systems for Individuals with developmental disabilities (P&As); and (3) University Centers for Excellence in Developmental Disabilities (UCEDDs). The purpose of the study is to assess program effectiveness and achievements, including collaborative efforts among these State developmental disabilities (DD) network programs. A component of the study will be an examination of the Administration on Developmental Disabilities' efficiency and effectiveness to support these DD Network programs. The results of this evaluation will provide a report to the Administration on Developmental Disabilities (ADD) (the agency that administers these programs) with information on the effectiveness of its programs and policies and serve as a way for ADD to promote accountability to the public.

The independent study is a response to accountability requirements for ADD as identified in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act), the Government Performance and Results Act (GPRA) of 1993, and the Program Assessment Rating Tool (PART), previously administered by the Office of Management and Budget (OMB).

ADD has OMB approval for all the evaluation tools (*e.g.,* data collection instruments) for this study, except a new one being proposed. The new evaluation tool would be an on-line survey tool designed to collect data for an assessment of ADD.

Respondents: For the ADD assessment survey being added, the respondents would be Staff of State Councils on Developmental Disabilities, State Protection and Advocacy Systems for Individuals with developmental disabilities, and University Centers for Excellence in Developmental Disabilities, Education, Research, and Service

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ADD Assessment Survey	60	1	1	60
DD Council Estimate of Total Burden Hours for Activities to Support Administration of Proposed Information Collection Instruments	20	1	33.50	670
P&A Estimate of Total Burden Hours for Activities to Support Administration of Proposed Information Collection Instruments	20	1	33.50	670
UCEDD Estimate of Total Burden Hours for Activities to Support Administration of Proposed Information Collection Instruments	20	1	33.50	670
DD Council: Executive Director Interview	20	1	4	80
DD Council: Interview with Council Chair/Council Members	60	1	0.75	45
DD Council: Group Interview with Policymakers, Collaborators, and Grantees	160	1	2	320
UCEDD: Telephone Interview with Current and Graduated Students	100	1	0.75	75
UCEDD: Interview with the Consumer Advisory Committee	60	1	0.75	45

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
UCEDD: Interview with Peer Researchers and Colleagues	100	1	0.75	75
UCEDD: Interview with Recipients of Community Services or Members of Organizations/Agencies that are Trained to Provide Community Services	100	1	0.75	75
UCEDD: Self-administered Form	20	1	8	160
P&A: Executive Director Interview	20	1	4	80
P&A: Staff Interview	60	1	0.75	45
P&A: Board of Directors (Commissioners)-Chair and Members	60	1	0.75	45
P&A: Group Interview with Policymakers and Collaborators	160	1	2	320
P&A: Interview with Recipient of Community Education	100	1	0.75	75
P&A: Interview with Clients	100	1	0.75	75
P&A: Self-administered Form	20	1	8	160
UCEDD: Interview with Director	20	1	4	80
DD Council: Group Interview with Recipients of Self-Advocacy and Leadership Education and Training	100	1	0.75	75
DD Council: Group Interview with Recipients of Education and Training to Improve Community Capacity	100	1	0.75	75
DD Council: Self-administered Form	20	1	8	160
Estimated Total Annual Burden Hours:				4,135

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202–395–7285, *E-mail: OIRA_SUBMISSION @OMB.EOP.GOV.*, *Attn:* Desk Officer for the Administration for Children and Families.

Dated: November 1, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–27855 Filed 11–3–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0564]

Agency Information Collection Activities; Proposed Collection; Comment Request; Restaurant Menu Labeling: Registration for Small Chains Under Section 4205 of the Patient Protection and Affordable Care Act of 2010

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of FDA's program of voluntary registration under the Patient Protection and Affordable Care Act of 2010 (Affordable Care Act).

DATES: Submit either electronic or written comments on the collection of information by January 3, 2011.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION:

I. Background

Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether

the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Restaurant Menu Labeling: Registration for Small Chains Under Section 4205 of the Patient Protection and Affordable Care Act of 2010—(OMB Control Number 0910–0664)—Extension

On March 23, 2010, the President signed into law the Affordable Care Act (Pub. L. 111–148). Section 4205 of the legislation, which principally amends sections 403 (21 U.S.C. 343) and 403A (21 U.S.C. 343–1) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act), requires chain restaurants and similar retail food establishments (SRFE) with 20 or more locations, as well as operators of 20 or more vending machines, to disclose certain nutrition information on certain food items offered for sale so that consumers can make more informed choices about the food they purchase. Section 4205 preempts State and local governments from establishing menu labeling requirements in restaurants and calorie declarations for food in vending machines that are not "identical to" the section 4205 requirements.

In addition to restaurant menu and vending machine labeling, section 4205 of the Affordable Care Act provides that persons or firms not subject to the disclosure of nutrition information required by this legislation, such as restaurants with fewer than 20 locations or vending machine operators with fewer than 20 vending machines, may elect to be subject to the requirements provided in section 4205 by registering biannually with FDA. As required by section 4205, FDA published a notice in the **Federal Register** of July 23, 2010 (75 FR 43182) (the July 23, 2010, notice) to explain how retail food establishments and vending machine operators not otherwise subject to the provisions of section 4205 may voluntarily elect to become subject to them. The information collection requirements of FDA's program of voluntary registration under section 4205 of the Affordable Care Act were approved under the emergency processing provisions of the PRA and assigned OMB control number 0910–0664.

Voluntary registration allows companies with outlets or machines regulated by local or State calorie labeling requirements to opt instead for the requirements of section 4205 of the Affordable Care Act. The information provided to FDA will help Federal, State or local officials to determine which jurisdiction's requirements apply to the firm.

Description of Respondents: Respondents to this collection of information include retail food establishments and vending machine operators with fewer than 20 outlets or machines.

FDA's July 23, 2010, notice requires that retail food establishments and vending machine operators register with FDA using the Agency's Form FDA 3757 available at *http://www.fda.gov/menulabeling.* FDA prefers that the information be submitted by e-mail by typing complete information into the form (PDF), saving it on the registrant's computer, and sending it by e-mail to *http://menulawregistration@fda.hhs.gov.* If e-mail is not available, the registrant can either fill in the form (PDF) and print it out (or print out the blank PDF and fill in the information by hand or typewriter), and send it to FDA either by faxing the completed form to 301–436–2804 or mailing it to the Center for Food Safety and Applied Nutrition, Compliance Information Branch (HFS–681), 5600 Fishers Lane, Rockville, MD 20857.

Information FDA requires on the registration form for restaurants and similar retail food establishments includes the following:

- The name, address, phone number, e-mail address, and contact information for the authorized official;
- The name, address, and e-mail address of each restaurant or similar retail food establishment being registered, as well as the name and contact information for an official onsite, such as the owner or manager, for each specific restaurant or similar retail food establishment;
- All trade names the restaurant or similar retail food establishment uses;
- Preferred mailing address (if different from location address for each establishment) for purposes of receiving correspondence; and
- Certification that the information submitted is true and accurate, that the person or firm submitting it is authorized to do so, and that each registered restaurant or similar retail food establishment will be subject to the requirements of section 4205.

Information FDA requires on the registration form for vending machine operators includes the following:

- The name, address, phone number, e-mail address, and contact information for the vending machine operator;
- The address of each vending machine owned or operated by the vending machine operator, and the name and contact information, including e-mail address, of the location in which each vending machine is located;
- Preferred mailing address (if different from location address), for purposes of receiving correspondence; and
- Certification that the information submitted is true and accurate, that the person or firm submitting it is authorized to do so, and that each registered restaurant or similar retail food establishment will be subject to the requirements of section 4205 of the Affordable Care Act.

In addition to the initial registration, the authorized official must register every other year with FDA, and the registration will automatically expire if not renewed.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Type of respondent	Number of respondents	Annual frequency per response	Total annual responses	Hours per response (average)	Total hours
Restaurant initial	103	1	103	2	206
Grocery initial	167	1	167	2	334
C-store initial	11	1	11	2	22
Other SRFE initial	81	1	81	2	162

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

Type of respondent	Number of respondents	Annual frequency per response	Total annual responses	Hours per response (average)	Total hours
Total initial hours					724
New registrations	7	1	7	1	7
Re-registrations	355	1	355	0.25	89
Total recurring hours					96

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates the reporting burden of this information collection to be 724 hours in the first year and 96 hours each year thereafter. The registration burden will be an ongoing, semiannual reporting of firm contact and location information to FDA. FDA bases its per respondent burden on the PRA analysis for section 415 of the FD&C Act (21 U.S.C. 350d) as laid out for the proposed rule entitled "Registration of Food Facilities Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002" (68 FR 5378, February 3, 2003) (Ref. 1). FDA estimates that the initial collection of the information, and presentation of it in a format that will meet the Agency's registration regulations, will require a burden of approximately 2 hours per registration for the first year because the registration system will not be fully automated.

FDA estimates that renewal registrations after the first year will require substantially less time because firms are expected to be able to affirm or edit the existing information in an online account in a way similar to other FDA firm registration systems. Therefore, FDA estimates that re-registration will take 0.25 hours for each registrant. Because there will be entry and exit from this set of firms, there will also be new registrations once the system is fully operational. FDA estimates that initial registration under the fully operational system will take 1 hour.

The pool of potential registrants will be restaurants and SRFEs with outlets in jurisdictions that have their own menu labeling regulations and that are not explicitly regulated under section 4205 of the Affordable Care Act. Of the existing State and local regulations, the minimum number of outlets for which any of them currently apply is 15, and section 4205 applies explicitly to firms with 20 or more outlets. Therefore, only firms with between 15 and 19 outlets, inclusive, have any explicit incentive to register. However, chains with fewer outlets may choose to register, either because they are growing quickly, or because they are concerned about possible regulation, therefore, for the purposes of this analysis we include chains with between 10 and 19 outlets, inclusive. The primary source of potential registrants will be restaurant and specialty food chains, but there are significant numbers of convenience stores and grocery stores that prepare food onsite and have a partial function as a take-away, or quick-service, restaurant. In addition, small chains of similar retail food establishments that operate in retail, hotel, corporate, educational, military or entertainment settings may want to register.

Because the statute preempts State and local regulations on vending machine labeling, no vending machine operators will have an incentive to register. Therefore, FDA estimates that zero vending machine operators will register with FDA under section 4205 of the Affordable Care Act.

According to The NPD Group's Spring 2010 ReCount report, there were 579,416 sole purpose eating and drinking establishments in the United States in the winter of 2010 (Ref. 2). Of these, 40 percent will be explicitly subject to FDA rulemaking for the Affordable Care Act because they are part of chains with 20 or more outlets (Ref. 2). Of the remaining 350,000 outlets, only those that would be subject to local or State rules concerning menu labeling would have any incentive to register. Approximately 7.5 percent of restaurant outlets are in States or localities with currently operational menu labeling regulation, principally New York City, Oregon, Philadelphia, and some New York State counties (Ref. 3). NPD's Spring 2010 *ReCount* report shows a total of 20,000 outlets are part of chains with between 10 and 19 establishments. If outlets are evenly distributed geographically, then 1,500 outlets and 103 restaurant firms may have an incentive to register with FDA. The hourly burden for restaurant chains is 206 hours (= 100 chains × 1 responses/chain/year × 2 hours/response).

From the U.S. Census County Business Patterns data, FDA estimates that there are approximately 62,000 grocery stores in 2010. Of these, approximately 6,500 are "independents" which means that they are part of chains with fewer than 11 outlets (Ref. 4), and 35,000 are known to belong to chains with more than 20 outlets (Ref. 5). We round the remaining 20,523 outlets up to 21,000 to account for those outlets in chains with 10 or 11 establishments. County Business Patterns show that 11.5 percent of all grocery stores are in jurisdictions that have relevant menu labeling regulations. Taking 11.5 percent of 21,000 yields approximately 2,400 stores run by 167 firms. The hourly burden for grocery chains is 334 hours (= 167 chains × 1 responses/chain/year × 2 hours/response).

According to Stagnito Media, there are 144,000 convenience store outlets in the United States (Ref. 6). Of these, 64,000 are defined as very small "mom and pop" locations. Approximately 60,000 outlets are controlled by 1 of the top 100 chains, each having at least 65 outlets (Ref. 7). Of the remaining 20,000, FDA estimates that half fall in the 10 to 19 outlet range. From County Business Patterns (Ref. 3), 1.6 percent of all convenience store outlets are in a jurisdiction with a local or State menu labeling regulation that does not explicitly exempt convenience stores. FDA estimates that approximately 160 convenience store outlets from 11 firms may have an incentive to register under this notice. The hourly burden for convenience store chains is 22 hours (= 11 chains × 1 responses/chain/year × 2 hours/response).

Additional covered establishments, such as those in operating in lodging, corporate, entertainment, and educational settings are often provided by very large firms with many hundreds or thousands of outlets, and will thus be explicitly covered by section 4205 of the Affordable Care Act rather than by the registration provisions. FDA estimates that an additional 81 firms, controlling approximately 1,200 outlets may have an incentive to register. The hourly

burden for these additional chains is 162 hours (= 81 chains × 1 responses/chain/year × 2 hours/response).

If all of these restaurant and similar retail food establishment chains choose to register with FDA, then FDA estimates the number of firms registering in the first year would be approximately 362 firms. At two hours per registration, the total initial hourly burden will then be 724 hours (= 362 firms × 2 hours/firm).

FDA estimates that the rate of growth for chains entering the 10 to 19 outlet segment will match the rate of growth out of this segment, so that the number of registrants will remain constant. County Business Patterns data shows an average growth rate in the number of establishments to be 2 percent per year over the 8 years from 1999 to 2007 for restaurants (Ref. 3). If the restaurant growth rate for outlets of approximately 2 percent per year applies to these chains, then new registrants will amount to approximately 7 per year, with the remaining 355 registrants only renewing their registration. The yearly burden for registration is estimated to be 1 hour per new registrant. Thus, the total hour burden will be 7 hours (7 firms × 1 hour/firm). The yearly burden for renewing registration is estimated to be 0.25 hour per continuing registrant. Thus, the total hour burden will be 89 hours (355 firms × 0.25 hour/firm = 88.75, rounded to 89). This yields a recurring hourly burden of 96 hours per year (7 hours + 89 hours).

II. References

The following references have been placed on display in the Division of Dockets Management (*see* **ADDRESSES**), and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register.**)

1. Food and Drug Administration, "Registration of Food Facilities Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002," 68 FR 5378, February 3, 2003.

2. The NPD Group, "Chains System Size Trend Report for U.S. FDA," *ReCount,* Spring 2010.

3. U.S. Census Bureau, 2007, County Business Patterns, *http://www.census.gov/econ/cbp/index.html,* 2007, version date September 22, 2009.

4. Moran, M., J. McTaggart, and D. Chanil, "Looking Up, Cautiously," *Progressive Grocer* 89(3): 20–52, 2010.

5. Food Marketing Institute, Top U.S. Supermarket & Grocery Chains (by 2007 grocery sales), *http://www.fmi.org,* 2008.

6. Stagnito Media, "Directory of Convenience Stores: FAQ," *http://www.conveniencestores.com/faq.html,* accessed June 1, 2010.

7. Longo, D. "Convenience Store News: Hot Top 100," *Convenience Store News,* 45(10), pp. 27–32, August 10, 2009.

Dated: October 29, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–27854 Filed 11–3–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0543]

Agency Information Collection Activities; Proposed Collection; Comment Request; Importer's Entry Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the revision of an approved Office of Management and Budget (OMB) collection of information for FDA's Importer's Entry Notice. This revision reflects additional burden recognized as a result of including tobacco products to the list of FDA-regulated products under the Family Smoking Prevention and Tobacco Control Act (the Tobacco Control Act).

DATES: Submit either electronic or written comments on the collection of information by January 3, 2011.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3794, *Jonnalynn.Capezutto@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Information Request Regarding Importer's Entry Notice—(OMB Control Number 0910–0046)—Revision

On June 22, 2009, the President signed the Tobacco Control Act (Pub. L. 111–31) into law. The Tobacco Control Act amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) by adding a new chapter granting FDA important new authority to regulate the manufacture, marketing, and distribution of tobacco products to

protect the public health generally and to reduce tobacco use by minors.

Section 801 of the FD&C Act, as amended by the Tobacco Control Act, charges the Secretary of Health and Human Services (HHS), through the FDA, with the responsibility of assuring foreign origin FDA regulated foods, drugs, cosmetics, medical devices, radiological health, and tobacco products offered for import into the United States meet the same requirements of the FD&C Act as do domestic products, and for preventing products from entering the country if they are not in compliance. The discharge of this responsibility involves close coordination and cooperation between FDA (headquarters and field inspectional personnel) and the U.S. Customs Service (USCS), as the USCS is responsible for enforcing the revenue laws covering the very same products.

This collection of information was approved by OMB on August 10, 2009, and received an expiration date of August 31, 2012 (ICR Reference Number 200905–0910–006). However, because tobacco products had only recently been added to FDA's listing of regulated products when this collection of information was approved, the approved collection did not reflect information regarding tobacco products offered for import into and for prevention from them from entering the United States if they did not meet the same requirements of the Act as domestic products. The revision to this collection of information expands the universe of respondents being regulated under the FD&C Act, as amended, to include importers of tobacco products.

In the most recent OMB approval of this information collection package, FDA noted that in order to make an admissibility decision for each entry, the Agency needed four additional pieces of information that were not available from USCS's system. These data elements were the FDA Product Code, FDA country of production, manufacturer/shipper, and ultimate consignee. It was the "automated" collection of these four data elements for which OMB approval was being requested. When this package was sent to OMB for approval, FDA construed this request as an extension of the prior approval of collection of this data via a different media, *i.e.,* paper. FDA noted that there were additional data elements which filers could provide to FDA along with other entry-related information. Doing so could result in their receiving an FDA admissibility decision more expeditiously, *e.g.,* the quantity, value, and Affirmation(s) of Compliance with Qualifier(s).

At each U.S. port of entry (seaport, landport, and airport) where foreign-origin FDA-regulated products are offered for import, FDA is notified, through Custom's Automated Commercial System (ACS) by the importer (or his agent) of the arrival of each entry. Following such notification, FDA reviews relevant data to ensure the imported product meets the standards as are required for domestic products, makes an admissibility decision, and informs the importer and USCS of its decision. A single entry frequently contains multiple lines of different products. FDA may authorize products listed on specific lines to enter the United States unimpeded, while other products in the same entry are to be held pending further FDA review/action.

An important feature developed and programmed into FDA's automated system is that all entry data passes through a screening criteria module, which makes the initial screening decision on every entry of foreign-origin FDA-regulated product. Almost instantaneously after the entry is filed, the filer receives FDA's admissibility decision covering each entry line, *i.e.,* "May Proceed" or "FDA Review."

Examples of FDA's need to further review an entry may result from some products originating from a specific country or manufacturer known to have a history of problems, FDA having no previous knowledge of the foreign manufacturer and/or product, or a product import alert may have been issued, etc. The system assists FDA entry reviewers by notifying them of information, such as the issuance of import alerts, thus averting the chance that such information will be missed in their review.

Since the inception of the interface with ACS, FDA's electronic screening criteria program is applied nationwide. This eliminates problems such as "port shopping," *e.g.,* attempts to intentionally slip products through one FDA port when refused by another, or filing entries at a port known to receive a high volume of entries. Every electronically submitted entry line of foreign-origin FDA-regulated product undergoes automated screening. The screening criteria can be set to be as specific or as broad as applicable; changes are immediately effective. This capability is of tremendous value in protecting the public in the event there is a need to immediately halt a specific product from entering the United States.

FDA estimates the revised reporting burden for this collection of information is as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FDA imported products	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
Non-Tobacco (approved by OMB 09/01/2009)	3,406	1,089	3,709,134	.14	519,279
Tobacco (new estimated burden)	200	68	13,600	.14	1,904
Total	3,606		3,722,734	.28	521,183

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: October 25, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–27850 Filed 11–3–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0190]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Infant Formula Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Infant Formula Requirements" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Johnny Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7651, e-mail: *Juanmanuel.Vilela@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 10, 2010 (75 FR 48350), the Agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0256. The approval expires on October 31, 2013. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain*.

Dated: October 25, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–27849 Filed 11–3–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0098]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Evaluation of Potential Data Sources for the Sentinel Initiative

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Evaluation of Potential Data Sources for the Sentinel Initiative" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3794, *Jonnalynn.capezzuto@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 4, 2009 (74 FR 45858), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0657. The approval expires on February 28, 2013. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: October 25, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–27848 Filed 11–3–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0536]

Agency Information Collection Activities: Proposed Collection; Comment Request, Guidance for Industry on Pharmacogenomic Data Submissions; Extension

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection resulting from recommendations to sponsors submitting or holding investigational new drug applications (INDs), new drug applications (NDAs), or biologic licensing applications (BLAs) on what pharmacogenomic data should be submitted to the agency during the drug development process.

DATES: Submit either electronic or written comments on the collection of information by January 3, 2011.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3792, *Elizabeth.Berbakos@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in

44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry on Pharmacogenomic Data Submissions (OMB Control Number 0910–0557—Extension)

The guidance provides recommendations to sponsors submitting or holding INDs, NDAs, or BLAs on what pharmacogenomic data should be submitted to the agency during the drug development process. Sponsors holding and applicants submitting INDs, NDAs, or BLAs are subject to FDA requirements for submitting to the agency data relevant to drug safety and efficacy (§§ 312.22, 312.23, 312.31, 312.33, 314.50, 314.81, 601.2, and 601.12).

The guidance interprets FDA regulations for IND, NDA, or BLA submissions, clarifying when the regulations require pharmacogenomics data to be submitted and when the submission of such data is voluntary. The pharmacogenomic data submissions described in the guidance that are required to be submitted to an IND, NDA, BLA, or annual report are covered by the information collection requirements under parts 312, 314, and 601 (21 CFR parts 312, 314, and 601) and are approved by OMB under control numbers 0910–0014 (part 312—INDs); 0910–0001 (part 314—NDAs and annual reports); and 0910–0338 (part 601—BLAs).

The guidance distinguishes between pharmacogenomic tests that may be considered valid biomarkers appropriate for regulatory decision-making, and other, less well-developed exploratory tests. The submission of exploratory pharmacogenomic data is not required under the regulations, although the agency encourages the voluntary submission of such data.

The guidance describes the voluntary genomic data submission (VGDS) that can be used for such a voluntary submission. The guidance does not recommend a specific format for the VGDS, except that such a voluntary submission be designated as a VGDS. The data submitted in a VGDS and the level of detail should be sufficient for FDA to be able to interpret the information and independently analyze the data, verify results, and explore possible genotype-phenotype correlations across studies. FDA does not want the VGDS to be overly burdensome and time-consuming for the sponsor.

FDA has estimated the burden of preparing a voluntary submission described in the guidance that should be designated as a VGDS. Based on FDA's experience with this guidance over the past few years, and on FDA's familiarity with sponsors' interest in submitting pharmacogenomic data during the drug development process, FDA estimates that approximately seven sponsors will submit approximately one VGDS and that, on average, each VGDS will take approximately 50 hours to prepare and submit to FDA.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
Voluntary Genomic Data Submissions Total	7	1	7	50	350

[1] There are no capital costs or operating and maintenance costs associated with this collection.

Dated: October 29, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–27847 Filed 11–3–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0381]

Generic Drug User Fee; Notice of Public Meeting; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until December 6, 2010, the comment period for the notice of public meeting entitled Generic Drug User Fee; Public Meeting; Request for Comments, published in the **Federal Register** of August 9, 2010 (75 FR 47820). In that notice, FDA announced a public meeting that took place on September 17, 2010, to gather stakeholder input on the development of a generic drug user fee program. FDA is reopening the comment period to permit public consideration of late-received comments and to provide an opportunity for all interested parties to provide information and share views on the matter.

DATES: Submit either electronic or written comments by December 6, 2010.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Peter C. Beckerman, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 4238, Silver Spring, MD 20993–0002, 301–796–4830, Fax: 301–847–3541, E-mail: *peter.beckerman@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 9, 2010 (75 FR 47820), FDA published a notice of a public meeting on the development of a generic drug user fee program. In that notice, FDA posed several questions related to a user fee for human generic drugs, and sought public input on such a program. The Agency received submissions and presentations from the public meeting, which are now posted on FDA's Web site. Some submissions arrived after the formal closing of the docket and FDA has decided to reopen the docket to permit public input on all the submissions.

Interested persons were originally given until October 17, 2010, to comment on the development of a generic drug user fee program. FDA is now reopening the docket to permit comment until December 6, 2010.

II. Request for Comments

Following publication of the August 9, 2010, meeting notice and request for comment, FDA received a request to allow interested persons additional time to comment. The requester asserted that the time period of 30 days was insufficient to respond fully to FDA's specific requests for comments and to allow potential respondents to thoroughly evaluate and address pertinent issues. In light of this request, and the arrival of late submitted comments, FDA is reopening the comment period for an additional 30 days.

III. How To Submit Comments

Regardless of attendance at the public meeting, interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 29, 2010.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2010–27824 Filed 11–3–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of Federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

System for Magnetic Resonance Spectroscopy of Brain Tissue for Pattern-Based Diagnostics

Description of Invention: Available for licensing and commercial development is a system for preprocessing magnetic resonance spectroscopy (MRS) data of brain tissue for pattern-based diagnostics. The MRS preprocessing system includes an MRS preprocessing module that executes an operation that normalizes MRS spectrum data, recalibrates and scales the normalized MRS spectrum data, and then renormalizes the scaled MRS spectrum data. The resulting preprocessed MRS data is used to assist in identifying abnormalities in tissues shown in MRS scans. Raw MRS spectrum data and scaling the raw MRS spectrum data is achieved by a plurality of weighting constants to generate a preprocessed MRS spectrum data. The method may also include providing raw MRS spectrum data, recalibrating the raw MRS spectrum data, and scaling the recalibrated MRS spectrum data by using a plurality of weighting constants to generate a preprocessed MRS spectrum data.

Applications

- MRI Imaging.
- Brain Imaging.
- Neurology.

Inventors: Jon G. Wilkes (FDA/NCTR), Dan A. Buzatu (FDA/NCTR), Pierre Alusta (FDA/NCTR), Bruce A. Pearce (FDA/NCTR), Richard Beger (FDA/NCTR), Inessa Im (FDA/NCTR).

Patent Status: U.S. Provisional Application No. 61/261,170 filed 13 Nov 2009 (HHS Reference No. E–298–2009/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Michael A. Shmilovich, Esq.; 301–435–5019; *shmilovm@mail.nih.gov.*

Collaborative Research Opportunity: The FDA National Center for Toxicological Research is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize FDA's magnetic resonance spectroscopy technology in various imaging and diagnostic applications. Please contact Alice Y. Welch, PhD at 301–796–8449 or *alice.welch@fda.hhs.gov* for more information.

Cancer-Linked Sequences Encoding the A2BP1/FOX1 Gene

Description of Invention: Mesothelioma is a rare type of cancer in which malignant cells are found in the lining of the chest or abdomen. Symptoms are frequently misdiagnosed and an accurate diagnosis generally does not occur until advanced stages, and patients live on average nine to thirteen months after an accurate diagnosis. To date, there are no effective systemic treatments.

Researchers at the National Cancer Institute, NIH, have identified a recurrent alteration in the DNA sequence for ataxin-2 binding protein (A2BP1/FOX1) in human mesothelioma and colorectal cancers that is present in at least twenty percent (20%) of cancer cell lines and primary tumor samples. The sequence is not present in normal tissue, proving that it has arisen as an acquired somatic mutation in cancer. Furthermore, additional data suggests a possible role for the alteration in neurological diseases such as autism,

inherited mental retardation, and seizures.

This discovery offers a new approach for the diagnosis and early detection of cancer.

Applications: Development of assays for detection, diagnosis, or prognosis of diseases associated with chromosomal disruptions of the ataxin-2 binding protein 1 (A2BP1 or FOX1) gene, such as cancer and neurological disorders.

Development Status: Pre-clinical.

Inventors: Frederic J. Kaye (NCI).

Relevant Publication: Beroukhim R et al. The landscape of somatic copy-number alteration across human cancers. Nature 2010 Feb 18; 463(7283):899–905. [PubMed: 20164920]

Patent Status

- U.S. Provisional Application No. 61/121,997 filed 12 Dec 2008 (HHS Reference No. E–180–2008/0–US–01).
- International Patent Application No. PCT/US09/67502 filed 10 Dec 2009, which published as WO 2010/068757 on 17 Jun 2010 (HHS Reference No. E–180–2008/0–PCT–02).

Licensing Status: Available for licensing.

Licensing Contact: Patrick P. McCue, PhD; 301–435–5560; *mccuepat@mail.nih.gov.*

Insertion of Foreign Genes in Rubella Virus and Their Stable Expression in a Live, Attenuated Viral Vaccine

Description of Invention: Rubella virus (RUB) is the only member of the Rubivirus genus of the family Togaviridae. The RUB genomic RNA is a single-stranded, 9762-nt, positive-sense RNA that contains two long open reading frames (ORFs): A 5′-proximal ORF which encodes nonstructural proteins (NSP) that function primarily in viral RNA replication, including the RdRp, and a 3′-proximal ORF which encodes the virion structural proteins (SP), the capsid protein (C), and two envelope glycoproteins, E1 and E2. The genomic RNA serves as a template for synthesis of a complementary minus-strand RNA which is the template for synthesis of both the genomic RNA and the subgenomic (SG) RNA, from which the structural proteins are translated.

All earlier efforts at expressing foreign genes in rubella virus failed due to stability of the insert. The inventors have found a way to insert foreign genes into rubella virus such that the foreign genes can be expressed stably over many passages of the virus. More specifically, based on an earlier observation that rubella virus can tolerate a small deletion in the nonstructural genes and still replicate normally, the inventors' have used this deletion to make room for insertion of a foreign gene. Thus, the inventors have conceptualized and reduced to practice a new way to use the already-approved rubella vaccine as a viral vector to express the additional protein antigens of a second (or multiple other) viruses. This is highly advantageous because it allows for production of a live virus vaccine when attenuation is not possible for highly virulent viruses such as HIV.

Furthermore, another advantage of this vaccine is that virus titers in cell culture reach one thousand (1000) human doses per milliliter (ml) of culture supernatant. This is highly desirable for production of multiple millions of doses for the developing world. In the developed world, this vaccine could be substituted for the current vaccine at almost no cost and used to immunize against rubella plus the inserted antigen(s). Without vaccination, the average age of becoming seropositive for rubella is approximately nine (9) years old. This new vaccine could be given to one to two year olds with a booster at nine years old. Additionally, this vaccine is already approved, so the safe and immunogenic doses are already known.

Applications

- Vaccines for the prevention of rubella and other indications.
- Use of rubella vector for expression of foreign genes.

Advantages

- Novel vaccine candidate
- Rapid production time

Development Status: Preclinical studies have been conducted by the inventors.

Inventors: Ira Berkower and Angelo Spadaccini (FDA).

Patent Status

- U.S. Provisional Application No. 61/252,568 filed 16 Oct 2009 (HHS Reference No. E–156–2008/0–US–01).
- International Patent Application No. PCT/US2010/052948 filed 15 Oct 2010 (HHS Reference No. E–156–2008/0–PCT–02).

Relevant Publication: Spadaccini A, Vimik K, Ni Y, Prutzman K, Berkower I. Stable expression of a foreign protein by a replication-competent rubella viral vector. Vaccine. 2010 Feb 3;28(5):1181–1187. [PubMed: 19945412].

Licensing Status: Available for licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301–435–4646; *soukasp@mail.nih.gov.*

Inhibition of Cell Motility, Angiogenesis and Metastasis

Description of Invention: The present invention relates to potent, highly selective antagonists of Grb2 Src homology-2 (SH2) domain binding. Grb2, through its SH2 domain, mediates growth factor driven cell motility *in vitro* and angiogenesis *in vivo.* These synthetic, small molecule antagonists have been shown to block cell motility stimulated by hepatocyte growth factor (HGF), fibroblast growth factor (FGF), epidermal growth factor (EGF), and vascular endothelial cell growth factor (VEGF). They also potently inhibit HGF- and VEGF-stimulated morphogenesis and angiogenesis, respectively, in several model systems. HGF stimulates mitogenesis, motogenesis and morphogenesis in a wide range of cellular targets during development and adulthood, and its signaling pathway is frequently over-activated in human cancers, including colon, gastric, breast, lung, thyroid and renal carcinomas, melanoma, several sarcomas as well as glioblastoma. The ability of HGF to initiate a program of cell dissociation and increased cell motility coupled with increased protease production promotes aggressive cellular invasion and is frequently linked to tumor metastasis.

Metastasis, the primary cause of death in most forms of cancer, is a multistep process whereby cells from the primary tumor spread systemically and colonize distant new sites. Blocking critical steps in this process could potentially inhibit tumor metastasis and dramatically improve cancer survival rates. The small, synthetic Grb2 SH2 domain antagonists described in this invention have been shown to inhibit the induced and spontaneous metastasis of melanoma- and prostate cancer-derived tumor cells in mice. These results establish a critical role for Grb2 SH2 domain-mediated interactions in the metastatic process and support the potential efficacy of this class of compound in reducing the metastatic spread of primary solid tumors in humans.

Applications and Modality: Inhibition of cell motility-dependent processes, including angiogenesis and metastasis, in several types of cancer such as prostate, colon, gastric, breast, lung, thyroid and renal carcinomas, melanoma and various sarcomas.

Development Status: In vivo and *in vitro* studies have been conducted on this technology.

Market

- Cancer is the second leading cause of death in the U.S.

• The worldwide incidence of new cancer patients is forecast to increase from 4.2 million cases in the major cancer markets in 2005 to 4.6 million in 2010.

• It is estimated that the worldwide cancer marker will be worth 85.3 billion in 2010.

Inventors: Donald P. Bottaro et al. (NCI).

Relevant Publications

1. Atabey N, Gao Y, Yao Z-J, Breckenridge D, Soon L, Soriano JV, Burke TR Jr, Bottaro DP. Potent blockade of Hepatocyte Growth Factor-stimulated cell motility, matrix invasion and branching morphogenesis by antagonists of Grb2 Src homology 2 domain interactions. J Biol Chem. 2001 Apr 27;276(17):14308–14314. [PubMed: 11278639].
2. Shi Z-D, Wei C-Q, Wang X, Lee K, Liu H, Zhang M, Vasselli J, Bottaro DP, Linehan WM, Yang D, Burke TR Jr. Macrocyclization in the design of tetra-tetrapeptide mimetics that display potent inhibition of Grb2 SH2 domain binding in whole cell systems. In: Peptide Revolution: Genomics, Proteomics Therapeutics. Chorev, M and Sawyer, TK, Eds. American Peptide Society, pp 515–517, 2003.
3. Soriano JV, Lui N, Gao Y, Yao Z-J, Ishibashi T, Underhill C, Burke TR Jr, Bottaro DP. Inhibition of angiogenesis by growth factor receptor bound protein 2-Src homology 2 domain bound antagonists. Mol Cancer Ther. 2004 Oct;3(10):1289–1299. [PubMed: 15486196].
4. Shi Z-D, Karki RG, Worthy KM, Bindu LK, Dharmawardana PG, Nicklaus MC, Bottaro DP, Fisher RJ, Burke TR Jr. Utilization of a nitrobenzoxadiazole (NBD) fluorophore in the design of a Grb2 SH2 domain-binding peptide mimetic. Bioorg Med Chem Lett. 2005 Mar 1;15(5):1385–1388. [PubMed: 15713392].
5. Kang S-U, Shi, Z-D, Worthy KM, Bindu LK, Dharmawardana PG, Choyke SJ, Bottaro DP, Fisher RJ, Burke TR Jr. Examination of phosphoryl-mimicking functionalities within a macrocyclic Grb2 SH2 domain-binding platform. J Med Chem. 2005 Jun 16;48(12):3945–3948. [PubMed: 15943469].
6. Shi Z-D, Peruzzi B, Dharmawardana PG, Leech T, Appella E, Worthy KM, Bindu LK, Fisher RJ, Bottaro DP, Burke TR Jr. Synthesis and use of C-terminally biotinylated peptidomimetics with high Grb2 SH2 domain-binding affinity. In: Understanding Biology Using Peptides, Blondelle SE (Ed), American Peptide Society, pp 208–209, 2005.
7. Dharmawardana PG, Peruzzi B, Giubellino A, Burke TR Jr, Bottaro DP. Molecular targeting of growth factor receptor-bound 2 (Grb-2) as an anti-cancer strategy. Anti-Cancer Drugs 2006 Jan;17(1):13–20. [PubMed: 16317285].
8. Liu F, Worthy KM, Bindu L, Giubellino A, Bottaro DP, Fisher RJ, Burke TR Jr. Utilization of achiral alkenyl amines for the preparation of high affinity Grb2 SH2 domain-binding macrocycles by ring-closing metathesis. Org Biomol Chem. 2007 Jan 21;5(2):367–372. [PubMed: 17205182].
9. Giubellino A, Gao Y, Lee S, Lee M-J, Vasselli JR, Medepalli S, Trepel JB, Burke TR Jr, Bottaro DP. Inhibition of tumor metastasis by a growth factor receptor bound protein Src domain-binding antagonist. Cancer Res. (Priority Report) 2007 Jul 1;67(13):6012–6016. [PubMed: 17616655].

Patent Status: U.S. Patent Application No. 11/525,672 filed 22 Sep 2006 (HHS Reference No. E–265–1999/2–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Jennifer Wong; 301–435–4633; *wongje@mail.nih.gov.*

Collaborative Research Opportunity: The Urologic Oncology Branch of the National Cancer Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize Grb2 SH2 domain antagonists as anti-cancer drugs. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: October 29, 2010.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2010–27912 Filed 11–3–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0132]

Guidance for Industry: Cellular Therapy for Cardiac Disease; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Guidance for Industry: Cellular Therapy for Cardiac Disease" dated October 2010. The guidance document provides sponsors who are developing cellular therapies for the treatment of cardiac disease with recommendations on the design of preclinical and clinical studies and on the chemistry, manufacturing and controls (CMC) information that should be included in an investigational new drug application (IND) for cellular therapy for cardiac disease. The guidance announced in this notice finalizes the draft guidance entitled "Guidance for Industry: Somatic Cell Therapy for Cardiac Disease" dated March 2009.

DATES: Submit either electronic or written comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448; or to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. *See* the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Chacko, Center for

Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210; or Sabina Reilly, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–4095.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled "Guidance for Industry: Cellular Therapy for Cardiac Disease," dated October 2010. This guidance document provides sponsors who are developing cellular therapies for the treatment of cardiac disease with recommendations regarding the: (1) Design of preclinical and clinical studies, (2) CMC information that should be included in an IND for cardiac cellular therapy, and (3) information about the product's delivery system that should be submitted. This guidance also includes a discussion of regulatory considerations regarding cellular delivery systems.

In the **Federal Register** of April 2, 2009 (74 FR 14992), FDA announced the availability of the draft guidance entitled "Guidance for Industry: Somatic Cell Therapy for Cardiac Disease" dated March 2009. FDA received several comments on the draft guidance and those comments were considered as the guidance was finalized. In addition, additional changes were made to improve the document. The guidance announced in this notice finalizes the draft guidance dated March 2009.

The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the IND regulations (21 CFR part 312) have been approved under OMB control number 0910–0014, the good laboratory practice regulations (21 CFR part 58) have been approved under OMB control number 0910–0119, the investigational device exemption (IDE) regulations (21 CFR part 812) have been approved under OMB control number 0910–0078, and the informed consent regulations (21 CFR part 50) have been approved under OMB control number 0910–0130.

III. Comments

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm,* or *http://www.regulations.gov*.

Dated: October 22, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–27881 Filed 11–3–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biological Chemistry and Macromolecular Biophysics.

Date: December 2–3, 2010.

Time: 11 a.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact: Donald L. Schneider, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7842, Bethesda, MD 20892, (301) 435–1727, *schneidd@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: BST Member Conflict Review Panel.

Date: December 2, 2010.

Time: 1:15 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National of Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call.)

Contact Person: Ping Fan, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7840, Bethesda, MD 20892, 301–408–9971, *fanp@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Behavioral and Social Consequences of HIV/AIDS.

Date: December 3, 2010.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call.)

Contact Person: Jose H. Guerrier, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Chromatin Insulators.

Date: December 7–8, 2010.

Time: 8 a.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting.)

Contact Person: Michael H. Chaitin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910, *chaitinm@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 29, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–27915 Filed 11–3–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel. Centers of Research Translation Grant Review.

Date: November 17–18, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact: Michael L. Bloom, MBA, PhD, Scientific Review Officer, Scientific Review Branch, NIAMS–NIH, 6701 Democracy Blvd, Room 820, MSC 4872, Bethesda, MD 20892–487, 301–594–4953, *bloomm2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: October 28, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–27913 Filed 11–3–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2010–0084]

Agency Information Collection Activities: Office of Infrastructure Protection; Infrastructure Protection Stakeholder Input Project—Generic Clearance

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 60-day notice and request for comments; New Information Collection Request: 1670–NEW.

SUMMARY: The Department of Homeland Security, National Protection and Programs Directorate, Office of Infrastructure Protection (IP), will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

DATES: Comments are encouraged and will be accepted until January 3, 2011. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Written comments and questions about this Information Collection Request should be forwarded to the Office of Infrastructure Protection, Attn.: Michael Beland, *Michael.Beland@dhs.gov.* Written comments should reach the contact person listed no later than January 3, 2011. Comments must be identified by DHS–2010–0084 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *E-mail: Michael.Beland@dhs.gov.* Include the docket number in the subject line of the message.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

SUPPLEMENTARY INFORMATION: The Homeland Security Act of 2002 and Homeland Security Presidential Directive 7 (HSPD–7) call for the Department of Homeland Security (DHS) to coordinate the overall effort to enhance the protection of the Nation's critical infrastructure and key resources. Specifically, HSPD–7 states DHS "shall establish appropriate systems, mechanisms, and procedures to share homeland security information relevant to threats and vulnerabilities in national critical infrastructure and key resources with other Federal departments and agencies, State and local governments, and the private sector in a timely manner." DHS designated IP to lead these efforts.

Given that the vast majority of the Nation's critical infrastructure and key resources in most sectors are privately owned or controlled, IP's success in achieving the homeland security mission for critical infrastructure protection and resilience is dependent upon how well critical infrastructure owners and operators and members of the general public understand the key concepts, are aware of their contribution to achieve a shared national goal, participate in public-private partnerships, and are motivated to take action. However, IP has never conducted a comprehensive feedback assessment with the full range of its stakeholders to identify, measure, and improve the effectiveness of its efforts. IP desires to collect information from its stakeholders in order to:

- Provide a baseline for the effectiveness of efforts to improve the security of the Nation's infrastructure;
- Assist in validating and achieving IP's strategic and mission area objectives;
- Obtain a better understanding of the evolving infrastructure protection and resiliency requirements of IP's stakeholders;
- Increase the visibility and awareness of the critical infrastructure protection and resilience mission;
- Initiate the coordination and uniformity of outreach efforts by IP, sector-specific agencies, and other partners engaged in the infrastructure protection mission; and
- Collect feedback regarding event, threat or service-specific activities in a timely fashion.

OMB is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate.

Title: Office of Infrastructure Protection Stakeholder Input Project—Generic Clearance.

OMB Number: 1670–NEW.

IP Stakeholder Input Project—Surveys

Frequency: On occasion.

Affected Public: Private sector and non-Federal infrastructure protection community.

Number of Respondents: 5,980.

Estimated Time per Respondent: 40 minutes.

Total Burden Hours: 3,056 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

IP Stakeholder Input Project—Focus Groups

Frequency: On occasion.

Affected Public: Private sector and non-Federal infrastructure protection community.

Number of Respondents: 260.

Estimated Time per Respondent: 2 hours.

Total Burden Hours: 520 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

IP Stakeholder Input Project—Interviews

Frequency: On occasion.

Affected Public: Private sector and non-Federal infrastructure protection community.

Number of Respondents: 60.

Estimated Time per Respondent: 1 hour.

Total Burden Hours: 60 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Dated: October 28, 2010.

David Epperson,

Acting Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2010–27827 Filed 11–3–10; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2010–0981; Control Numbers: 1625–0073]

Information Collection Request to Office of Management and Budget; OMB

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) and Analysis to the Office of Management and Budget (OMB) requesting an extension of its approval for the following collection of information: 1625–0073, Alteration of Unreasonable Obstructive Bridges. Before submitting this ICR to OMB, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before January 3, 2011.

ADDRESSES: To avoid duplicate submissions to the docket [USCG–2010–0981], please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

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

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

(4) *Fax:* 202–493–2251.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, a copy is available from: Commandant (CG–611), Attn Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2nd St., SW., Stop 7101, Washington, DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523, or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

The Coast Guard invites comments on whether this ICR should be granted based on the collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collections; and (4) ways to minimize the burden of the collections on respondents, including the use of automated collection techniques or other forms of information technology.

We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please *see* the "Privacy Act" paragraph below.

Submitting comments: If you submit a comment, please include the docket number [USCG–2010–0981], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing comments and documents: Go to *http://www.regulations.gov* to view documents mentioned in this Notice as being available in the docket. Enter the docket number for this Notice [USCG–2010–0981] in the Search box, and click "Go >>." You may also visit the DMF in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the

Privacy Act statement regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Information Collection Request

Title: Alteration of Unreasonable Obstructive Bridges.

OMB Control Number: 1625–0073.

Summary: The collection of information is a request to determine if the bridge is unreasonably obstructive.

Need: Sections 494, 502, 511, 513, 514, 515 516, 517, 521, 522, 523 and 524 of 33 U.S.C. authorize the Coast Guard to alter the bridges and causeways that go over navigable waters of the United States and deem to be unreasonably obstructive.

Forms: None.

Respondents: Public and private owners of bridges over navigable waters of the United States.

Frequency: On occasion.

Burden Estimate: The estimated burden remains the same at 240 hours a year.

Dated: October 22, 2010.

M.B. Lytle,

Captain, U.S. Coast Guard, Acting Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2010–27845 Filed 11–3–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2010–0978; Control Numbers: 1625–0008]

Information Collection Request to Office of Management and Budget; OMB

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) and Analysis to the Office of Management and Budget (OMB) requesting a revision of its approval for the following collection of information: 1625–0008, Regattas and Marine Parades. Before submitting this ICR to OMB, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before January 3, 2011.

ADDRESSES: To avoid duplicate submissions to the docket [USCG–2010–0978], please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

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

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

(4) *Fax:* 202–493–2251.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

A copy of the ICR is available through the docket on ythe Internet at *http://www.regulations.gov.* Additionally, a copy is available from: Commandant (CG–611), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2nd St., SW., Stop 7101, Washington, DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523, or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

The Coast Guard invites comments on whether this ICR should be granted based on the collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collections; and (4) ways to minimize the burden of the collections on respondents, including the use of automated collection techniques or other forms of information technology.

We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. *Please see* the "Privacy Act" paragraph below.

Submitting comments: If you submit a comment, please include the docket number [USCG–2010–0978], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing comments and documents: Go to *http://www.regulations.gov* to view documents mentioned in this Notice as being available in the docket. Enter the docket number for this Notice [USCG–2010–0978] in the Search box, and click "Go >>." You may also visit the DMF in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

Information Collection Request

Title: Regattas and Marine Parades.

OMB Control Number: 1625–0008.

Summary: Title 46 U.S.C. 1233 authorizes the Coast Guard to issue rules promoting safety of life on navigable waters during regattas or marine events. Title 33 CFR 100.17 and 100.18 include the rules for providing notice of, and additional information for

permitting regattas/marine events to the Coast Guard.

Need: The Coast Guard needs to determine whether a marine event may present a substantial threat to safety of human life on navigable waters, and which measures are necessary to ensure safety of life during the events. Sponsors must notify via the most efficient means for the Coast Guard to learn of the events/address environmental impacts.

Forms: CG–4423.

Respondents: Sponsors of marine events.

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 3,000 to 5,271 hours a year.

Dated: October 22, 2010.

M. B. Lytle,

Captain, U.S. Coast Guard, Acting Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2010–27844 Filed 11–3–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2008–0017]

Voluntary Private Sector Accreditation and Certification Preparedness Program

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of closing date for public comments.

SUMMARY: The Department of Homeland Security (DHS) published a notice in the **Federal Register** on October 1, 2010, requesting comments on an initial small business plan to address small business concerns in the Voluntary Private Sector Accreditation and Certification Preparedness Program (PS–Prep Program). That notice did not contain a closing date for the comment period. This notice provides a closing date.

DATES: Submit comments on or before December 6, 2010.

ADDRESSES: DHS will review any comments received for small business considerations or the PS–Prep Program generally and, when merited, will publish a **Federal Register** notice providing the results of that review.

Those interested may submit comments, identified by Docket ID FEMA–2008–0017, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. (Note: This process applies to all government requests for comments—even though as in the case of the PS–Prep Program, they may not be for regulatory purposes.)
- *Fax:* 703–483–2999.
- *Mail/Hand Delivery/Courier:* Office of Chief Counsel, Federal Emergency Management Agency, 500 C Street, SW., Room 840, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID FEMA–2008–0017. All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Because comments are made available to the public, submitters should take caution to not include any sensitive, personal information, trade secret, or any commercial or financial information which is obtained from any person and which is deemed privileged or confidential. Submitters may wish to read the Privacy Act notice available on the Privacy Notice link located at the bottom of *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov.* Submitted comments may also be inspected at FEMA, Office of Chief Counsel, 500 C Street, SW., Room 840, Washington, DC 20472–3100.

FOR FURTHER INFORMATION CONTACT: Mr. Marcus Pollock, National Integration Center, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472–3100; phone: 202–646–2801; e-mail: *FEMA-NIMS@dhs.gov.*

SUPPLEMENTARY INFORMATION: On October 1, 2010, DHS published a notice in the **Federal Register** at 75 FR 60773 announcing an initial plan to address small business concerns in the PS–Prep Program. That notice (1) presented the plan for small business preparedness, and (2) invited public comment on the plan. However, the notice that published on October 1, 2010 did not include a closing date for the submission of public comments. This notice corrects that error by providing a closing date of December 6, 2010 for the submission of public comments.

Authority: 6 U.S.C. 321m(b)(2)(D).

Dated: October 22, 2010.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–27828 Filed 11–3–10; 8:45 am]

BILLING CODE 9111–46–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–100]

Notice of Proposed Information Collection: Comment Request; HUD Stakeholder Survey

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* January 3, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4176, Washington, DC 20410; telephone: 202–402–5564, (this is not a toll-free number) or e-mail Ms. Pollard at *Colette.Pollard@HUD.gov* for a copy of the proposed form and other available information.

FOR FURTHER INFORMATION CONTACT: Francey Youngberg, Deputy Assistant Secretary for Intergovernmental Affairs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10148, Washington, DC 20410; telephone: (202) 402–6431, (this is not a toll-free number) or e-mail Ms. Youngberg at *Francey.L.Youngberg@hud.gov.*

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the

burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: HUD Stakeholder Survey.

OMB Control Number, if applicable: 2501–New.

Description of the need for the information and proposed use: The Department of Housing and Urban Development (HUD) hosts events with a variety of groups nationwide designed to educate stakeholders about HUD initiatives and policies. This data collection consists of a brief, optional survey to be completed in person at the end of each event. The information produced by the stakeholder surveys will allow HUD to measure the effectiveness of the stakeholder sessions and collect feedback on policy initiatives. The information can be used to shape policies, improve stakeholder events and make better use of HUD's limited time with stakeholders. There are no similar surveys which allow for HUD to engage in a sustained, systematic collection of feedback from stakeholders on of a broad range of HUD initiatives and events.

Agency form numbers, if applicable: None.

Members of Affected Public: Stakeholder groups include (but are not limited to) public housing authorities, congressional members and staff, local government officials, assisted housing residents, HUD grantees, civil rights organizations, homeless advocacy organizations, the legal community, academics, organized labor representatives, HUD grantees, and members of the housing, nonprofit, philanthropic, business and faith-based sectors.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	3,150	1		0.1		315

Total Estimated Burden Hours: 315.

Status of the proposed information collection: New collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 28, 2010.

Francey Youngberg,

Deputy Assistant Secretary for Intergovernmental Affairs.

[FR Doc. 2010–27923 Filed 11–3–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Hydropower Resource Assessment at Existing Reclamation Facilities—Draft Report

AGENCIES: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the draft report.

SUMMARY: The Bureau of Reclamation has made available for public review and comment the "Hydropower Resource Assessment at Existing Reclamation Facilities" (HRA) Draft Report. The HRA is an assessment of the economic and technical potential for hydropower development at existing Bureau of Reclamation (Reclamation) owned non-powered dams and structures.

DATES: Submit written comments on the Draft Report by December 6, 2010.

ADDRESSES: Send written comments or requests for copies to Mr. Michael Pulskamp, Bureau of Reclamation, Denver Federal Center, Bldg. 67, P.O. Box 25007, Denver, Colorado 80225, or e-mail to *mpulskamp@usbr.gov.*

The Draft Report is also accessible from the following Web site: *http://www.usbr.gov/power/.*

FOR FURTHER INFORMATION CONTACT: Mr. Michael Pulskamp, 303–445–2931, *mpulskamp@usbr.gov.*

SUPPLEMENTARY INFORMATION: The Administration is committed to increasing the generation of environmentally sustainable, affordable hydropower for our national electricity supplies. Reclamation has 476 dams and 8,116 miles of canals, and owns and operates 58 hydropower plants. On an annual basis, these plants produce an average of 40 billion kilowatt hours of electricity, enough to meet the entire electricity needs of over 9 million people on average, and provide the energy equivalent of more than 80 million barrels of crude oil or about 48.4 billion pounds of coal. Reclamation is the second largest producer of hydroelectric power in the United States, and is actively engaged in looking for opportunities to encourage development of additional hydropower capacity.

In March 2010 Reclamation signed a Memorandum of Understanding (MOU) with the Department of Energy and the U.S. Army Corps of Engineers. The MOU focuses on ways to increase renewable energy generation by focusing on development of sustainable, low impact, and small hydropower projects. The MOU committed Reclamation to produce an updated list of facilities and sites best suited for projects to increase sustainable hydropower generation by October 2010. The HRA provides information on potential hydropower development at existing Reclamation facilities that may warrant further study.

The Draft Report does not make any recommendations for development of the sites included in the report. Instead, it provides an inventory of hydropower potential at existing Reclamation sites using broad energy and economic criteria. Reclamation is not undertaking a new dam construction initiative with this study, and is focused on identifying the hydropower potential of Reclamation's existing structures. This resource assessment level study does not take the place of a site by site feasibility study.

Public Disclosure

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: October 26, 2010.

Dave Sabo,

Acting Director, Technical Resources, Bureau of Reclamation.

[FR Doc. 2010–27908 Filed 11–3–10; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

The Bureau of Ocean Energy Management, Regulation and Enforcement

Environmental Documents Prepared for Proposed Oil, Gas, and Mineral Operations by the Gulf of Mexico Outer Continental Shelf (OCS) Region

AGENCY: The Bureau of Ocean Energy Management, Regulation and Enforcement, Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS mineral proposals by the Gulf of Mexico OCS Region.

SUMMARY: The Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), in accordance with Federal Regulations that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA) and Findings of No Significant Impact (FONSI), prepared by BOEMRE for the following oil-, gas-, and mineral-related activities proposed on the Gulf of Mexico.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section at the number below. Bureau of Ocean Energy Management, Regulation and Enforcement, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394, or by calling 1–800–200–GULF.

SUPPLEMENTARY INFORMATION: BOEMRE prepares SEAs and FONSIs for proposals that relate to exploration, development, production, and transport of oil, gas, and mineral resources on the Federal OCS. These SEAs examine the potential environmental effects of activities described in the proposals and present BOEMRE conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes a major Federal action that significantly affects the quality of the human environment in accordance with NEPA Section 102(2)(C). A FONSI is prepared in those instances where BOEMRE finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the SEA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Activity/operator	Location	Date
GOM Shelf, LLC, Structure Removal, SEA ES/SR 10–033	Matagorda Island, Block 588, Lease OCS–G 18782, located 18 miles from the nearest Louisiana shoreline.	4/2/2010
Energy XXI GOM, LLC, Structure Removal, SEA ES/SR 10–027.	West Cameron, Block 248, Lease OCS–G 09048, located 44 miles from the nearest Louisiana shoreline.	4/2/2010
Shell Offshore, Inc., Initial Exploration Plan, SEA S–7357	De Soto Canyon Blocks 353 & 397 & Mississippi Canyon Block 393, located 78 miles from the nearest Louisiana shoreline, 112 miles from the nearest Mississippi shoreline, 113 miles from the nearest Alabama shoreline and 119 miles from the nearest Florida shoreline.	4/5/2010
Ridgelake Energy, Inc., Structure Removal, SEA ES/SR 10–019.	Eugene Island, Block 324, Lease OCS–G 26041, located 96 miles from the nearest Louisiana shoreline.	4/6/2010
Helis Oil & Gas Company, LLC, Structure Removal, SEA ES/SR 10–020 & 10–021.	Eugene Island, Block 44, Lease OCS–G 19784, located 20 miles from the nearest Louisiana shoreline.	4/6/2010
GOM Shelf, LLC, Structure Removal, SEA ES/SR 10–040	Grand Isle, Block 48, Lease OCS–G 00134, located 15 miles from the nearest Louisiana shoreline.	4/6/2010
GOM Shelf, LLC, Structure Removal, SEA ES/SR 10–026	Matagorda Island, Block 586, Lease OCS–G 14791, located 24 miles from the nearest Texas shoreline.	4/6/2010
Hilcorp Energy GOM, LLC, Structure Removal, SEA ES/SR 10–049.	Ship Shoal, Block 209, Lease OCS–G 00827, located 34 miles from the nearest Louisiana shoreline.	4/6/2010
Apex Oil & Gas, Inc., Structure Removal, SEA ES/SR 10–050	West Cameron, Block 442, Lease OCS–G 25914, located 80 miles from the nearest Louisiana shoreline.	4/7/2010
Apex Oil & Gas, Inc., Structure Removal, SEA ES/SR 10–051	West Cameron, Block 473, Lease OCS–G 15095, located 76 miles from the nearest Louisiana shoreline.	4/7/2010
Sea Robin Pipeline Company, LLC, Structure Removal, SEA ES/SR 10–056.	East Cameron, Block 265, Lease OCS–G 02392, located 70 miles from the nearest Louisiana shoreline.	4/9/2010
Apache Corporation, Structure Removal, SEA ES/SR 08–012A	High Island, Block A 572, Lease OCS–G 02392, located 118 miles from the nearest Texas shoreline.	4/9/2010
Helis Oil & Gas Company, LLC, Structure Removal, SEA ES/SR 10–018.	High Island, Block A 64, Lease OCS–G 26513, located 31 miles from the nearest Texas shoreline.	4/9/2010
Energy XXI GOM, LLC, Structure Removal, SEA ES/SR 10–036.	West Cameron, Block 238, Lease OCS–G 02834, located 44 miles from the nearest Louisiana shoreline.	4/9/2010
Merit Energy Company, Structure Removal, SEA ES/SR 10–043.	High Island, Block 138, Lease OCS–G 09079, located 20 miles from the nearest Louisiana shoreline.	4/15/2010
Merit Energy Company, Structure Removal, SEA ES/SR 10–047 & 10–048.	High Island, Blocks 38 & 39, Leases OCS–G 14878 & 04078, located 12 & 14 miles from the nearest Louisiana shoreline.	4/16/2010
Reservoir Geophysical Corporation, Geological & Geophysical Notice of Scientific Research, SEA NG10–004.	Located in the Gulf of Mexico, Outer Continental Shelf	4/16/2010
Dynamic Offshore Resources NS, LLC, Structure Removal, SEA ES/SR 10–053, 10–054 & 10–055.	Matagorda Island, Blocks 605 & 606, Leases OCS–G 07199 & 07200, located 20 & 21 miles from the nearest Texas shoreline.	4/16/2010
GOM Shelf LLC, Structure Removal, SEA ES/SR 10–030, 10–031 & 10–032.	Matagorda Island, Blocks 633 & 634, Leases OCS–G 06042 & 07202, located 15 miles from the nearest Texas shoreline.	4/16/2010
Chevron, U.S.A., Inc., Structure Removal, SEA ES/SR 10–057	South Timbalier, Block 24, Lease OCS–G 00387, located 6 miles from the nearest Louisiana shoreline.	4/16/2010

Activity/operator	Location	Date
Walter Oil & Gas Corporation, Revised Exploration Plan, SEA R–5035 AA.	Ewing Bank, Block 834, Lease OCS–G 27982, located in the Central Planning Area of the Gulf of Mexico, 70 miles offshore, south of Lafourche Parish, Louisiana.	4/19/2010
BHP Billiton Petroleum (GOM), Inc., Revised Exploration Plan, SEA R–5033 AA.	Green Canyon, Block 817, Lease OCS–G 31753, located in the Central Planning Area of the Gulf of Mexico, 130 miles offshore, south of Terrebonne Parish, Louisiana.	4/19/2010
McMoRan Oil & Gas, LLC, Structure Removal, SEA ES/SR 09–041.	High Island, Block A471, Lease OCS–G 02690, located 96 miles from the nearest Texas shoreline.	4/19/2010
McMoRan Oil & Gas, LLC, Structure Removal, SEA ES/SR 09–040A.	High Island, Block A–471, Lease OCS–G 02690, located 96 miles from the nearest Texas shoreline.	4/21/2010
BP Exploration & Production, Inc., Revised Exploration Plan, SEA R–5038 AA.	Mississippi Canyon, Block 252, Lease OCS–G 32306, located in the Central Planning Area of the Gulf of Mexico, 48 miles offshore, south of Plaquemines Parish, Louisiana.	4/24/2010
McMoRan Oil & Gas, LLC, Structure Removal SEA ES/SR 09–046.	East Cameron, Block 286, Lease OCS–G 02051, located 84 miles from the nearest Louisiana shoreline.	4/26/2010
Chevron U.S.A., Inc., Structure Removal, SEA ES/SR 10–060	Bay Marchand, Block 2, Lease OCS–G 00369, located 4 miles from the nearest Louisiana shoreline.	4/27/2010
Merit Energy Company, Structure Removal, SEA ES/SR 08–108A.	Mustang Island, Block 785, Lease OCS–G 08975, located 28 miles from the nearest Texas shoreline.	4/27/2010
Merit Energy Company, Structure Removal, SEA ES/SR 08–109A.	Mustang Island, Block 672, Lease OCS–G 10198, located 27 miles from the nearest Texas shoreline.	4/28/2010
GOM Shelf LLC, Structure Removal, SEA ES/SR 10–037	West Delta, Block 70, Lease OCS–G 00182, located 19 miles from the nearest Louisiana shoreline.	4/28/2010
GOM Shelf, LLC, Structure Removal, SEA ES/SR 10–038	West Delta, Block 70, Lease OCS–G 00182, located 23 miles from the nearest Louisiana shoreline.	4/28/2010
GOM Shelf, LLC, Structure Removal, SEA ES/SR 10–039	West Delta, Block 71, Lease OCS–G 00838, located 23 miles from the nearest Louisiana shoreline.	4/28/2010
Wild Well Control, Inc., Structure Removal, SEA ES/SR 10–065.	West Delta, Block 69, Lease OCS–G 00181, located 23 miles from the nearest Louisiana shoreline.	4/30/2010
Merit Energy Company, Structure Removal, SEA ES/SR 08–114A.	Matagorda Island, Block 682, Lease OCS–G 05171, located 20 miles from the nearest Texas shoreline.	5/3/2010
Arena Offshore, LLC, Structure Removal, SEA ES/SR 10–052	Brazos, Block A–66, Lease OCS–G 06088, located 164 miles from the nearest Texas shoreline.	5/4/2010
Energy XXI GOM, LLC, Well Conductor Removal, SEA APM EW948–SS001.	Ewing Bank, Block 948, Lease OCS–G 26226, located 70 miles from the nearest Louisiana shoreline.	5/4/2010
Noble Energy, Inc., Structure Removal, SEA ES/SR 09–110A, 09–111A & 09–112A.	Main Pass, Blocks 305 & 306, Leases OCS–G 01676 & 01677, located 26 miles from the nearest Louisiana shoreline.	5/6/2010
Hunt Oil Company, Structure Removal, SEA ES/SR 10–063	South Timbalier, Block 196, Lease OCS–G 19829, located 43 miles from the nearest Louisiana shoreline.	5/13/2010
XTO Offshore, Inc., Structure Removal, SEA ES/SR 10–059 ...	Eugene Island, Block 286, Lease OCS–G 00993, located 75 miles from the nearest Louisiana shoreline.	5/18/2010
XTO Offshore, Inc., Structure Removal, SEA ES/SR 92–045A	Eugene Island, Block 286, Lease OCS–G 00993, located 75 miles from the nearest Louisiana shoreline.	5/18/2010
Energy XXI GOM, LLC, Structure Removal, SEA ES/SR 10–061.	Ship Shoal, Block 52, Lease OCS–G 24916, located 13 miles from the nearest Louisiana shoreline.	5/20/2010
XTO Offshore, Inc., Structure Removal, SEA ES/SR 10–058 ...	Eugene Island, Block 309, Lease OCS–G 00997, located 75 miles from the nearest Louisiana shoreline.	5/21/2010
Cronus Offshore, Inc., Structure Removal, SEA ES/SR 89–052 B.	Brazos, Block A22, Lease OCS–G 03937, located 35 miles from the nearest Texas shoreline.	5/24/2010
Maritech Resources, Inc., Structure Removal, SEA ES/SR 10–017.	High Island, Block A–568, Lease OCS–G 02716, located 110 miles from the nearest Texas shoreline.	5/24/2010
McMoRan Oil & Gas, LLC, Structure Removal, SEA ES/SR 10–069.	Ship Shoal, Block 157, Lease OCS–G 08709, located 30 miles from the nearest Louisiana shoreline.	5/24/2010
McMoRan Oil & Gas, LLC, Structure Removal, SEA ES/SR 10–070, 10–071, 10–072 & 10–073.	West Cameron, Block 118, Lease OCS–G 00757, located 17 miles from the nearest Louisiana shoreline.	5/24/2010
McMoRan Oil & Gas LLC, Structure Removal, SEA ES/SR 10–082.	High Island, Block A–520, Lease OCS–G 24416, located 98 miles from the nearest Louisiana shoreline.	5/25/2010
Apache Corporation, Structure Removal, SEA ES/SR 10–079	Mustang Island, Block 787, Lease OCS–G 11221, located 26 miles from the nearest Texas shoreline.	5/25/2010
McMoRan Oil & Gas, LLC, Structure Removal, SEA ES/SR 10–068.	Ship Shoal, Block 145, Lease OCS–G 01014, located 23 miles from the nearest Louisiana shoreline.	5/25/2010
Stone Energy Corporation, Structure Removal, SEA ES/SR 10–080.	South Timbalier, Block 102, Lease OCS–G 26092, located 26 miles from the nearest Louisiana shoreline.	5/25/2010
Gryphon Exploration Company, Structure Removal, SEA ES/SR 10–083.	West Cameron, Block 567, Lease OCS–G 24768, located 100 miles from the nearest Louisiana shoreline.	5/25/2010
Apache Corporation, Structure Removal, SEA ES/SR 10–041 & 10–042.	Matagorda Island, Block 623, Lease OCS–G 03088, located 15 miles from the nearest Texas shoreline.	5/26/2010
Truckline Gas Company, LLC, Structure Removal, SEA ES/SR 10–089.	Ship Shoal, Block 274, Lease OCS–G 01852, located 62 miles from the nearest Louisiana shoreline.	5/27/2010
GOM Shelf LLC, Structure Removal, SEA ES/SR 10–038A	West Delta, Block 70, Lease OCS–G 00182, located 23 miles from the nearest Louisiana Shoreline.	5/27/2010

Activity/operator	Location	Date
Shell Offshore, Inc., Geological & Geophysical Prospecting for Mineral Resources, SEA L10–027.	Located in the Central Gulf of Mexico South of Morgan City, Louisiana.	5/27/2010

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about SEAs and FONSIs prepared by the Gulf of Mexico OCS Region are encouraged to contact BOEMRE at the address or telephone listed in the **FOR FURTHER INFORMATION CONTACT** section.

Dated: August 11, 2010.

John Rodi,

Deputy Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 2010–27805 Filed 11–3–10; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

Environmental Documents Prepared for Proposed Oil, Gas, and Mineral Operations by the Gulf of Mexico Outer Continental Shelf (OCS) Region

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement, Interior.

ACTION: Notice of the Availability of Environmental Documents Prepared for OCS Mineral Proposals by the Gulf of Mexico OCS Region.

SUMMARY: The Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), in accordance with Federal Regulations that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA) and Findings of No Significant Impact (FONSI), prepared by BOEMRE for the following oil-, gas-, and mineral-related activities proposed on the Gulf of Mexico.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section at the number below. Bureau of Ocean Energy Management, Regulation and Enforcement, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394, or by calling 1–800–200–GULF.

SUPPLEMENTARY INFORMATION: BOEMRE prepares SEAs and FONSIs for proposals that relate to exploration, development, production, and transport of oil, gas, and mineral resources on the Federal OCS. These SEAs examine the potential environmental effects of activities described in the proposals and present BOEMRE conclusions regarding whether those effects have significant impacts. Environmental Assessments are used to evaluate impacts and assist in determining whether or not approval of the proposals constitutes a major Federal action that significantly affects the quality of the human environment under Section 102(2)(C) of NEPA. A FONSI is prepared in those instances where BOEMRE finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the SEA. This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Activity/operator	Location	Date
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 00–066A.	West Cameron, Block 405, Lease OCS–G 23631, located 68 miles from the nearest Louisiana shoreline.	1/6/2010
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 07–016A.	East Cameron, Block 140, Lease OCS–G 25950, located 45 miles from the nearest Louisiana shoreline.	1/7/2010
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 09–228.	South Marsh Island, Block 35, Lease OCS–G 21614, located 40 miles from the nearest Louisiana shoreline.	1/7/2010
Helis Oil & Gas Company, LLC, Structure Removal, SEA ES/SR 08–163A.	West Cameron, Block 43, Lease OCS–G 16107, located 6 miles from the nearest Louisiana shoreline.	1/7/2010
Virgin Offshore, USA, Inc., Structure Removal, SEA ES/SR 10–002.	High Island, Block 198, Lease OCS–G 17151, located 32 miles from the nearest Louisiana shoreline.	1/8/2010
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 10–001.	West Cameron, Block 342, Lease OCS–G 27023, located 53 miles from the nearest Louisiana shoreline.	1/14/2010
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 09–235.	Eugene Island, Block 128A, Lease OCS–G 00442, located 33 miles from the nearest Louisiana shoreline.	1/15/2010
BP Exploration & Production, Inc., Revised Exploration Plan, SEA R–5001 AA.	Mississippi Canyon, Block 778, Lease OCS–G 09868, located in the Central Planning Area of the Gulf of Mexico, 66 miles from offshore, southeast of Venice, Louisiana.	1/20/2010
Helis Oil & Gas Company, LLC, Structure Removal, SEA ES/SR 09–236.	Ship Shoal, Block 53, Lease OCS–G 26051, located 15 miles from the nearest Louisiana shoreline.	1/21/2010
Tana Exploration Company, LLC, Structure Removal, SEA ES/SR 10–003.	East Cameron, Block 206, Lease OCS–G 13968, located 55 miles from the nearest Louisiana shoreline.	1/22/2010
Chevron U.S.A., Inc., Structure Removal, SEA ES/SR 08–026A & 08–059A.	East Cameron, Block 272, Lease OCS–G 02047, located 79 miles from the nearest Louisiana shoreline.	1/22/2010
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 09–232, 09233 & 09–234.	Eugene Island, Block 128A, Lease OCS–G 00442, located 33 miles from the nearest Louisiana shoreline.	1/22/2010
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 09–229, 09230 & 09–231.	Ship Shoal, Block 59 & 76, Lease OCS–G 11977 & G 10762, located 16 miles from the nearest Louisiana shoreline.	1/22/2010
Beryl Oil & Gas LP, Structure Removal, SEA ES/SR 10–004 ...	South Timbalier, Block 197, Lease OCS–G 05611, located 40 miles from the nearest Louisiana shoreline.	1/22/2010
BHP Billiton Petroleum (GOM), Inc., Revised Exploration Plan, SEA R–5013 AA.	Green Canyon, Block 555, Lease OCS–G 22979, located in the Central Planning Area of the Gulf of Mexico, 118 miles offshore, south of Houma, Louisiana.	2/11/2010

Activity/operator	Location	Date
Mariner Energy, Inc., Structure Removal, SEA ES/SR 10–005	South Marsh Island, Block 11, Lease OCS–G 01182, located 35 miles from the nearest Louisiana shoreline.	2/11/2010
McMoRan Oil & Gas, LLC, Structure Removal, SEA ES/SR 09–046.	East Cameron, Block 286, Lease OCS–G 02051, located 84 miles from the nearest Louisiana shoreline.	2/12/2010
BHP Billiton Petroleum (GOM), Inc., Revised Exploration Plan, SEA R–5012 AA.	Green Canyon, Block 817, Lease OCS–G 31753, located in the Central Planning Area of the Gulf of Mexico, 130 miles offshore, south of Terrebonne Parish, Louisiana.	2/12/2010
LLOG Exploration & Production Company, Structure Removal, SEA ES/SR 09–203.	High Island, Block A282, Lease OCS–G 24419, located 90 miles from the nearest Texas shoreline.	2/12/2010
Shell Offshore, Inc., Geological & Geophysical Prospecting for Mineral Resources, SEA L10–001.	Located in the Central Gulf of Mexico south of Venice, Louisiana.	2/12/2010
Marathon Oil Company, Revised Exploration Plan, SEA R–5015 AA.	Green Canyon, Block 511, Lease OCS–G 22971, located in the Central Planning Area of the Gulf of Mexico, 108 miles offshore, south of Terrebone Parish, Louisiana.	2/23/2010
Tana Exploration Company, LLC, Structure Removal, SEA ES/SR 10–007.	East Cameron, Block 271, Lease OCS–G 27050, located 90 miles from the nearest Louisiana shoreline.	2/25/2010
Chevron U.S.A., Inc., Structure Removal, SEA ES/SR 08–061A.	Eugene Island, Block 276, Lease OCS–G 00989, located 63 miles from the nearest Louisiana shoreline.	2/25/2010
XTO Offshore, Inc., Structure Removal, SEA ES/SR 10–008 ...	Matagorda Island, Block 632, Lease OCS–G 03091, located 13 miles from the nearest Texas shoreline.	3/1/2010
Chevron USA, Inc., Structure Removal, SEA ES/SR 10–006 ...	Grand Isle, Block 37, Lease OCS–G 00392, located 7 miles from the nearest Louisiana shoreline.	3/8/2010
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 10–016.	South Pelto, Block 12, Lease OCS–G 10835, located 9 miles from the nearest Louisiana shoreline.	3/8/2010
Stone Energy Corporation, Structure Removal, SEA ES/SR 10–009.	South Pelto, Block 15, Lease OCS–G 09652, located 10 miles from the nearest Louisiana shoreline.	3/8/2010
ATP Oil & Gas Corporation, Structure Removal, SEA ES/SR 10–014 & 10–015.	South Timbalier, Block 77, Lease OCS–G 04827, located 18 miles from the nearest Louisiana shoreline.	3/8/2010
Cronus Offshore, Inc., Structure Removal, SEA ES/SR 89–052A.	Brazos, Block A22, Lease OCS–G 03937, located 35 miles from nearest Texas shoreline.	3/10/2010
BP Exploration & Production, Inc., Geological & Geophysical Exploration for Mineral Resources, SEA L10–007.	Located in the Central Gulf of Mexico south of Morgan City, Louisiana.	3/17/2010
GOM Shelf, LLC, Structure Removal, SEA ES/SR 10–025	South Marsh Island, Block 174, Lease OCS–G 02888, located 95 miles from the nearest Louisiana shoreline.	3/19/2010
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 10–013.	Vermilion, Block 199, Lease OCS–G 09499, located 56 miles from the nearest Louisiana shoreline.	3/19/2010
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 10–012.	West Cameron, Block 347, Lease OCS–G 22543, located 41 miles from the nearest Louisiana shoreline.	3/19/2010
Apache Corporation, Structure Removal, SEA ES/SR 10–024	Eugene Island, Block 380, Lease OCS–G 02327, located 95 miles from the nearest Louisiana shoreline.	3/22/2010
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 10–011.	West Cameron, Block 444, lease OCS–G 25915, located 74 miles from the nearest Louisiana shoreline.	3/23/2010
Shell Offshore, Inc., Revised Exploration Plan, SEA R–5030 AA.	Walker Ridge, Block 95, Lease OCS–G 31943, located in the Central Planning Area of the Gulf of Mexico, 160 miles offshore, south of Morgan City, Louisiana.	3/31/2010

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about SEAs and FONSIs prepared by the Gulf of Mexico OCS Region are encouraged to contact BOEMRE at the address or telephone listed in the **FOR FURTHER INFORMATION CONTACT** section.

Dated: October 4, 2010.

Robert P. LaBelle,

Acting Associate Director for Offshore Energy and Minerals Management.

[FR Doc. 2010–27806 Filed 11–3–10; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY930000–L51100000–GN0000–LVEMK10CW370; WYW140590]

Notice of Correction to Notice of Intent To Prepare an Environmental Impact Statement for the Gas Hills Uranium Project, Fremont and Natrona Counties, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction.

SUMMARY: On September 7, 2010, the Bureau of Land Management published a Notice of Intent to Prepare an Environmental Impact Statement for the Gas Hills Uranium Project, Fremont and Natrona Counties, Wyoming (75 FR 54384). The notice inadvertently contained an incorrect legal land description. The correct legal land description for the Gas Hills Uranium Project location is as follows:

Sixth Principal Meridian, Wyoming

T. 32 N., R. 89 and 90 W.
T. 33 N., R. 89 and 90 W.

FOR FURTHER INFORMATION CONTACT: Kristin Yannone, Project Leader, at 307–332–8448.

Donald A. Simpson,

State Director.

[FR Doc. 2010–27801 Filed 11–3–10; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Western Michigan University, Anthropology Department, Kalamazoo, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of Western Michigan University, Anthropology Department, Kalamazoo, MI. The human remains and associated funerary objects were removed from Mackinac County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Western Michigan University professional staff in consultation with representatives of the Little Traverse Bay Bands of Odawa Indians, Michigan, and the Sault Ste. Marie Tribe of Chippewa Indians of Michigan.

In 1973, human remains representing a minimum of eight individuals were removed from the Gyftakis site (20MK51), St. Ignace, Moran Township, Mackinac County, MI, during an archeological excavation directed by Dr. James Fitting. The human remains were transferred to Western Michigan University for curation and further analysis. The 20 associated funerary objects are 8 black bear scapula and fragments, 1 black bear atlas, 1 black bear proximal femur head, 1 large bird long bone shaft, 1 possible black bear phalanx, 1 possible crane carpometacarpus, 1 raptor carpometacarpus, 1 possible small bird long bone, 1 unidentified non-human cranium fragment, 2 bird or small mammal long bones and 2 probable bird phalanxes.

In 1972, Middle Woodland period ceramic sherds were found during test excavations for the St. Ignace Archaeological Survey Project, which prompted the archeological survey. The burials were found to be in good condition. Dr. Robert Sundick, a physical anthropologist in the Anthropology Department at Western Michigan University, studied the remains. Native American ancestry was determined based on the temporal association of the Gyftakis Site to the Middle Woodland period (A.D. 170), radiocarbon dating of a sample from an associated hearth and AMS date of ceramic pot residue. Additionally, seriation of the pottery and lithic tools discovered at the Gyftakis Site, but which are not associated funerary objects, are indicative of the Middle Woodland period and are clearly of pre-Contact/European manufacturing.

According to oral tradition, the Little Traverse Bay Bands of Odawa Indians have occupied the St. Ignace area for numerous generations preceding European arrival into the Great Lakes. The archeological evidence of pre-historic Native American occupation of the Gyftakis site supports the Odawa oral histories. In 1615, the French were the first Europeans to record the Odawa in the Great Lakes. Since this first encounter in the early 17th century to the present-day, the Odawa have a long, documented history at St. Ignace and the surrounding Mackinac region.

Officials of Western Michigan University have determined, pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of eight individuals of Native American ancestry. Officials of Western Michigan University also have determined, pursuant to 25 U.S.C. 3001(3)(A), the 20 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of Western Michigan University have determined, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Little Traverse Bay Bands of Odawa Indians, Michigan.

Representatives of any other Indian Tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact LouAnn Wurst, Department of Anthropology, Western Michigan University, 1005 Moore Hall, Kalamazoo, MI 49008, telephone (269) 387–2753, before December 6, 2010. Repatriation of the human remains and associated funerary objects to the Little Traverse Bay Bands of Odawa Indians, Michigan, may proceed after that date if no additional claimants come forward.

Western Michigan University is responsible for notifying the Little Traverse Bay Bands of Odawa Indians, Michigan, and the Sault Ste. Marie Tribe of Chippewa Indians of Michigan, that this notice has been published.

Dated: October 29, 2010.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–27916 Filed 11–3–10; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of Agriculture, Forest Service, Chattahoochee-Oconee National Forests, Gainesville, GA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Department of Agriculture, Forest Service, Chattahoochee-Oconee National Forests, Gainesville, GA. The human remains and associated funerary objects were removed from Greene County, GA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the professional staff of the Chattahoochee-Oconee National Forests, University of Georgia, and Southeastern Archaeological Services, Inc., and in consultation with the Muscogee (Creek) Nation, Oklahoma, and the Poarch Band of Creek Indians of Alabama.

Sometime between 1985 and 1986, human remains representing a minimum of two individuals were removed from site 9GE1083, Greene County, GA. This site was disturbed by logging operations, and the human remains were removed by a local collector in late 1985 or early 1986. No known individuals were identified. The 131 associated funerary objects are Lamar period ceramic pottery sherds.

The site was investigated by Forest Service and contract archeologists and determined to be a boulder cache containing ceramic sherds and human skeletal remains. An area of charcoal rich soil was screened during the investigation, resulting in the recovery of a small number of ceramic sherds and bone fragments. A total of 478 pieces of human bone were recovered. No paired bones were identified that would indicate more than one individual; although differential wear on two teeth may indicate it is possible two individuals are present.

Lamar period ceramics present at the site, which are associated with the Iron Horse, Dyar and Bell phases, suggest a date of approximately A.D. 1450–1670. Following 1670, this region was abandoned by Native Americans for a period of time, and the surviving populations are thought to have eventually joined with the Creek Confederacy. Based on a review of the archeology, ethnography and history of the region, officials of the Forest Service believe the human remains are Creek in affiliation. The Creek are represented by the Alabama-Coushatta Tribe of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Coushatta Tribe of Louisiana; Kialegee Tribal Town, Oklahoma; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; and Thlopthlocco Tribal Town, Oklahoma.

Officials of the Chattahoochee-Oconee National Forests have determined, pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of the Chattahoochee-Oconee National Forests also have determined, pursuant to 25 U.S.C. 3001(3)(A), the 131 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Chattahoochee-Oconee National Forests have determined, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Alabama-Coushatta Tribe of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Coushatta Tribe of Louisiana; Kialegee Tribal Town, Oklahoma; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; and Thlopthlocco Tribal Town, Oklahoma.

Representatives of any other Indian Tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact James Wettstaed, Chattahoochee-Oconee National Forests, 1775 Cleveland Rd., Gainesville, GA 30501, telephone (770) 297–3026, before December 6, 2010. Repatriation of the human remains and associated funerary objects to the Alabama-Coushatta Tribe of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Coushatta Tribe of Louisiana; Kialegee Tribal Town, Oklahoma; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; and Thlopthlocco Tribal Town, Oklahoma, may proceed after that date if no additional claimants come forward.

The Chattahoochee-Oconee National Forests are responsible for notifying the Alabama-Coushatta Tribe of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Coushatta Tribe of Louisiana; Kialegee Tribal Town, Oklahoma; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; and Thlopthlocco Tribal Town, Oklahoma, that this notice has been published.

Dated: October 29, 2010.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–27917 Filed 11–3–10; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University, Rohnert Park, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University, Rohnert Park, CA. The human remains were removed from Mendocino County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Anthropological Studies Center professional staff in consultation with representatives of the Round Valley Indian Tribes of the Round Valley Reservation, California.

In January 1982, human remains representing a minimum of one individual were removed from the Diamond H. Ranch Site #2 (CA–MEN–164), in Mendocino County, CA. The human remains were collected from a prehistoric feature exposed in a road cut bank during a surface survey for the Diamond H. Ranch Biomass Generating Plant. This collection, curated under the accession number 82–01, represents results of the survey of CA–MEN–164, near the town of Covelo, Mendocino County, CA. The collection has been housed at the Anthropological Studies Center since it was accessioned in 1982. No known individual was identified. No associated funerary objects are present.

Analysis of the artifacts found at site CA–MEN–164 indicates a probable occupation between A.D. 1500 and 1856. Although the exact age and identity of the individual is unknown, more likely than not, the human remains fall within the period indicated above and are Native American. Ethnographic documents indicate CA–MEN–164 was located within the territory of the Ukomno'm division of the Yuki. Ethnographic accounts and information provided by representatives of the Round Valley Indian Tribes of the Round Valley Reservation, California, demonstrate cultural affiliation with the human remains, as the Round Valley Indian Tribes are composed of descendants of the Yuki, Concow Maidu, Little Lake and other Pomo, Nomlaki, Cahto, Wailaki and Pit River peoples.

Officials of the Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University, have determined, pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of one individual of Native American ancestry. Lastly, officials of the Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University, have determined, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Round Valley Indian Tribes of the Round Valley Reservation, California.

Representatives of any other Indian Tribe that believes itself to be culturally affiliated with the human remains should contact Erica Gibson, NAGPRA

Project Coordinator, Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University, Rohnert Park, CA 94928, telephone (707) 664–2015, before December 6, 2010. Repatriation of the human remains to the Round Valley Indian Tribes of the Round Valley Reservation, California, may proceed after that date if no additional claimants come forward.

The Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University, is responsible for notifying the Round Valley Indian Tribes of the Round Valley Reservation, California, that this notice has been published.

Dated: October 29, 2010.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–27919 Filed 11–3–10; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of Agriculture, Forest Service, Hiawatha National Forest, Escanaba, MI and University of Michigan, Museum of Anthropology, Ann Arbor, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of the U.S. Department of Agriculture, Forest Service, Hiawatha National Forest, Escanaba, MI, and in the physical custody of the University of Michigan, Museum of Anthropology, Ann Arbor, MI. The human remains were removed from Naomikong Point Site, Chippewa County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by U.S. Department of Agriculture, Forest Service, professional staff in consultation with representatives of the Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Sault Ste. Marie Tribe of Chippewa Indians of Michigan; and Saginaw Chippewa Indian Tribe of Michigan.

In 1966, human remains representing a minimum of one individual were removed from the Naomikong Point Site (20CH2), Chippewa County, MI, during excavations by the University of Michigan. This site is on Federal land, and excavation occurred under a U.S. Department of Agriculture, Forest Service, Special Use Permit. No known individual was identified. No associated funerary objects are present.

Based on archeological context, the human remains are identified as more likely than not Native American.

Officials of the U.S. Department of Agriculture, Forest Service, have determined, pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.

These Native American human remains are from the aboriginal lands of the Chippewa and Ottawa. According to the Treaty of Washington, March 28, 1836 (7 stat. 491), there are five present-day Indian Tribes that have aboriginal land in the area where the remains were excavated. These five Tribes are the Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; and the Sault Ste. Marie Tribe of Chippewa Indians of Michigan. The aboriginal land Tribes that are in closest proximity to the site are the Bay Mills Indian Community, Michigan, and Sault Ste. Marie Tribe of Chippewa Indians of Michigan. Letters of support for the disposition of the Native American human remains to the Bay Mills Indian Community, Michigan, and Sault Ste. Marie Tribe of Chippewa Indians of Michigan were sent by the Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Sault Ste. Marie Tribe of Chippewa Indians of Michigan; and Saginaw Chippewa Indian Tribe of Michigan. Therefore, officials of the U.S. Department of Agriculture, Forest Service, will transfer the Native American human remains from the Naomikong Point Site to the Bay Mills Indian Community, Michigan, and Sault Ste. Marie Tribe of Chippewa Indians of Michigan.

Officials of the U.S. Department of Agriculture, Forest Service, determined, pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of one individual of Native American ancestry. Lastly, officials of the U.S. Department of Agriculture, Forest Service, have determined, pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains is to the Bay Mills Indian Community, Michigan, and the Sault Ste. Marie Tribe of Chippewa Indians of Michigan.

Representatives of any Indian Tribe that believes itself to be culturally affiliated with the human remains or any other Indian Tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact Teresa Chase, Acting Forest Supervisor, Hiawatha National Forest, 2727 N. Lincoln Road, Escanaba, MI 49829, telephone (906) 786–4062, before December 6, 2010. Disposition of the human remains to the Bay Mills Indian Community, Michigan, and the Sault Ste. Marie Tribe of Chippewa Indians of Michigan, may proceed after that date if no additional requestors come forward.

The U.S. Department of Agriculture, Forest Service, is responsible for notifying the Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Sault Ste. Marie Tribe of Chippewa Indians of Michigan; and Saginaw Chippewa Indian Tribe of Michigan, that this notice has been published.

Dated: October 29, 2010.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–27918 Filed 11–3–10; 8:45 am]

BILLING CODE 4312–50–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain Mobile Devices and Related Software, DN 2768*; the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: Marilyn R. Abbott, Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint filed on behalf of Apple Inc., f/k/a Apple Computer, Inc., on October 29, 2010. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain mobile devices and related software. The complaint names as respondents Motorola, Inc., of Schaumburg, IL and Motorola Mobility, Inc., of Libertyville, IL

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register.** There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number ("Docket No. 2768") in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

By order of the Commission.

Dated: November 1, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–27903 Filed 11–3–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Revision to Notice of Lodging of Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act Published on October 28, 2010

The notice previously published on October 28, 2010, is hereby revised to correct two site location errors. The correct site locations are:

71. the Former Leed's Assembly Plant—Northern Parcel Site in Missouri; and

72. the Former Leed's Assembly Plant—Southern Parcel Site in Missouri.

Instructions for sending comments on the proposed Consent Decree and Settlement Agreement and for obtaining copies of the proposed Decree and Agreement are provided in the October 28, 2010 Notice (**Federal Register**/Vol. 75, No. 208/Thursday, October 28, 2010/Notices/page 66390).

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–27846 Filed 11–3–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Certifications for 2010 under the Federal Unemployment Tax Act

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Secretary of Labor signed the annual certifications under the Federal Unemployment Tax Act, 26 U.S.C. 3301 *et seq.*, thereby enabling employers who make contributions to state unemployment funds to obtain certain credits against their liability for the federal unemployment tax. By letter, the certifications were transmitted to the Secretary of the Treasury. The letter and certifications are printed below.

Signed in Washington, DC, on November 1, 2010.

Jane Oates,

Assistant Secretary of Labor, Employment and Training Administration.

BILLING CODE 4510–30–P

SECRETARY OF LABOR

WASHINGTON, D.C.

October 31, 2010

The Honorable Timothy F. Geithner
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

Dear Secretary Geithner:

Transmitted herewith are an original and one copy of the certifications of the states and their unemployment compensation laws for the 12-month period ending on October 31, 2010. One is required with respect to the normal federal unemployment tax credit by Section 3304 of the Internal Revenue Code of 1986 (IRC), and the other is required with respect to the additional tax credit by Section 3303 of the IRC. Both certifications list all 53 jurisdictions.

Sincerely,

HILDA L. SOLIS
Secretary of Labor

Enclosures

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

CERTIFICATION OF STATES TO THE SECRETARY OF THE TREASURY PURSUANT TO SECTION 3304(c) OF THE INTERNAL REVENUE CODE OF 1986

In accordance with the provisions of Section 3304(c) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(c)), I hereby certify the following named states to the Secretary of the Treasury for the 12-month period ending on October 31, 2010, in regard to the unemployment compensation laws of those states which heretofore have been approved under the Federal Unemployment Tax Act:

Alabama	Idaho
Alaska	Illinois
Arizona	Indiana
Arkansas	Iowa
California	Kansas
Colorado	Kentucky
Connecticut	Louisiana
Delaware	Maine
District of Columbia	Maryland
Florida	Massachusetts
Georgia	Michigan
Hawaii	Minnesota
Mississippi	Puerto Rico

Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Virgin Islands
Washington
West Virginia
Wisconsin
Wyoming

This certification is for the maximum normal credit allowable under Section 3302(a) of the Code.

Signed at Washington, D.C., on October 31, 2010.

Hilda L. Solis

HILDA L. SOLIS
Secretary of Labor

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

CERTIFICATION OF STATE UNEMPLOYMENT COMPENSATION LAWS TO THE SECRETARY OF THE TREASURY PURSUANT TO SECTION 3303(b)(1) OF THE INTERNAL REVENUE CODE OF 1986

In accordance with the provisions of paragraph (1) of Section 3303(b) of the Internal Revenue Code of 1986 (26 U.S.C. 3303(b)(1)), I hereby certify the unemployment compensation laws of the following named states, which heretofore have been certified pursuant to paragraph (3) of Section 3303(b) of the Code, to the Secretary of the Treasury for the 12-month period ending on October 31, 2010:

Alabama	Idaho
Alaska	Illinois
Arizona	Indiana
Arkansas	Iowa
California	Kansas
Colorado	Kentucky
Connecticut	Louisiana
Delaware	Maine
District of Columbia	Maryland
Florida	Massachusetts
Georgia	Michigan
Hawaii	Minnesota
Mississippi	Puerto Rico

Missouri	Rhode Island
Montana	South Carolina
Nebraska	South Dakota
Nevada	Tennessee
New Hampshire	Texas
New Jersey	Utah
New Mexico	Vermont
New York	Virginia
North Carolina	Virgin Islands
North Dakota	Washington
Ohio	West Virginia
Oklahoma	Wisconsin
Oregon	Wyoming
Pennsylvania	

This certification is for the maximum additional credit allowable under Section 3302(b) of the Code, subject to the limitations of Section 3302(c) of the Code.

Signed at Washington, D.C., on October 31, 2010.

HILDA L. SOLIS
Secretary of Labor

[FR Doc. 2010–27899 Filed 11–3–10; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Office of the Assistant Secretary; The Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO); Notice of Open Meeting

The Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO) was established pursuant to Title II of the Veterans' Housing Opportunity and Benefits Improvement Act of 2006 (Pub. L. 109–233) and Section 9 of the Federal Advisory Committee Act (FACA) (Pub. L. 92–462, Title 5 U.S.C. app.II). The authority of the ACVETEO is codified in Title 38 U.S. Code, Section 4110.

The ACVETEO is responsible for assessing employment and training needs of veterans; determining the extent to which the programs and activities of the U.S. Department of Labor meet these needs; and assisting to conduct outreach to employers seeking to hire veterans. The ACVETEO will conduct a business meeting by teleconference on Friday, December 3, 2010 from 2 to 3:30 p.m. The ACVETEO will discuss progress and plans regarding programs that assist veterans seeking employment and raise employer awareness as to the advantages of hiring veterans, with special emphasis on employer outreach and wounded and injured veterans. There will be an opportunity for persons or organizations to address the committee. Any individual or organization that wishes to do so should contact Gregory Green (202) 693–4734. Time constraints may limit the number of presentations.

Signed in Washington, DC this 1st day of November, 2010.

John M. McWilliam,

Deputy Assistant Secretary for Operations and Management, Veterans' Employment and Training Service.

[FR Doc. 2010–27905 Filed 11–3–10; 8:45 am]

BILLING CODE 4510–79–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of National Council on the Humanities

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meeting.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given that the National Council on the Humanities will meet in Washington, DC on November 18–19, 2010.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support from and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on November 18–19, 2010, will not be open to the public pursuant to subsections (c)(4), (c)(6) and (c)(9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and information the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the sessions on November 18, 2010 will be as follows:

COMMITTEE MEETINGS

Policy Discussion (Open to the Public):		
9–10:30 a.m.	Challenge Grants and Federal/State Partnership.	Room 507.
	Education Programs	Room M– 07.
	Preservation and Access	Room 415.
	Public Programs	Room 421.
	Research Programs	Room 315.
Discussion of specific grant applications and programs before the Council (Closed to the Public):		
10:30 a.m. until Adjourned	Challenge Grants and Federal/State Partnership.	Room 507.
	Education Programs	Room M–07.
	Preservation and Access	Room 415.
	Public Programs	Room 421.
	Research Programs	Room 315.

The morning session of the meeting on November 19, 2010 will convene at 9 a.m., in the first floor Council Room M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

A. Minutes of the Previous Meeting.

B. Reports.

1. Introductory Remarks.

2. *Guest Speaker:* Henry Louis Gates, Jr.

3. Staff Report.

4. Congressional Report.

5. Budget Report.

6. Reports on Policy and General Matters.

a. Challenge Grants.

b. Federal/State Partnership.

c. Education Programs.

d. Public Programs.

e. Preservation and Access.

f. Research Programs.

The remainder of the proposed meeting will be given to the consideration of specific applications and will be closed to the public for the reasons stated above.

Further information about this meeting can be obtained from Michael P. McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or by calling (202) 606–8322, TDD (202) 606–8282.

Advance notice of any special needs or accommodations is appreciated.

Michael P. McDonald,

Advisory Committee, Management Officer.

[FR Doc. 2010–27841 Filed 11–3–10; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meetings: November 2010

Time and Dates

All meetings are held at 2:30 p.m.:
Monday, November 1;
Tuesday, November 9;
Wednesday, November 10;
Tuesday, November 16;
Wednesday, November 17;
Thursday, November 18;
Tuesday, November 23;
Tuesday, November 30.

PLACE: Board Agenda Room, No. 11820, 1099 14th St., NW., Washington DC 20570.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pursuant to § 102.139(a) of the Board's Rules and Regulations, the Board or a panel thereof will consider "the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct, or disposition * * * of particular representation or unfair labor practice proceedings under section 8, 9, or 10 of the [National Labor Relations] Act, or any court proceedings collateral or ancillary thereto." *See also* 5 U.S.C. 552b(c)(10).

CONTACT PERSON FOR MORE INFORMATION: Lester A. Heltzer, Executive Secretary, (202) 273–1067.

Dated: November 2, 2010.

Lester A. Heltzer,

Executive Secretary.

[FR Doc. 2010–28052 Filed 11–2–10; 4:15 pm]

BILLING CODE 7545–01–P

NATIONAL SCIENCE FOUNDATION

Business and Operations Advisory Committee

ACTION: Change in Notice of Meeting.

SUMMARY: The National Science Foundation published a Notice of Meeting in the **Federal Register** on Monday, October 25, page 65528. The topics listed in the agenda have been changed.

Date/Time: November 16, 2010; 1 p.m. to 5:30 p.m. (EST).

November 17, 2010; 8 a.m. to 12 p.m. (EST).

Place: Arlington Hilton, Gallery II Conference Room, Arlington, VA.

Type of Meeting: OPEN.

Contact Person: Patty Balanga, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 292–8100.

Purpose of Meeting: To provide advice concerning issues related to the oversight, integrity, development and enhancement of NSF's business operations.

Agenda

November 16, 2010

Welcome/Introductions; BFA Update; The Changing Workplace: Challenges in a Federal Context (Overview and Panel Discussion); Committee Discussion: Prepare for Meeting with NSF Deputy Director; Discussion with Deputy Director; Open Government.

November 17, 2010

The Changing Workplace: Challenges in a Federal Context (Discussion Continued); International Facilities Subcommittee; Committee Expectations/Closing Discussions.

Dated: October 29, 2010.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2010–27791 Filed 11–3–10; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2010–0261]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on July 29, 2010.

1. *Type of submission, new, revision, or extension:* Extension.
2. *The title of the information collection:* 10 CFR part *4:* "*Nondiscrimination In Federally Assisted Commission Programs*".
3. *Current OMB approval number:* 3150–0053.
4. *The form number if applicable:* N/A.
5. *How often the collection is required:* Approximately 3 collection per year.
6. *Who will be required or asked to report:* All recipients of Federal financial assistance (grants) from the Nuclear Regulatory Commission (NRC).
7. *An estimate of the number of annual responses:* 800.
8. *The estimated number of annual respondents:* 200.
9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 3,600 hours.
10. *Abstract:* Recipients of NRC financial assistance provide data to demonstrate assurance to NRC that they are in compliance with non-discrimination regulations and policies.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC Worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by December 6, 2010. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Christine J. Kymn, Desk Officer, Office of Information and Regulatory Affairs (3150–0053), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Christine.J.Kymn@omb.eop.gov* or submitted by telephone at (202) 395–4638.

The NRC Clearance Officer is Tremaine Donnell, (301) 415–6258.

Dated at Rockville, Maryland, this 28th day of October 2010.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2010–27865 Filed 11–3–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0222]

Office of New Reactors; Notice of Availability of the Final Staff Guidance Standard Review Plan Section 13.6.2, Revision 1 on Physical Security—Design Certification

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of Availability.

SUMMARY: The NRC is issuing its Final Revision 1 to NUREG–0800, "Standard Review Plan (SRP) for the Review of Safety Analysis Reports for Nuclear Power Plants," Section 13.6.2, Revision 1 on Physical Security—Design Certification (Agencywide Documents Access and Management System (ADAMS) Accession No. ML102510273).

The NRC staff issues revisions to SRP sections to facilitate timely implementation of the current staff guidance and to facilitate reviews to amendments to licenses for operating reactors or for activities associated with review of applications for early site permits and combined licenses for the Office of New Reactors. The NRC staff will also incorporate Revision 1 of SRP Section 13.6.2 into the next revisions of the Regulatory Guide 1.206, "Combined License Applications for Nuclear Power Plants," and related guidance documents.

Disposition: On June 15, 2010, the NRC staff issued the proposed Revision 1 on SRP Section 13.6.2 on "Physical Security—Design Certification," ADAMS Accession No. ML100640121. There were no comments received on the proposed revision. Therefore, the guidance is issued as final without changes to the proposed notification as above.

ADDRESSES: The NRC maintains ADAMS, which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *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 Public Document Room reference staff at 1–800–397–4209, 301–415–4737, or by e-mail at *pdr.resource@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. William F. Burton, Chief, Rulemaking and Guidance Development Branch, Division of New Reactor Licensing, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone at 301–415–6332 or e-mail at *william.burton@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC posts its issued staff guidance on the NRC external Web page (*http://www.nrc.gov/reading-rm/doc-collections/isg/*).

Dated at Rockville, Maryland, this 28th day of October 2010.

For the Nuclear Regulatory Commission.

William F. Burton,

Chief, Rulemaking and Guidance Development Branch, Division of New Reactor Licensing, Office of New Reactor.

[FR Doc. 2010–27871 Filed 11–3–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0223]

Office of New Reactors; Notice of Availability of the Final Staff Guidance Standard Review Plan Section 13.6.3, Revision 1 on Physical Security—Early Site Permit

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of Availability.

SUMMARY: The NRC is issuing its Final Revision 1 to NUREG–0800, "Standard Review Plan (SRP) for the Review of Safety Analysis Reports for Nuclear Power Plants," Section 13.6.3, Revision 1 on Physical Security—Early Site Permit (Agencywide Documents Access and Management System (ADAMS) Accession No. ML102571602). The NRC staff issues revisions to SRP sections to facilitate timely implementation of the current staff guidance and to facilitate reviews to amendments to licenses for operating reactors or for activities associated with review of applications for early site permits and combined licenses for the Office of New Reactors. The NRC staff will also incorporate Revision 1 of SRP Section 13.6.3 into the next revisions of the Regulatory Guide 1.206, "Combined License Applications for Nuclear Power Plants," and related guidance documents.

Disposition: On June 15, 2010, the NRC staff issued the proposed Revision 1 on SRP Section 13.6.3 on "Physical Security—Early Site Permit," ADAMS Accession No. ML100980132. There were no comments received on the proposed revision. Therefore, the guidance is issued as final with editorial change to the proposed notification as above.

ADDRESSES: The NRC maintains an ADAMS, which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *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 Public Document Room reference staff at 1–800–397–4209, 301–415–4737, or by e-mail at *pdr.resource@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. William F. Burton, Chief, Rulemaking and Guidance Development Branch, Division of New Reactor Licensing, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001; telephone at 301–415–6332 or e-mail at *william.burton@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC posts its issued staff guidance on the NRC external Web page (*http://www.nrc.gov/reading-rm/doc-collections/isg/*).

Dated at Rockville, Maryland, this 28th day of October 2010.

For the Nuclear Regulatory Commission,

William F. Burton,

Chief, Rulemaking and Guidance Development Branch, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2010–27866 Filed 11–3–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0228]

Office of New Reactors; Notice of Availability of the Final Staff Guidance Standard Review Plan, Section 13.6.1, Revision 1 on Physical Security—Combined License and Operating Reactors

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of Availability.

SUMMARY: The NRC is issuing its Final Revision 1 to NUREG–0800, "Standard Review Plan (SRP) for the Review of Safety Analysis Reports for Nuclear Power Plants," Section 13.6.1, Revision 1 on Physical Security—Combined License and Operating Reactors (Agencywide Documents Access and Management System (ADAMS) Accession No. ML102230082).

The NRC staff issues revisions to SRP sections to facilitate timely implementation of the current staff guidance and to facilitate reviews to

amendments to licenses for operating reactors or for activities associated with review of applications for early site permits and combined licenses for the Office of New Reactors. The NRC staff will also incorporate Revision 1 of SRP Section 13.6.1 into the next revisions of the Regulatory Guide 1.206, "Combined License Applications for Nuclear Power Plants," and related guidance documents.

Disposition: On June 10, 2010, the NRC staff issued the proposed Revision 1 on SRP Section 13.6.1 on "Physical Security—Combined License and Operating Reactors," ADAMS Accession No. ML100350158. There were no comments received on the proposed revision. Therefore, the guidance is issued as final without changes to the proposed notification as stated above.

ADDRESSES: The NRC maintains ADAMS, which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *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 Public Document Room reference staff at 1–800–397–4209, 301–415–4737, or by e-mail at *pdr.resource@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. William F. Burton, Chief, Rulemaking and Guidance Development Branch, Division of New Reactor Licensing, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone at 301–415–6332 or e-mail at *william.burton@nrc.gov*.

SUPPLEMENTARY INFORMATION: The NRC posts its issued staff guidance on the NRC external Web page (*http://www.nrc.gov/reading-rm/doc-collections/isg/*).

Dated at Rockville, Maryland, this 28th day of October 2010.

For the Nuclear Regulatory Commission.

William F. Burton,

Chief, Rulemaking and Guidance Development Branch, Division of New Reactor Licensing.

[FR Doc. 2010–27873 Filed 11–3–10; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The Federal Salary Council will meet on November 19, 2010, at the time and location shown below. The Council is an advisory body composed of representatives of Federal employee organizations and experts in the fields of labor relations and pay policy. The Council makes recommendations to the President's Pay Agent (the Secretary of Labor and the Directors of the Office of Management and Budget and the Office of Personnel Management) about the locality pay program for General Schedule employees under section 5304 of title 5, United States Code. The Council's recommendations cover the establishment or modification of locality pay areas, the coverage of salary surveys, the process of comparing Federal and non-Federal rates of pay, and the level of comparability payments that should be paid.

The November meeting will be devoted to reviewing the results of pay comparisons and formulating its recommendations to the President's Pay Agent on pay comparison methods, locality pay rates, and locality pay areas and boundaries for 2012. The meeting is open to the public. Please contact the Office of Personnel Management at the address shown below if you wish to submit testimony or present material to the Council at the meeting.

DATES: November 19, 2010, at 10 a.m.

LOCATION: Office of Personnel Management, 1900 E Street, NW., Room 5H17, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles D. Grimes, III, Deputy Associate Director, Employee Services, Office of Personnel Management, 1900 E Street, NW., Room 7H31, Washington, DC 20415–8200. Phone (202) 606–2838; FAX (202) 606–4264; or e-mail at *pay-performance-policy@opm.gov*.

For the President's Pay Agent.

John Berry,

Director.

[FR Doc. 2010–27835 Filed 11–3–10; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–29493]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

October 29, 2010.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of October 2010. A copy of each application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202)551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 19, 2010, and should be accompanied by proof of service on the applicant, 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 Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street, NE., Washington, DC 20549–4041.

Evergreen Leaders Trust [File No. 811–8334]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on October 13, 2010, and amended on October 25, 2010.

Applicant's Address: 200 Berkeley St., Boston, MA 02116.

Federated Investment Portfolios [File No. 811–7461]; Federated Investment Trust [File No. 811–7477]

Summary: Applicants, a hub and spoke, respectively, in a hub and spoke structure, seek orders declaring that they have ceased to be investment companies. On September 25, 1998, Federated Investment Trust redeemed all of its interests in Federated Investment Portfolios, whose assets were distributed in-kind to Federated Investment Trust at net asset value. Also, on September 25, 1998, Federated Investment Trust transferred its assets to Federated Total Return Bond Fund, a series of Federated Total Return Series,

Inc., based on net asset value. Applicants incurred no expenses in connection with the reorganization and liquidation.

Filing Dates: The applications were filed on August 3, 2010, and amended on October 22, 2010.

Applicants' Address: Federated Investors Funds, 4000 Ericsson Dr., Warrendale, PA 15086–7561.

Stone Harbor Credit Recovery Income Fund [File No. 811–22330]; Stone Harbor Local Markets Income Fund [File No. 811–22068]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicants have never made a public offering of their securities and do not propose to make a public offering or engage in business of any kind.

Filing Dates: The applications were filed on September 16, 2010 and September 20, 2010, respectively, and each was amended on October 14, 2010.

Applicants' Address: ALPS Fund Services, Inc., 1290 Broadway, Suite 1100, Denver, CO 80203.

Pioneer Municipal and Equity Income Trust [File No. 811–21448]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Between October 6, 2008 and October 24, 2008, applicant redeemed its auction market preferred shares at $25,000 per share, plus an amount equal to accumulated but unpaid dividends. On October 24, 2008, applicant transferred its assets to Pioneer Tax Free Income Fund, based on net asset value. Expenses of approximately $257,023 incurred in connection with the reorganization were paid by applicant.

Filing Dates: The application was filed on November 12, 2009, and amended on September 29, 2010.

Applicant's Address: 60 State St., Boston, MA 02109.

Torrey US Strategy Partners, LLC [File No. 811–21066]; Torrey International Strategy Partners, LLC [File No. 811–21067]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On July 27, 2010, each applicant made a final liquidating distribution to its shareholders, based on net asset value. Expenses of approximately $128,797 and $37,004, respectively, incurred in connection with the liquidations were paid by applicants. Applicants have retained $40,435 and $31,640, respectively, in cash to pay certain expected liabilities.

Filing Date: The applications were filed on October 8, 2010.

Applicants' Address: 45 East Putnam Ave., Suite 124, Greenwich, CT 06830.

Morgan Stanley Global Opportunity Bond Fund, Inc. [File No. 811–8460]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On January 25, 2010, applicant transferred its assets to Morgan Stanley Emerging Markets Debt Fund, Inc., based on net asset value. Expenses of approximately $169,949 incurred in connection with the reorganization were paid by applicant and the acquiring fund.

Filing Dates: The application was filed on October 4, 2010 and amended on October 14, 2010.

Applicant's Address: c/o Morgan Stanley Investment Management Inc., 522 Fifth Ave., New York, NY 10036.

Emerging Markets Portfolio [File No. 811–8332]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 24, 2010, applicant made a liquidating distribution to its shareholders, based on net asset value. No expenses were incurred in connection with the liquidation.

Filing Date: The application was filed on October 6, 2010.

Applicant's Address: Two International Place, Boston, MA 02110.

Pennsylvania Avenue Funds [File No. 811–21253]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 7, 2010, applicant transferred its assets to Quaker Event Arbitrage Fund, a series of Quaker Investment Trust, based on net asset value. Expenses of $1,740 incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on October 7, 2010.

Applicant's Address: 260 Water St., Brooklyn, NY 11201.

Wells Family of Real Estate Funds [File No. 811–8355]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 18, 2009, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $221,161 incurred in connection with the liquidation were paid by Wells Asset Management, Inc., applicant's investment adviser.

Filing Date: The application was filed on October 1, 2010.

Applicant's Address: Wells Asset Management, Inc., 6200 The Corners Parkway, Norcross, GA 30092.

Hyperion Brookfield Collateralized Securities Fund, Inc. [File No. 811–21466]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On August 6, 2010, applicant made a final liquidating distribution to its shareholders, based on net asset value. Expenses of $38,500 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on September 21, 2010.

Applicant's Address: Three World Financial Center, 200 Vesey St., 10th Floor, New York, NY 10281–1010.

ICAP Funds, Inc. [File No. 811–8850]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 26, 2010, each series of applicant transferred its assets to the corresponding shell series of MainStay Funds Trust, based on net asset value. Expenses of $108,347 incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on October 8, 2010.

Applicant's Address: 51 Madison Ave., New York, NY 10010.

Castle Convertible Fund, Inc. [File No. 811–2213]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On January 9, 2009, applicant transferred its assets to Alger Convertible Fund, a series of The Alger Funds, based on net asset value. Expenses of $120,000 incurred in connection with the reorganization were paid by Fred Alger Management, Inc., applicant's investment adviser.

Filing Date: The application was filed on October 14, 2010.

Applicant's Address: 111 Fifth Ave., New York, NY 10003.

Templeton Capital Accumulator Fund [File No. 811–6198]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 20, 2005, applicant transferred its assets to Templeton Growth Fund, Inc., based on net asset value. Expenses of $376,699 incurred in connection with the

reorganization were paid one-quarter by the applicant, one-quarter by Templeton Growth Fund, Inc., one-quarter by Templeton Investment Counsel, LLC, the applicant's investment manager, and one-quarter by Templeton Global Advisors Limited, Templeton Growth Fund, Inc.'s investment manager.

Filing Dates: The application was filed on August 11, 2010 and amended on October 22, 2010.

Applicant's Address: 500 East Broward Boulevard, Fort Lauderdale, FL 33394–3091.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27861 Filed 11–3–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63211]

Notice of Intention To Cancel Registrations of Certain Transfer Agents

October 29, 2010.

Notice is hereby given that the Securities and Exchange Commission ("Commission") intends to issue an order, pursuant to Section 17A(c)(4)(B) of the Securities Exchange Act of 1934 ("Act"),[1] cancelling the registrations of the transfer agents whose names appear in the attached Appendix.

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director, or David Karasik, Special Counsel, at (202) 551–5710, U.S. Securities and Exchange Commission, Division of Trading and Markets, Room 7321 SP1, 100 F Street, NE., Washington, DC 20549–7010 or by e-mail at *tradingandmarkets@sec.gov* with the phrase "Notice of Intention To Cancel Transfer Agent Registration" in the subject line.

Background

Section 17A(c)(4)(B) of the Act provides that if the Commission finds that any transfer agent registered with the Commission is no longer in existence or has ceased to do business as a transfer agent, the Commission shall by order cancel that transfer agent's registration.

Although the Commission has made efforts to locate and to determine the status of each of the transfer agents listed in the Appendix, based on the facts it has, the Commission believes that each of those transfer agents is no longer in existence or has ceased doing business as a transfer agent. Accordingly, at any time after December 15, 2010, the Commission intends to issue an order cancelling the registrations of the transfer agents listed in the Appendix.

The representative of any transfer agent listed in the Appendix who believes the registration of the transfer agent should not be cancelled must notify the Commission in writing or by e-mail prior to December 15, 2010. Written notifications may be mailed to Office of Clearance and Settlement, Division of Trading and Markets, U.S. Securities and Exchange Commission, Room 7321 SP1, 100 F Street NE., Washington, DC 20459–7010. E-mail notifications may be sent to *tradingandmarkets@sec.gov* with the phrase "Notice of Intention To Cancel Transfer Agent Registration" in the subject line.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[2]

Florence E. Harmon,

Deputy Secretary.

APPENDIX

Transfer agent	File No.
Advest Transfer Services, Inc	8405855
AGN Associates & Stock Transfer Services, LLC	8406255
Amazon Natural Treasures.com, Inc	8405839
Beverly National Corporation	8505474
Capital Fund Services, Inc	8405909
Capital Fund Services, Inc	8405683
Century Realty Trust Co	8400082
CNB Bancorp, Inc	8505383
Compushare Transfer Corporation	8406194
Endless Investments, LLC	8406178
Electrochemical Industries Frutarom Inc	8400814
First Choice National Stock Transfer Agency Inc	8406154
Fortune Fund Administration, Inc	8405672
Francine Goodman (dba Maximvs Transfer Services)	8405926
GTI Corporate Transfer Agents LLC	8406151
Guarantee Services Corp	8406145
Hola Corp	8406047
Howard Johnson & Company	8405555
InCap Fund Administration, Inc	8406124
Incorp Stock Transfer Inc	8406042
International Acquisitions & Holdings, Inc	8406164
Kingsdale Shareholder Services Inc	8406188
Lapeer County Bank & Trust Co	8505250
Legends Financial Holding, Inc	8505534
Liberty Transfer Company	8405474
Manchester Benefits Group, Ltd	8405891
Manchester Exchange Trust Limited	8405810
McGladrey & Pullen, LLP	8405806
Mercantile Bancorp, Inc	8406226
Nicholas Vito Pelletiere Security West Stock Transfer	8406090
NuWave eSolutions Private Limited	8406170

[1] 15 U.S.C. 78q–1(c)(4)(B).

[2] 17 CFR 200.30–3(a)(22).

APPENDIX—Continued

Transfer agent	File No.
Pacific Stock Transfers Inc	8406088
Public Stock Transfer Company dba/Public Ease	8405866
Royalty Stock Transfer	8406189
Select American Transfer Co	8406152
Select Fidelity Transfer Services Ltd	8406139
Syntel, Inc	8406142
Technology Funding Capital Corporation	8405738
The Commercial Bank	8405867
The Northern Savings & Loan Company	8405867
The Nyhart Company, Inc	8405722
Trustmark Stock & Transfer Inc	8406073
UAC Inc	8400293
Wall Street Stock Transfer Corp	8406246
Wulf International, Ltd	8406180

[FR Doc. 2010–27857 Filed 11–3–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63208; File No. SR–DTC–2010–13]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Implement a Disincentive Fee Associated With the Deposit Automation Management System

October 28, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 18, 2010, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I and II below, which items have been prepared primarily by DTC.[2] DTC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) and Rule 19b–4(f)(3) thereunder so that the proposed rule change was effective upon filing with the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend DTC rules to provide that DTC will impose a new disincentive fee for certain deposits made through DTC's Deposit Automation Management ("DAM") system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The DAM system allows participants to transmit details of a deposit before forwarding physical securities to DTC. Under the DAM system, a participant is able to send to DTC details regarding securities that the participant plans to deposit.[5] DTC uses the deposit details to determine whether the proposed deposit is acceptable by checking for such things as issue eligibility, chill status, correct CUSIP information, *etc.* The deposit detail information is stored in DTC's database. Upon the submitting participant's initiation, DTC's systems send a transmission to the submitting participant's printer using a Systems Network Architecture ("SNA") connection.[6] The transmission causes bar-coded deposit tickets to print at the participant's office on dedicated thermal printers.[7] The bar-coded deposit tickets contain a variety of information required for DTC's processing of deposits.

Since IBM's recent announcement that it would no longer support SNA, DTC has begun making the deposit tickets available in PDF format. The method used by participants to initiate the print process did not change but rather than send the deposit tickets to a dedicated thermal printer at the participant's location, DTC "pushes" the deposit tickets to the requesting participant's work station in PDF format where the ticket can then be printed from any printer attached to that work station ("PDF method"). This process eliminates the need for participants to use expensive thermal printers or "peel-off" bar code labels.

Effective October 8, 2010, DTC retired the outdated and unsupported SNA ticket print stream and the use of "peel-off" adhesive bar code labels. Participants continue to have the ability to produce DAM deposit tickets for submission to DTC using the PDF method. Effective Monday, November 1, 2010, all DAM deposits received by DTC must be accompanied by a deposit ticket printed using the PDF method. Pursuant to this rule change, all deposits received without a DAM deposit ticket generated using the PDF method will continue to be processed by DTC but will incur a $100.00 processing fee in addition to the current DAM deposit fee.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[8] and the rules and regulations thereunder that are applicable to DTC

[1] 15 U.S.C. 78s(b)(1).

[2] The text of the proposed rule change is attached as Exhibit 5 to DTC's filing, which is available at *http://www.dtcc.com/downloands/legal/rule_filings/2010/dtc/2010–13.pdf.*

[3] 15 U.S.C. 78s(b)(3)(A)(iii) and 17 CFR 240.19b–4(f)(3).

[4] The Commission has modified the text of the summaries prepared by the DTC.

[5] Participants send the deposit details to DTC using either a Participant Terminal System message ("DAMP"), a PBS transmission, or a CF2DEP file.

[6] SNA is a network system developed by IBM in the early 1980s to move large amounts of data through the Internet.

[7] Some participants with low volumes of deposits have elected to use "peel-off" adhesive bar code labels instead of investing in expensive thermal printers.

[8] 15 U.S.C. 78q–1.

because the proposed rule will promote efficiencies in DTC's DAM service, and as such, it should help DTC remove undue impediments to and perfect the mechanism of a national system for the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act [9] and Rule 19b–4(f)(3)[10] thereunder because it establishes or changes a due, fee, or other charge imposed by DTC. At any time within sixty days of the filing of such rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–DTC–2010–13 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–DTC–2010–13. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of DTC and on DTC's Web site, *http://www.dtcc.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2010–13 and should be submitted on or before November 26, 2010.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27856 Filed 11–3–10; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(3).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63215; File No. SR–FICC–2010–07]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Proposed Fee

October 29, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 18, 2010 the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared primarily by FICC. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act [2] and Rule 19b–4(f)(2) [3] thereunder 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 amends FICC's Government Securities Division's ("GSD") Fee Structure to add a monthly fee of $250 for GCF participants with the exception of the GCF inter-dealer brokers for the development and maintenance of the DTCC GCF Repo Index.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC 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

The proposed rule change amends the GSD Fee Structure to add a monthly fee of $250 for GCF participants with the exception of the GCF inter-dealer brokers for the development and maintenance of the DTCC GCF Repo Index. This fee will become effective as of December 1, 2010. The index will provide the daily weighted average of the general collateral rate for each of the three most highly traded GCF Repo CUSIPs along with the total par value of all daily transactions in each CUSIP. FICC plans to post the index daily on FICC's Web site.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(ii).

[3] 17 CFR 240.19b–4(f)(2).

FICC states that the proposed rule change is consistent with the requirements of Section 17A of the Act [4] and the rules and regulations thereunder because the DTCC GCF Repo Index provides additional transparency to the funding market by making data available that is generated by GSD's GCF Repo product.

B. Self-Regulatory Organization's Statement on Burden on Competition

FICC 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

FICC has not solicited or received written comments relating to the proposed rule change. FICC will notify the Commission of any 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 19(b)(3)(A)(ii) of the Act [5] and Rule 19b–4(f)(2) [6] because the proposed rule change establishes or changes a due, fee, or other charge applicable only to a member. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–FICC–2010–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–FICC–2010–07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at FICC's principal office and on FICC's Web site at *http://ficc.com/gov/gov.docs.jsp?NS-query=#rf*. 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 submission should refer to File No. SR–FICC–2010–07 and should be submitted on or before November 26, 2010.

For the Commission by the Division of Trading and Markets pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27860 Filed 11–3–10; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78q–1.

[5] *Supra* note 2.

[6] *Supra* note 3.

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63213; File No. SR–CBOE–2010–098]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Market Maker Tier Appointment Cost for SPX

October 29, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 25, 2010, the Chicago Board Options Exchange, Incorporated ("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 the appointment cost for options on the Standard and Poor's 500 Index (SPX). 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.

[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).

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to amend CBOE Rule 8.3, *Appointment of Market-Makers,* to revise the appointment cost for SPX options. Specifically, CBOE is proposing to amend Rule 8.3(c)(iii) to increase the appointment cost for SPX from .95 to 1.0. Among other reasons, the Exchange believes the appointment cost change is reasonable in light of the planned introduction of a multi-platform feature to SPX (discussed below).

By way of background, CBOE currently operates the Hybrid Trading System and the Hybrid 3.0 Platform.[5] The particular trading platform on which index options and options on exchange-traded funds ("ETFs") are traded are designated by the Exchange on a class-by-class basis pursuant to Rule 8.14, *Index Hybrid Trading System Classes: Market-Maker Participants.* However, CBOE recently submitted a rule change to amend Rule 8.14 to provide that, for each Hybrid 3.0 class, the Exchange may determine to authorize a group of series of the class for trading on the Hybrid Trading System.[6]

Currently, all series of the SPX option class trade on the Hybrid 3.0 Platform. Pursuant to Rule 8.14, as amended, the Exchange may determine to designate a group of series in the SPX index option class for trading on the Hybrid Trading System. In conjunction with this change, the Exchange is proposing to increase the SPX appointment cost from .95 back to 1.0 effective December 1, 2010.[7] The appointment cost would confer the right to trade in open outcry the SPX series that are traded on the Hybrid 3.0 Platform and also confer the right to trade any group of series of SPX that the exchange may determine to authorize for trading on the Hybrid Trading System pursuant to Rule 8.14, as amended.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with 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.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) Act[9] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. Among other reasons, the Exchange believes that the appointment cost change for SPX is reasonable in light of the introduction of the multi-platform feature to SPX.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative 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[10] and Rule 19b–4(f)(6)(iii) thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2010–098 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–2010–098. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of 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–2010–098 and should be submitted on or before November 26, 2010.

[5] The "Hybrid Trading System" refers to the Exchange's trading platform that allows Market-Makers to submit electronic quotes in their appointed classes. The "Hybrid 3.0 Platform" is an electronic trading platform on the Hybrid Trading System that allows one or more quoters to submit electronic quotes which represent the aggregate Market-Maker quoting interest in the series for the trading crowd. *See* Rule 1.1(aaa).

[6] *See* SR–CBOE–2010–095.

[7] The Exchange notes that the appointment cost for SPX had previously been 1.0. *See* Securities Exchange Act Release No. 57752 (May 1, 2008), 73 FR 25813 (May 7, 2008) (SR–CBOE–2008–051) (immediately effective rule change that changed the SPX appointment cost from 1.0 to .95).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. CBOE has satisfied this requirement.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27858 Filed 11–3–10; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 7222]

Designation of Jundallah, Also Known as People's Resistance Movement of Iran (PMRI), Also Known as Jonbesh-i Moqavemat-i-Mardom-i Iran, Also Known as The Popular Resistance Movement of Iran, Also Known as Soldiers of God, Also Known as Fedayeen-e-Islam, Also Known as Former Jundallah of Iran, Also Known as Jundullah, Also Known as Jondullah, Also Known as Jundollah, Also Known as Jondollah, Also Known as Jondallah, Also Known as Army of God (God's Army), Also Known as the Baloch Peoples Resistance Movement (BPRM), as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act, as Amended

Based upon a review of the Administrative Record assembled in this matter, and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that there is a sufficient factual basis to find that the relevant circumstances described in section 219 of the Immigration and Nationality Act, as amended (hereinafter "INA") (8 U.S.C. 1189), exist with respect to Jundallah, also known as People's Resistance Movement of Iran (PMRI), also known as Jonbesh-i Moqavemat-i-Mardom-i Iran, also known as The Popular Resistance Movement of Iran, also known as Soldiers of God, also known as Fedayeen-e-Islam, also known as Former Jundallah of Iran, also known as Jundullah, also known as Jondullah, also known as Jundollah, also known as Jondollah, also known as Jondallah, also known as Army of God (God's Army) and also known as the Baloch Peoples Resistance Movement (BPRM).

Therefore, I hereby designate the aforementioned organization and its aliases as a Foreign Terrorist Organization pursuant to section 219 of the INA.

This determination shall be published in the **Federal Register**.

[12] 17 CFR 200.30–3(a)(12).

Dated: October 21, 2010.

Hillary Rodham Clinton,

Secretary of State.

[FR Doc. 2010–27785 Filed 11–3–10; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 7223]

Designation of Jundallah, Also Known as People's Resistance Movement of Iran (PMRI), Also Known as Jonbesh-i Moqavemat-i-Mardom-i Iran, Also Known as Popular Resistance Movement of Iran, Also Known As Soldiers of God, Also Known as Fedayeen-e-Islam, Also Known as Former Jundallah of Iran, Also Known as Jundullah, Also Known as Jondullah, Also Known as Jundollah, Also Known as Jondollah, Also Known as Jondallah, Also Known as Army of God (God's Army), Also Known as the Baloch Peoples Resistance Movement (BPRM), as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the organization known as also known as Jundallah, and also known as People's Resistance Movement of Iran (PMRI), also known as Jonbesh-i Moqavemat-i-Mardom-i-Iran, also known as Popular Resistance Movement of Iran, also known as Soldiers of God, also known as Fedayeen-e-Islam, also known as Former Jundallah of Iran, also known as Jundullah, also known as Jondullah, also known as Jundollah, also known as Jondollah, also known as Jondallah, also known as Army of God (God's Army) and also known as the Baloch Peoples Resistance Movement (BPRM) committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that "prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously," I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: October 21, 2010.

Hillary Rodham Clinton,

Secretary of State, Department of State.

[FR Doc. 2010–27787 Filed 11–3–10; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

[DOT Docket No. DOT–OST–2010–0074]

The Future of Aviation Advisory Committee (FAAC) Environment Subcommittee; Notice of Meeting

AGENCY: Office of the Secretary of Transportation, U.S. Department of Transportation.

ACTION: The Future of Aviation Advisory Committee (FAAC) Environment Subcommittee; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Department of Transportation (DOT), Office of the Secretary of Transportation, announces a meeting of the FAAC Environment Subcommittee, which will be held by teleconference. This notice announces the date and time of the meeting, which will be open to the public. The purpose of the FAAC is to provide advice and recommendations to the Secretary of Transportation to ensure the competitiveness of the U.S. aviation industry and its capability to manage effectively the evolving transportation needs, challenges, and opportunities of the global economy. The Environment Subcommittee is charged with examining steps and strategies that can be taken by aviation-sector stakeholders and the Federal Government to reduce aviation's environmental footprint and foster sustainability gains in cost-effective ways. This includes consideration of potential approaches to promote effective international actions through the International Civil Aviation Organization.

DATES: The meeting will be held on November 16, 2010, from 9 a.m. to 12 p.m. Eastern Standard Time.

ADDRESSES: The meeting will be held via teleconference. Call-in information will be provided to members of the public who register to participate.

Public Access: The meeting is open to the public. (*See* below for registration instructions.)

Public Comments: Persons wishing to offer written comments and suggestions concerning the activities of the advisory committee or Environment Subcommittee should file comments in the Public Docket (Docket Number DOT–OST–2010–0074 at *http://www.regulations.gov*) or alternatively through the *FAAC@dot.gov* e-mail. If comments and suggestions are intended specifically for the Environment Subcommittee, the term "Environment" should be listed in the subject line of the message. To ensure such comments can be considered by the subcommittee before its November 16, 2010, meeting, public comments must be filed by 5 p.m. Eastern Standard Time on Friday, November 12, 2010.

SUPPLEMENTARY INFORMATION:

Background

Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we are giving notice of a meeting of the Environment Subcommittee of the FAAC taking place on November 16, 2010, from 9 a.m. to 12 p.m. Eastern Standard Time. The meeting will be held by teleconference. The agenda includes completing and prioritizing the Environment Subcommittee's recommendations to the FAAC.

Registration

The meeting can accommodate up to 15 members of the public. Persons desiring to call in must pre-register through e-mail to *FAAC@dot.gov* by 5 p.m. Eastern Standard Time Friday, November 12, 2010. The term "Registration: Environment" should be listed in the subject line of the message and participation will be limited to the first 15 persons to pre-register and receive a confirmation of their pre-registration. Instructions for participating by phone will be provided with registration confirmation.

Minutes of the meeting will be taken and will be made available to the public.

Requests for Special Accommodation

The DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, please send a request to *FAAC@dot.gov* with the term "Special Accommodations" listed in the subject line of the message by close of business Friday, November 12, 2010.

FOR FURTHER INFORMATION CONTACT: Lynne Pickard, Deputy Director, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3577; fax (202) 267–5594; *Lynne.Pickard@faa.gov.*

Issued in Washington, DC, on November 1, 2010.

Pamela Hamilton-Powell,

Designated Federal Official, Future of Aviation Advisory Committee.

[FR Doc. 2010–27862 Filed 11–3–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 2010–1052]

Airport Privatization Pilot Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Receipt and Acceptance for Review: Preliminary Application for Airglades Airport (2IS), Clewiston, Florida.

SUMMARY: The Federal Aviation Administration (FAA) has completed its review of Hendry County and Airglades Airport's preliminary application for participation in the airport privatization pilot program received under 49 U.S.C. Section 47134. The preliminary application is accepted for review, with a filing date of October 6, 2010. Hendry County, the airport sponsor, may select a private operator, negotiate an agreement and submit a final application to the FAA for exemption under the pilot program.

49 U.S.C. Section 47134 establishes an airport privatization pilot program and authorizes the Department of Transportation to grant exemptions from certain Federal statutory and regulatory requirements for up to five airport privatization projects. The application procedures require the FAA to publish a notice in the **Federal Register** after review of a preliminary application. The FAA must publish a notice of receipt of the final application in the **Federal Register** for public review and comment for a sixty-day period. The Airglades Airport preliminary application is available for public review at *http://www.regulations.gov.* The docket number is FAA Docket Number 2010–1052.

FOR FURTHER INFORMATION CONTACT: Dave Cushing (202–267–8348) Airport Compliance Division, ACO–100, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Introduction and Background

Title 49 of the U.S. Code 47134 authorizes the Secretary of Transportation, and through delegation, the FAA Administrator, to exempt a sponsor of a public use airport that has received Federal assistance, from certain Federal requirements in connection with the privatization of the airport by sale or lease to a private party. Specifically, the Administrator may exempt the sponsor from all or part of the requirements to use airport revenues for airport-related purposes, to pay back a portion of Federal grants upon the sale or lease of an airport, and to return airport property deeded by the Federal Government upon transfer of the airport. The Administrator is also authorized to exempt the private purchaser or lessee from the requirement to use all airport revenues for airport-related purposes, to the extent necessary to permit the purchaser or lessee to earn compensation from the operations of the airport.

On September 16, 1997, the Federal Aviation Administration issued a notice of procedures to be used in applications for exemption under Airport Privatization Pilot Program (62 FR 48693). A request for participation in the Pilot Program must be initiated by the filing of either a preliminary or final application for exemption with the FAA.

Hendry County submitted an initial preliminary application to the Airport Privatization Pilot Program for Airglades Airport on August 31, 2010. The FAA requested additional information and Hendry County submitted that information on October 6, 2010— the filing date of this preliminary application. The County may select a private operator, negotiate an agreement and submit a final application to the FAA for exemption.

If FAA accepts the final application for review, the application will be made available for public review and comment for a sixty-day period.

Issued in Washington, DC on October 20, 2010.

Randall S. Fiertz,

Director, Office of Airport Compliance and Field Operations.

[FR Doc. 2010–27896 Filed 11–3–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2007–0012]

RIN 2133–AB69

Determination of Foreign Reconstruction or Rebuilding of U.S.-Built Vessels That Participate in the Capital Construction Fund and Cargo Preference Programs

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of Withdrawal.

SUMMARY: The Maritime Administration (MARAD) is withdrawing and terminating its notice published in the **Federal Register** on November 14, 2007, at 72 FR 64109, which requested comments on what standards MARAD should apply concerning determinations of foreign reconstruction of U.S.-built vessels that participate in the Capital Construction Fund (CCF) program and foreign rebuilding of U.S.-built vessels that participate in the cargo preference program. Initially, when the notice was published, it was considered useful to obtain public comment on whether MARAD should issue regulations on standards applicable to determination of rebuilding or reconstruction. At the time the notice was published, the Coast Guard's approach to rebuilding was an unsettled area of law and a particular issue had arisen with regard to MARAD's method of determination in a foreign rebuild context. That matter was resolved and in December 2009, the Coast Guard's method of carrying out rebuilding determinations was affirmed by the United States Court of Appeals for the Fourth Circuit. Likewise, MARAD's approach to such determinations had been affirmed by the United States Court of Appeals for the Second Circuit. Even though the standards are different as applied regarding the cargo preference program, the two approaches would only rarely produce a different result. Furthermore, because they are generally applied in different circumstances, they even more rarely produce inconsistent results regarding the same vessel. MARAD has been requested to make a determination only twice in the last fifteen years. Therefore, a new rule is not required.

DATES: The notice published at 72 FR 64109 (November 14, 2007) is withdrawn and terminated on November 4, 2010.

Docket: For access to the docket to read background documents, please go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Murray A. Bloom, Chief, Division of Maritime Programs, Office of Chief Counsel, Maritime Administration, 1200 New Jersey Ave., SE., Washington, DC 20590; Ph. (202) 366–5320, fax: (202) 366–3511; or e-mail *murray.bloom@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Three maritime promotional statutes mandate use of U.S.-built vessels and generally provide that a U.S.-built vessel becomes ineligible to carry preference cargo if the vessel is determined to have been reconstructed or rebuilt in a foreign country.

Section 12132(b) of title 46, United States Code, provides that a vessel eligible to engage in the U.S. coastwise trade and later rebuilt outside the United States may no longer engage in the coastwise trade. This statute is administered by the U.S. Coast Guard. The Coast Guard's regulations that implement the statute are set forth in 46 CFR part 67. In determining whether a vessel has been rebuilt, the Coast Guard examines the amount of steel replaced on a vessel. The Coast Guard's interpretation of its regulations regarding rebuilding was affirmed in *Shipbuilders Council of America, Inc.* v. *United States Coast Guard,* 578 F.3d 234 (4th Cir. 2009) and followed in the more recent case decided December 3, 2009, in *Shipbuilders Council of America* v. *United States Dept. of Homeland Security,* 673 F.Supp.2d 438 (E.D.Va. 2009).

Chapter 535 of title 46, United States Code, established the Capital Construction Fund (CCF) program, whereby a U.S. citizen owner of an eligible vessel may defer Federal income taxes on income derived from the operation of an eligible vessel to the extent that income is deposited into a fund to be used solely for the acquisition, construction or reconstruction of qualified vessels. The statutory definitions of both eligible and qualified vessels, as pertaining to the CCF program, require such vessels, if reconstructed, to be reconstructed in the United States. MARAD administers the CCF program (except for the CCF applicable to fishery vessels and administered by the National Oceanic and Atmospheric Administration) under regulations located at 46 CFR part 390. To evaluate reconstruction under the CCF program, MARAD follows determinations made by the Coast Guard for Jones Act purposes. Under the CCF, because most vessels are Jones Act vessels and must meet Coast Guard limitations for rebuilding, it is appropriate for CCF vessels to meet only the single test for Coast Guard and MARAD.

Chapter 553 of title 46, United States Code, provides that preference be given in the carriage of U.S. Government-impelled cargoes to privately-owned commercial vessels of the United States. The statute excludes any vessel rebuilt in a foreign country, unless the vessel shall have been documented under U.S. registry for at least three years prior to seeking preference cargoes. MARAD regulations at 46 CFR part 381 govern shipment of preference cargoes. To assess rebuilding under cargo preference rules, MARAD examines the extent of shipyard work and whether vessel type has been or would be changed, and how the changes to the vessel would affect trade, U.S. shipyards, and purposes and policy of the Merchant Marine Act. MARAD's authority to apply a standard to rebuilding determinations, different from the Coast Guard's, was affirmed in *Aquarius Marine Co.* v. *Pena,* 64 F.3d 82 (2nd Cir. 1995). This case was followed by MARAD's final opinions in *Barge Connor,* Docket No. A–198 (Oct. 26, 2005) and *Matson Navigation Company,* MARAD Docket No. A–199 (Dec. 9, 2008).

II. Summary of the Notice

On November 14, 2007, MARAD published a notice requesting comments. It was published at 72 FR 64109. The notice requested comments as to how MARAD should administer the programs assigned to it and sought answers to four questions. MARAD received 21 comments from 10 commenters. Commenters included U.S. shippers, individuals, and shipping associations. A discussion of the comments follows.

III. Discussion of Comments

The notice requested comments on four topics pertaining to foreign rebuild and reconstruction standards as applied to the CCF program and cargo preference. The questions included: (1) What substantive standards should MARAD apply to determine whether a CCF vessel has been reconstructed or a cargo preference vessel has been rebuilt; (2) what procedures should the MARAD adopt to investigate whether a CCF vessel has been reconstructed or a cargo preference vessel has been rebuilt; (3) what role, if any, should unrelated third parties, such as competitors or shipyards, play in developing a record of decision on whether a CCF vessel has been reconstructed or a cargo preference vessel has been rebuilt; and (4) what public disclosure criteria should apply

to the record of decision on whether a CCF vessel has been reconstructed or a cargo preference vessel has been rebuilt. In response to question one as to which substantive standards MARAD should apply to determine whether a CCF vessel has been reconstructed or a cargo preference vessel has been rebuilt, the majority of commenters responded that there were already established precedents in the *Aquarius Marine Co.* case and MARAD's determinations in *Golden Monarch and Barge Connor;* two others suggested that MARAD adopt the Coast Guard's standard for rebuild/reconstruction determinations. MARAD will maintain the status quo by adhering to the established precedents. As to question number two regarding what procedures MARAD should adopt to inquire into whether a CCF vessel has been reconstructed or a cargo preference vessel has been rebuilt, a majority of the commenters felt participants in the CCF and cargo preference programs should seek advisory opinions from MARAD prior to having work performed outside the United States. One commenter suggested that MARAD enter into a Memorandum of Understanding with the Coast Guard to be notified of all applications for rebuild determinations and then make an independent determination based upon the application submitted to the Coast Guard. MARAD noted in its decision in *Barge Connor* that it would have provided an advisory decision to Moby Marine Corporation if asked prior to work having been performed in Colombia. MARAD is willing to provide advisory opinions and will do so when asked. Such advisory opinions will be published in the **Federal Register**.

As to the third question posed in the notice regarding what role, if any, that unrelated third parties should play in developing a record of decision on whether a CCF vessel has been reconstructed or a cargo preference vessel has been rebuilt, all commenters felt third parties should play a substantial role in developing the record.

A variety of comments were received in response to question four regarding public disclosure of records of decision. There was general consensus that MARAD should publish its final rulings in the **Federal Register**. MARAD currently does not publish its rulings in the **Federal Register**. Instead, previous final opinions and orders may be found on MARAD's Web site at *http://www.marad.dot.gov* in its Electronic Reading Room. However, MARAD will publish final decisions and orders relating to the rebuilding of vessels, as it pertains to programs administered by MARAD, in the future.

IV. Reason for Withdrawal

MARAD's procedures on foreign rebuilding for cargo preference purposes were affirmed in *Aquarius Marine Co.* in 1995 and reaffirmed in the *Barge Connor* (2005) and *Matson* (2008) decisions. This is a settled area of law. Also, MARAD received no objections to its practice that CCF reconstruction follow Coast Guard guidance. MARAD and the Coast Guard have different standards for rebuilding as discussed herein, but those standards have a very slight chance of overlapping or producing conflicting results. This is so because the differing standards address diverse segments of the vessel market. Thus, there is no need for a new rule or to amend the cargo preference regulations or the CCF regulations with respect to rebuild or reconstruction determination standards.

By Order of the Maritime Administrator.

Dated: October 25, 2010.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2010–27812 Filed 11–3–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35439]

Watco Holdings, Inc., Watco Companies, Inc., and Watco Transportation Services, Inc.—Corporate Family Transaction Exemption

Watco Holdings, Inc. (Holdings), Watco Companies, Inc. (Watco), Watco Transportation Services, Inc. (Transportation Services), and the rail carrier subsidiaries have jointly filed a verified notice of exemption under 49 CFR 1180.2(d)(3) for a corporate family transaction. Watco, a noncarrier, is a Kansas corporation that controls Transportation Services, also a noncarrier and a Kansas corporation. Watco indirectly controls 22 Class III railroads (the Watco Railroads): South Kansas and Oklahoma Railroad Company (SKO); Palouse River & Coulee City Railroad, Inc.; Timber Rock Railroad, Inc.; Stillwater Central Railroad, Inc.; Eastern Idaho Railroad, Inc; Kansas & Oklahoma Railroad, Inc.; Pennsylvania Southwestern Railroad, Inc.; Great Northwest Railroad, Inc.; Kaw River Railroad, Inc.; Mission Mountain Railroad, Inc; Mississippi Southern Railroad, Inc.; Yellowstone Valley Railroad, Inc.; Louisiana Southern Railroad, Inc.; Arkansas Southern Railroad, Inc.; Alabama Southern Railroad, Inc.; Vicksburg Southern Railroad, Inc.; Austin Western Railroad, Inc.; Baton Rouge Southern Railroad, LLC (BRSR); Pacific Sun Railroad, LLC (PSRR); Grand Elk Railroad; Alabama Warrior Railway, LLC (AWR); and Boise Valley Railroad, Inc.

Under the proposed transaction, all but 4 of the Watco Railroads, SKO, PSRR, AWR, and BRSR, will reorganize. Holdings, which is a new Kansas noncarrier holding company, will indirectly control all of the Watco Railroads. There are several steps to the proposed transaction. The existing stockholders of Watco will form Holdings, and Holdings will become the parent to Watco and thus will indirectly control the 22 Watco Railroads. In addition, Watco will convert from a Kansas corporation to a Delaware limited liability company and will continue to control Transportation Services. In turn, Transportation Services will convert from a Kansas corporation to a Kansas limited liability company and will continue to directly control 21 of the Watco Railroads: all but BRSR.[1] Further, each of the Watco Railroads except SKO, PSRR, AWR, and BRSR will be converted to either a limited liability company or a C corporation, depending on applicable State law. Each of the Watco Railroads will remain incorporated in the same state of its incorporation today.

The transaction is scheduled to be consummated on or after November 18, 2010, the effective date of the exemption (30 days after the notice was filed). The purpose of this transaction is to facilitate Watco's ability to obtain financing.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or any change in the competitive balance with carriers outside the Watco corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail

[1] The parties state that BRSR will continue to be controlled by separate, wholly owned subsidiaries of Watco.

carriers. Accordingly the Board may not impose labor protective conditions here because all of the carriers involved are Class III rail carriers.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than November 10, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35439, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Karl Morell, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 1, 2010.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2010–27938 Filed 11–3–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Draft Finding of No Significant Impact on the Tier 1 Ohio 3C Quick Start Passenger Rail Tier-1 Environmental Assessment

AGENCY: Federal Railroad Administration (FRA), United States Department of Transportation (DOT).

ACTION: Notice of availability; request for comments on draft Finding of No Significant Impact.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA) and the FRA's Procedures for Considering Environmental Impacts (FRA Environmental Procedures) (64 FR 28545, May 26, 1999), the FRA and the Ohio Department of Transportation (ODOT) and the Ohio Rail Development Commission (ORDC) prepared a Tier-1 Environmental Assessment (Tier-1 EA) that evaluates the impacts of the 3C Quick Start Passenger Rail Project. Based on the Tier-1 EA, the FRA has prepared a draft finding of no significant impact (draft FONSI) and is inviting the public to comment on the draft.

DATES: Written comments will be accepted on or before December 6, 2010. Copies of both the Tier-1 EA and draft FONSI are available on FRA's Web site at: *http://www.fra.dot.gov/Pages/249.shtml* and ODOT's Web site at *http://www.3CisMe.Ohio.gov*.

ADDRESSES: Please submit written comments on the draft FONSI to Ms. Judi Craig Parsons Brinckerhoff, 312 Elm Street, Suite 2500, Cincinnati, Ohio 45202.

FOR FURTHER INFORMATION CONTACT: For further information regarding the draft FONSI please contact Wendy Messenger, Environmental Protection Specialist, Federal Railroad Administration, 1200 New Jersey Ave., SE., Stop 20, Washington DC 20590, *Wendy.Messenger@dot.gov*.

SUPPLEMENTARY INFORMATION: The purpose of the 3C "Quick Start" Passenger Rail Project is to reestablish intercity conventional speed passenger rail service (up to 79 miles per hour) in the 3C Corridor and provide a reliable train system that links Ohio's three largest cities (Cleveland, Columbus and Cincinnati.) The service will deliver predictable and consistent travel times. It is intended to provide travel options and develop the passenger rail market for possible further development. To achieve these goals ORDC applied for Federal funding through the High Speed Intercity Passenger Rail Program (HSIPR Program) administered by the FRA and funded by the American Recovery and Reinvestment Act (Recovery Act). ORDC's application under the Recovery Act identified the transportation benefits of the project as providing citizens with additional mobility options and a new transportation choice for travelers with associated benefits. The FRA intends to provide funding under the HSIPR Program for this project.

In June 2009, the FRA released the HSIPR Program Guidance (Interim Guidance) that described the eligibility requirements and procedures for obtaining funding under the HSIPR Program. (74 FR 29900 (June 23, 2009)). The Interim Guidance split the funding opportunities into four separate tracks. The 3C Quick Start Project was submitted by ODOT for consideration for Track 2 funding. The Interim Guidance required Track 2 applicants to submit, with their application, a "corridor-wide 'service' NEPA study, such as a programmatic or Tier I EIS." (Interim Guidance Section 1.6.2). The Interim Guidance went on to explain that Tier 1 Environmental Impact Statements and some Environmental Assessments are programmatic and "[a]ddress[ ] actions at a broad level, such as a program concept for an entire corridor." (Interim Guidance Section 2.2).

In order to comply with the requirements of the Interim Guidance, ODOT and ORDC prepared a Tier-1 or "service" NEPA document that included the analysis of four route alternatives including the "No Build" and twelve communities with 32 possible station sites. The No Build Alternative analyzes what would happen if there are no improvements on the OH 3C Corridor. The alternatives analyses analyze the effect on the human and natural environments of the improvements that involve the four route alternatives, twelve communities and 32 possible station sites that meet the goals of the OH 3C Quick Start Project. The Tier-1 EA was completed in September, 2009 and was made available for comment between September 25, 2009 and October 6, 2009 at *http://www.3CisMe.Ohio.gov*. Approximately 7,500 comments were received.

At the Tier-1 level of review, the FRA finds that the 3C Quick Start Passenger Rail Project as presented and evaluated in the July 2010 Tier-1 EA, satisfies the requirements of FRA's "Procedures for Considering Environmental Impacts" and will not have a significant impact on the quality of the human or natural environment, following the implementation of the mitigation measures detailed in the FONSI and those which will be developed during the site-specific environmental documentation process for specific improvements.

Therefore, FRA has drafted a FONSI for the proposed improvements. This FONSI based on the Tier-1 EA has been prepared to comply with NEPA and the FRA's Environmental Procedures. FRA has concluded that the award of Federal funds to reestablish the intercity passenger rail service on the 3C corridor as described in the EA, constitutes a major Federal action within the meaning of Section 102(c) of NEPA (42 U.S.C. 4332). Prior to release of construction funding for this project, ODOT and ORDC will successfully complete applicable mitigation measures detailed in the draft FONSI and complete appropriate project-level NEPA evaluations, documentation and decision documents and the mitigation measures developed thereunder.

FRA Environmental Procedures require that a FONSI be made available to the public for not less than 30 days when the "nature of the proposed action is one without precedent." Because the nature of this project is unprecedented and this Tier-1 Level FONSI is

contemplated to be one of the first that FRA will issue, this notice invites the public to comment on the draft FONSI.

Issued in Washington, DC, on November 1, 2010.

Mark E. Yachmetz,

Associate Administrator for Railroad Policy and Development.

[FR Doc. 2010–27872 Filed 11–2–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Illinois

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, Red Gate Road Extension and Bridge Crossing over the Fox River between Illinois Route 31 and Illinois Route 25 in Kane County, Illinois. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before May 3, 2011. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Norman R. Stoner, P.E., Division Administrator, Federal Highway Administration, 3250 Executive Park Drive, Springfield, Illinois 62703, Phone: (217) 492–4600, E-mail address: *Norman.Stoner@dot.gov.* The FHWA Illinois Division Office's normal business hours are 7:30 a.m. to 4:15 p.m. You may also contact Ms. Diane O'Keefe, P.E., Illinois Department of Transportation, Deputy Director of Highways, Region One Engineer, 201 West Center Court, Schaumburg, Illinois 60196, Phone: (847) 705–4000. The Illinois Department of Transportation Region One's normal business hours are 8 a.m. to 4:30 p.m.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Illinois: extension of Red Gate Road and construction of a two-lane bridge and bicycle/pedestrian trail across the Fox River from Illinois Route 31 (IL 31) to Illinois Route 25 (IL 25); a distance of 0.5 mile. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) for the project approved on November 4, 2009; the Final Section 4(f) Evaluation approved on October 5, 2010; the Finding of No Significant Impact (FONSI) issued on October 14, 2010; and in other documents in the FHWA administrative record. The EA, the Final Section 4(f) Evaluation, FONSI, and other documents in the FHWA administrative record file are available by contacting the FHWA or the Illinois Department of Transportation at the addresses provided above. The EA, Final Section 4(f) Evaluation and FONSI can be viewed and downloaded from the project Web site at *http://www.redgatebridge.org.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351] Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].
2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].
3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303 and 23 U.S.C. 138].
4. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)].
5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archaeological and Historic Preservation Act (AHPA) [16 U.S.C. 469–469(c)].
6. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Migratory Bird Treaty Act [16 U.S.C. 703–712].
7. *Wetlands and Water Resources:* Clean Water Act (Section 401 and 404) [33 U.S.C. 1251–1377]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287].
8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: October 29, 2010.

Norman R. Stoner,

Division Administrator, Springfield, Illinois.

[FR Doc. 2010–27932 Filed 11–3–10; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

SUMMARY: The FAA is issuing this notice to advise the public that a new charter has been issued for the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC). The duties of this advisory committee include:

1. To make recommendations for standardizing, clarifying, and upgrading terminology and procedures, as a result of its review of present ATC procedures and practices.
2. To provide advice and make recommendations concerning:
   a. New or significantly revised ATC procedural concepts.
   b. The adequacy of charts, diagrams, and illustrations used to convey information concerning the application of ATC procedures and their relevance to current, revised, or proposed ATC procedures and concepts.
   c. Aviation regulations that have an impact on present, new, or significantly revised ATC procedures and concepts.
3. To act solely in an advisory capacity to accomplish its duties.

DATES: Effective October 29, 2010.

FOR FURTHER INFORMATION CONTACT: Elizabeth Ray, ATPAC Executive Director, 800 Independence Avenue, SW., Washington, DC 20591. Telephone (202) 267–9205.

SUPPLEMENTARY INFORMATION: Pursuant to Section 9(c) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of the filing of the ATPAC Charter, Effective October 29, 2010.

Issued in Washington, DC, on October 29, 2010.

Elizabeth Ray,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 2010–27832 Filed 11–3–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Membership Availability in the National Parks Overflights Advisory Group Aviation Rulemaking Committee To Represent Environmental Concerns

ACTION: Notice.

SUMMARY: The National Park Service (NPS) and the Federal Aviation Administration (FAA), as required by the National Parks Air Tour Management Act of 2000, established the National Parks Overflights Advisory Group (NPOAG) in March 2001. The NPOAG was formed to provide continuing advice and counsel with respect to commercial air tour operations over and near national parks. This notice informs the public of two vacancies (due to completion of membership on May 30, 2011) on the NPOAG (now the NPOAG Aviation Rulemaking Committee (ARC) for a member representing environmental concerns and invites interested persons to apply to fill the vacancy.

DATES: Persons interested in serving on the NPOAG ARC should contact Mr. Barry Brayer at the mailing or e-mail address below in writing on or before December 20, 2010.

FOR FURTHER INFORMATION CONTACT: Barry Brayer, AWP–1SP, Special Programs Staff, Federal Aviation Administration, Western-Pacific Region Headquarters, P.O. Box 92007, Los Angeles, CA 90009–2007, telephone: (310) 725–3800, e-mail: *Barry.Brayer@faa.gov,* or Karen Trevino, National Park Service, Natural Sounds Program, 1201 Oakridge Dr., Suite 100, Fort Collins, CO 80525, telephone (970) 225–3563, e-mail: *Karen_Trevino@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Parks Air Tour Management Act of 2000 (the Act) was enacted on April 5, 2000, as Public Law 106–181. The Act required the establishment of the advisory group within 1 year after its enactment. The advisory group was established in March 2001, and is comprised of a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American Tribes. The Administrator of the FAA and the Director of NPS (or their designees) serve as ex officio members of the group. Representatives of the Administrator and Director serve alternating 1-year terms as chairperson of the advisory group.

The advisory group provides "advice, information, and recommendations to the Administrator and the Director—

(1) On the implementation of this title [the Act] and the amendments made by this title;

(2) On commonly accepted quiet aircraft technology for use in commercial air tour operations over a national park or Tribal lands, which will receive preferential treatment in a given air tour management plan;

(3) On other measures that might be taken to accommodate the interests of visitors to national parks; and

(4) On safety, environmental, and other issues related to commercial air tour operations over a national park or tribal lands."

Members of the advisory group may be allowed certain travel expenses as authorized by section 5703 of Title 5, United States Code, for intermittent Government service.

By FAA Order No. 1110–138, signed by the FAA Administrator on October 10, 2003, the NPOAG became an Aviation Rulemaking Committee (ARC). FAA Order No. 1110–138, was amended and became effective as FAA Order No. 1110–138A, on January 20, 2006.

The current NPOAG ARC is made up of one member representing general aviation, three members representing the commercial air tour industry, four members representing environmental concerns, and two members representing Native American Tribal concerns. Current members of the NPOAG ARC are: Heidi Williams, Aircraft Owners and Pilots Association; Alan Stephen, fixed-winged air tour operator representative; Elling Halvorson, Papillon Airways, Inc.; Matthew Zuccaro, Helicopter Association International; Chip Dennerlein, Siskiyou Project; Gregory Miller, American Hiking Society; Kristen Brengel, National Parks Conservation Association; Bryan Faehner, National Parks Conservation Association; Rory Majenty, Hualapai Nation; and Ray Russell, Navajo Parks and Recreation. Members with expiring terms are Kristen Brengel and Bryan Faehner from the National Parks Conservation Association representing environmental concerns.

Public Participation in the NPOAG ARC

In order to retain balance within the NPOAG ARC, the FAA and NPS invite persons interested in serving on the ARC to represent environmental concerns, to contact Mr. Barry Brayer (contact information is written above in **FOR FURTHER INFORMATION CONTACT**).

Requests to serve on the ARC must be made to Mr. Brayer in writing and postmarked or e-mailed on or before December 20, 2010. The request should indicate whether or not you are a member of an association or group representing environmental concerns, or have another affiliation with issues relating to aircraft flights over national parks. The request should also state what expertise you would bring to the NPOAG ARC as related to the vacancy you are seeking to fill (*e.g.,* environmental concerns). The term of service for NPOAG ARC members is 3 years.

Issued in Hawthorne, CA, on October 27, 2010.

Barry Brayer,

NPOAG Chairman, Manager, Special Programs Staff, Western-Pacific Region.

[FR Doc. 2010–27833 Filed 11–3–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2010 0095]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel BARCODE.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2010–0095 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the

vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before December 6, 2010.

ADDRESSES: Comments should refer to docket number MARAD–2010–0095. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel BARCODE is:

Intended Commercial Use of Vessel: "coastwise. Limited charter 6 or fewer passengers."

Geographic Region: "Florida."

Privacy Act Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: October 21, 2010.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2010–27810 Filed 11–3–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2010–0096]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel FISHASAURUS.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2010–0096 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before December 6, 2010.

ADDRESSES: Comments should refer to docket number MARAD–2010–0096. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel FISHASAURUS is:

Intended Commercial Use of Vessel: "Sport fishing charters, 6 passengers or less."

Geographic Region: "Michigan, Ohio, Indiana."

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: October 21, 2010.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2010–27822 Filed 11–3–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Change in Use of Aeronautical Property at Louisville International Airport, Louisville, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: The Federal Aviation Administration is requesting public comment on request by the Louisville Regional Airport Authority to change a portion of airport property from aeronautical to non-aeronautical use at the Louisville International Airport, Louisville, Kentucky. The request consists approximately of 1.773 acres of fee simple release. This action is taken under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before *December 6, 2010.*

ADDRESSES: Documents are available for review at the Louisville International

Airport, 600 Terminal Drive, Louisville, KY 40209 and the FAA Memphis Airports District Office, 2862 Business Park Drive, Building G, Memphis, TN 38118. Written comments on the Sponsor's request must be delivered or mailed to: Mr. Phillip J. Braden, Manager, Memphis Airports District Office, 2862 Business Park Drive, Building G, Memphis, TN 38118.

In addition, a copy of any comments submitted to the FAA must be mailed or delivered to Mr. Charles T. Millers, Executive Director, Louisville Regional Airport Authority, P.O. Box 9129, Louisville, KY 40209.

FOR FURTHER INFORMATION CONTACT: Mr. Tommy L. Dupree, Team Lead/Civil Engineer, Federal Aviation Administration, Memphis Airports District Office, 2862 Business Park Drive, Building G, Memphis, TN 38118. The application may be reviewed in person at this same location, by appointment.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the request to release property at the Louisville International Airport, Louisville, KY. Under the provisions of AIR 21 (49 U.S.C. 47107(h)(2)).

On October 28, 2010, the FAA determined that the request to release property at Louisville International Airport meets the procedural requirements of the Federal Aviation Administration. The FAA may approve the request, in whole or in part, no later than *December 6, 2010.*

The following is a brief overview of the request:

The Louisville Regional Airport Authority is proposing the release of approximately 1.773 acres along various locations on the western boundary of Louisville International Airport that are adjacent to Crittenden Drive. This release is for compliance by the authority with prior commitments between the Louisville Regional Airport Authority and The Commonwealth of Kentucky for the previous relocation of Crittenden Drive associated with the authority's Runway 17R–35L construction at Louisville International Airport.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon appointment and request, inspect the request, notice and other documents germane to the request in person at the Tennessee Department of Transportation, Division of Aeronautics.

Issued in Memphis, TN, on October 28, 2010.

Tommy L. Dupree,

Acting Manager, Memphis Airports District Office, Southern Region.

[FR Doc. 2010–27893 Filed 11–3–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning an information collection titled, "Securities Offering Disclosure Rules." The OCC is also giving notice that it has sent the collection to OMB for review.

DATES: You should submit written comments by December 6, 2010.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mail Stop 2–3, Attention 1557–0120, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, please send a copy of your comments to OCC Desk Officer, 1557–0120, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary H. Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, NW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Securities Offering Disclosure Rules.

OMB Control No.: 1557–0120.

Affected Public: Business or other for-profit.

Type of Review: Regular.

Abstract: This information collection covers an existing regulation and involves no change to the regulation or to the information collection. The OCC requests only that OMB extend its approval of the information collection.

The requirements in 12 CFR part 16 enable the OCC to perform its responsibilities relating to offerings of securities by national banks by providing the investing public with facts about the condition of the bank, the reasons for raising new capital, and the terms of the offering. Part 16 generally requires national banks to conform to Securities and Exchange Commission Rules.

The collections of information in part 16 are as follows:

Form for Registration. A national bank offering or selling its own securities to the public is required to make such offer or sale through the use of a prospectus that has been filed with the OCC as part of a registration statement.

Abbreviated Form for Registration. A national bank that is a subsidiary of a company that has securities registered under the Securities Exchange Act of 1934 (Exchange Act) may offer and sell securities (nonconvertible debt) only to accredited investors upon meeting conditions in 12 CFR 16.6 and by providing an abbreviated information statement in a form for registration.

Small Issues. A national bank may offer and sell securities publicly in a limited dollar amount by using an Offering Statement meeting the requirements of SEC's Regulation A (17 CFR 230.251 *et seq.*).

Regulation D. A national bank may offer or sell its own securities in a private placement to accredited or sophisticated investors in compliance with 12 CFR 16.7.

Form 144. A national bank must file Form 144, which contains information on resales of securities originally sold through the private placement exemption, only in certain circumstances.

These information collection requirements ensure bank compliance with applicable Federal law, promote bank safety and soundness, provide protections for banks, and further public policy interests.

Estimated Number of Respondents: 48.

Estimated Number of Responses: 48.

Estimated Total Annual Burden: 450 hours.

The information collection was issued for 60 days of comment on August 17, 2010. 75 FR 50800. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 29, 2010.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

[FR Doc. 2010–27901 Filed 11–3–10; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the resolution for transactions involving registered securities.

DATES: Written comments should be received on or before January 3, 2011, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Robert L. Schumacher, 200 Third Street, A4–A, Parkersburg, WV 26106–1328, or *Robert.Schumacher@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Robert L. Schumacher, Bureau of the Public Debt, 200 Third Street, A4–A, Parkersburg, WV 26106–1328, (304) 480–8150.

SUPPLEMENTARY INFORMATION:

Title: Resolution For Transactions Involving Registered Securities.

OMB Number: 1535–0117.

Form Number: PD F 1010.

Abstract: The information is requested to establish the official's authority to act on behalf of the organization.

Current Actions: None.

Type of Review: Extension.

Affected Public: Business or other for profit.

Estimated Number of Respondents: 1,380.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 230.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 28, 2010.

Robert L. Schumacher,

Manager, Information Management Branch.

[FR Doc. 2010–27863 Filed 11–3–10; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Native American CDFI Assistance (NACA) Program

Funding Opportunity Title: Notice of Funds Availability (NOFA) inviting applications for the FY 2011 Funding Round of the Native American CDFI Assistance (NACA) Program.

Announcement Type: Announcement of funding opportunity.

Catalog of Federal Domestic Assistance (CFDA) Number: 21.020.

DATES: Applications for Financial Assistance (FA) and/or Technical Assistance (TA) awards through the FY 2011 Funding Round of the NACA Program must be received by 11:59 p.m., Eastern Time (ET), December 22, 2010.

Executive Summary: Subject to funding availability, this NOFA is issued in connection with the FY 2011 Funding Round. The NACA Program is administered by the Community Development Financial Institutions (CDFI) Fund.

I. Funding Opportunity Description

A. Through the NACA Program, the CDFI Fund provides: (i) FA awards to CDFIs that direct at least 50 percent of their activities toward serving Native American, Alaska Native, and/or Native Hawaiians (Native CDFIs). Native CDFIs must have Comprehensive Business Plans for creating demonstrable community development impact through the deployment of credit, capital, and financial services within their respective Target Markets or for the expansion into new Investment Areas, Low-Income Targeted Populations, or Other Targeted Populations; and (ii) TA grants to Native CDFIs, entities proposing to become Native CDFIs, and to Native organizations, Tribes, and Tribal organizations (Sponsoring Entities) that propose to create Native CDFIs, in order to build their capacity to meet the community development and capital access needs of their existing or proposed Target Markets and/or to become certified Native CDFIs.

B. The regulations governing the CDFI Program are found at 12 CFR part 1805 (the Regulations) and provide guidance on evaluation criteria and other requirements of the NACA Program. The CDFI Fund encourages Applicants to review the Regulations. Detailed application content requirements are found in the applicable funding application and related guidance materials. Each capitalized term in this

NOFA is more fully defined in the Regulations, the application, or the guidance materials.

C. The CDFI Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFA. The CDFI Fund reserves the right to re-allocate funds from the amount that is anticipated to be available under this NOFA to other CDFI Fund programs, particularly if the CDFI Fund determines that the number of awards made under this NOFA is fewer than projected.

II. Award Information

A. *Funding Availability:* Through this NOFA, and subject to funding availability, the CDFI Fund expects that it may award approximately $12 million in appropriated funds in the FY 2011 Funding Round. The CDFI Fund reserves the right to award in excess of $12 million in appropriated funds to Applicants in the FY 2011 Funding Round, provided that the funds are available and the CDFI Fund deems it appropriate.

B. *Availability of Funds for the FY 2011 Funding Round:* Funds for the FY 2011 Funding Round have not yet been appropriated. If funds are not appropriated for the FY 2011 Funding Round, there will not be a FY 2011 Funding Round. Further, it is possible that if funds are appropriated for the FY 2011 Funding Round, the amount of such funds may be greater than or less than the amounts set forth above. Further, if funds for the FY 2011 Funding Round are not appropriated, entities that are eligible to apply for CDFI Program funds and that might otherwise have applied for NACA Program funds are encouraged to apply for funds through the FY 2011 Funding Round of the CDFI Program.

C. *Types of Awards:* An Applicant may submit an application either for: (i) A FA award; (ii) a FA award and a TA grant; or (iii) a TA-only grant.

1. *FA Awards:* FA is intended to provide flexible financial support to CDFIs so that they may achieve the strategies outlined in their Comprehensive Business Plans. FA awards can be used in the following five categories: (i) Financial Products; (ii) Financial Services; (iii) Development Services; (iv) Loan Loss Reserves, (v) Capital Reserves, or other activities/uses that support the activities in the Applicant's Comprehensive Business Plan; and/or (vi) Operations. For purposes of this NOFA, Financial Products means loans, grants, equity investments, and similar financing activities, including the purchase of loans originated by certified CDFIs and the provision of loan guarantees, in the Applicant's Target Market, or for related purposes that the CDFI Fund deems appropriate (including administrative funds used to carry out Financial Products). Financial Services means checking and savings accounts, certified checks, automated teller machine services, deposit taking, remittances, safe deposit box services, and other similar services (including administrative funds used to carry out Financial Services). Development Services means activities that promote community development and are integral to the Applicant's provisions of Financial Products and Financial Services (including administrative funds used to carry out Development Services) including, for example, financial or credit counseling, housing and homeownership counseling (pre- and post-), self-employment technical assistance, entrepreneurship training, and financial management skill-building. Loan Loss Reserves means funds that the Applicant will set aside in the form of cash reserves, or through accounting-based accrual reserves, to cover losses on loans, accounts, and notes receivable made in its Target Market, or for related purposes that the CDFI Fund deems appropriate (including administrative funds used to carry out Loan Loss Reserves). Capital Reserves means funds that the Applicant will set aside in the form of reserves to support the Applicant's ability to leverage other capital, for such purposes as increasing its net assets or serving the financing needs of its Target Market, or for related purposes that the CDFI Fund deems appropriate (including administrative funds used to carry out Capital Reserves). Operations means funds that the Applicant will use to carry out its Comprehensive Business Plan, and/or for related purposes that the CDFI Fund deems appropriate, that are not used to carry out or administer any of the foregoing eligible FA uses. FA awards are most commonly used for an Applicant's Financial Products since FA funds can be used to support the Applicant's community development lending activities.

The CDFI Fund may provide FA awards in the form of equity investments (including, in the case of certain Insured Credit Unions, secondary capital accounts), grants, loans, deposits, credit union shares, or any combination thereof. The CDFI Fund reserves the right, in its sole discretion, to provide a FA award in a form and amount other than that which the Applicant requests; however, the award amount will not exceed the Applicant's award request as stated in its application. The CDFI Fund reserves the right, in its sole discretion, to provide a FA award to an Applicant on the condition that the Applicant agrees to use a TA grant for specified capacity-building purposes, even if the Applicant has not requested a TA grant. FA awards must be used to support the Applicant's activities; FA awards cannot be used to support the activities of, or otherwise be "passed through" to, third-party entities, whether Affiliates, Subsidiaries, or others, without the prior written permission of the CDFI Fund.

2. *TA Grants:* (a) The CDFI Fund provides TA awards in the form of grants. The CDFI Fund reserves the right, in its sole discretion, to provide a TA grant for uses and amounts other than that which the Applicant requests; however, the award amount will not exceed the Applicant's award request as stated in its application and the applicable budget chart.

(b) TA grants may be used to address a variety of needs including, but not limited to, development of strategic planning documents (such as strategic or capitalization plans), market analyses or product feasibility analyses, operational policies and procedures, curricula for Development Services (such as entrepreneurial training, home buyer education, financial education or training, or borrower credit repair training), improvement of underwriting and portfolio management, development of outreach and training strategies to enhance product delivery, operating support to expand into a new eligible market, and tools that allow the Applicant to assess the impact of its activities in its community.

(c) Eligible TA grant uses include, but are not limited to: (i) Procuring professional services; (ii) acquiring/enhancing technology items, including computer hardware, software, and Internet connectivity and related management information systems; (iii) acquiring training for staff, management, and/or board members; and (iv) paying recurring expenses, including staff salary and other key operating expenses, that will enhance the capacity of the Applicant to serve its Target Market and/or to become certified as a Native CDFI or to create a Native CDFI. Applicants should see the NACA application for additional details of each eligible use of TA.

D. *Assistance Agreement:* Each Awardee under this NOFA must execute an Assistance Agreement in order to receive a disbursement of award proceeds by the CDFI Fund. The Assistance Agreement contains the terms and conditions of the award. For

further information, *see* Section VI.A of this NOFA.

III. Eligibility Information

A. *Eligible Applicants:* The Regulations specify the eligibility requirements that each Applicant must meet in order to be eligible to apply for assistance under this NOFA. The following sets forth additional detail and dates that relate to the submission of applications under this NOFA:

1. *Applicant Categories:* All Applicants for FA, FA/TA and TA-only awards through this NOFA must meet the criteria in Table 1—NACA Applicant Criteria.

TABLE 1—NACA APPLICANT CRITERIA

Applicant type	Criteria of applicant	Maximum award
FA, FA/TA	A Certified/Certifiable Native CDFI that meets all other eligibility requirements described in this NOFA.	Up to and including $750,000 in FA funds, and up to and including $150,000 if TA funds are being requested.
TA-only	A Certified Native CDFI, a Certifiable Native CDFI, an Emerging Native CDFI, or a Sponsoring Entity.	Up to $150,000 for capacity-building activities.

2. *Native CDFI Certification Requirements:* For purposes of this NOFA, eligible FA Applicants include Certified Native CDFIs and Certifiable Native CDFIs; eligible TA Applicants include Certified Native CDFIs, Certifiable Native CDFIs, Emerging Native CDFIs, and Sponsoring Entities, defined as follows:

(a) *Certified Native CDFIs:* For purposes of this NOFA, a Certified Native CDFI is an entity that has received official notification from the CDFI Fund that it meets all CDFI certification requirements as of the date of publication of this NOFA, the certification of which has not expired and that has not been notified by the CDFI Fund that its certification has been terminated. In cases where the CDFI Fund provided Native CDFIs with written notification that their certifications had been extended, the CDFI Fund will consider the extended certification date (the later date) to determine whether those Native CDFIs meet this eligibility requirement. When applicable, each such Applicant must submit a Certification of Material Events form to the CDFI Fund not later than the deadline indicated in Section IV. F. Application Deadlines. The Certification of Material Events form can be found on the CDFI Fund's Web site at *http://www.CDFIfund.gov*.

(b) *Certifiable Native CDFIs:* For purposes of this NOFA, a Certifiable Native CDFI is an entity from which the CDFI Fund has received a complete CDFI Certification application no later than the deadline indicated in Section IV. F—Application Deadlines, evidencing that the Applicant meets the requirements to be certified as a Native CDFI. The CDFI Certification application can be found on the CDFI Fund's Web site at *http://www.CDFIfund.gov*. If the CDFI Fund is unable to certify the organization as a Native CDFI based on the CDFI certification application submitted to the CDFI Fund, it is in the sole discretion of the CDFI Fund to terminate the award commitment. While a Certifiable Native CDFI may be conditionally selected for a FA award, the CDFI Fund will not enter into an Assistance Agreement or disburse award funds unless and until the CDFI Fund has officially certified the organization as a Native CDFI.

(c) *Emerging Native CDFIs:* For purposes of this NOFA, an Emerging Native CDFI is an entity that demonstrates to the CDFI Fund's satisfaction that it has a reasonable plan to be a certified Native CDFI within two calendar years after both entities enter into an Assistance Agreement or such other date selected by the CDFI Fund. Emerging Native CDFIs may apply for TA grants only and are not eligible to apply for FA awards. Each Emerging Native CDFI selected to receive a TA grant will be required, pursuant to its Assistance Agreement with the CDFI Fund, to become certified as a Native CDFI by a certain date.

(d) *Sponsoring Entities:* For the purposes of this NOFA, a Sponsoring Entity is an entity that proposes to create a separate legal entity that will become a certified Native CDFI. Sponsoring Entities include: (a) A Tribe, Tribal entity, Alaska Native Village, Village Corporation, Regional Corporation, Non-Profit Regional Corporation/Association, or Inter-Tribal or Inter-Village organization; or (b) an organization whose primary mission is to serve a Native Community including, but not limited to, an Urban Indian Center, Tribally Controlled Community College, community development corporation (CDC), training or education organization, or Chamber of Commerce, and that primarily serves a Native Community (meaning, at least 50 percent of its activities are directed toward the Native Community). Sponsoring Entities may only apply for TA grants; they are not eligible to apply for FA awards. Each Sponsoring Entity that is selected to receive a TA grant will be required, pursuant to its Assistance Agreement with the CDFI Fund, to create a legal entity by a certain date that will, in turn, seek Native CDFI certification and to transfer remaining award funds to that Native CDFI upon certification.

3. *Limitation on Awards:* An Applicant may receive only one FA award through the FY 2011 Funding Round of the CDFI Program or the NACA Program. A NACA Program Applicant, its Subsidiaries, or Affiliates also may apply for and receive a Bank Enterprise Award (BEA) Program award, provided however that the activities approved for BEA Program awards were not funded by the proceeds of a NACA Program award. A NACA Program Applicant, its Subsidiaries, or Affiliates also may apply for and receive a tax credit allocation through the New Markets Tax Credit (NMTC) Program, but only to the extent that the activities approved for NACA Program awards are different from those activities for which the Applicant receives a NMTC Program allocation.

B. *Prior Awardees:* Applicants must be aware that success in a prior round of any of the CDFI Fund's programs is not indicative of success under this NOFA. For purposes of this section, the CDFI Fund will consider an Affiliate to be any entity that meets the definition of Affiliate in the Regulations or an entity otherwise identified as an Affiliate by the Applicant in its funding application under this NOFA. Prior Awardees should note the following:

1. *$5 million Funding Cap:* Congress waived the $5 million funding cap for the FY 2009 and FY 2010 Funding Rounds, and it is possible that the $5 million funding cap may be waived for the FY 2011 Funding Round as well. As of the publication date of this NOFA, however, such a waiver has not been enacted into law. Accordingly, the CDFI

Fund is currently prohibited from obligating more than $5 million in assistance, in the aggregate, to any one organization and its Subsidiaries and Affiliates during any three-year period. In general, the three-year period extends back three years from the date that the CDFI Fund signs an award agreement; for purposes of this NOFA, and for ease of administration, the CDFI Fund will consider any assistance documented with a Notice of Award or Assistance Agreement dated between July 1, 2008 and July 1, 2011 (which is the anticipated date that the CDFI Fund will issue assistance agreements for the FY 2011 Funding Round). However, in light of the possibility of a waiver of the $5 million funding cap, an Applicant who is otherwise eligible under this NOFA, and is requesting an award amount that would cause the Applicant to exceed the $5 million funding cap, should submit an Application under this NOFA. The CDFI Fund will assess applicability of the $5 million funding cap during the award selection phase based upon whether the Congressional waiver has been enacted at that time.

2. *Failure to Meet Reporting Requirements:* The CDFI Fund will not consider an application submitted by an Applicant if the Applicant, or an Affiliate of the Applicant, is a prior Awardee or Allocatee under any CDFI Fund program and is not current on the reporting requirements set forth in a previously executed assistance, allocation, or award agreement(s), as of the applicable application deadline of this NOFA. Please note that the CDFI Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received.

3. *Pending Resolution of Noncompliance:* If an Applicant is a prior Awardee or Allocatee under any CDFI Fund program and if (i) it has submitted complete and timely reports to the CDFI Fund that demonstrate noncompliance with a previous assistance, allocation, or award agreement, and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, allocation, or award agreement, the CDFI Fund will consider the Applicant's application under this NOFA pending full resolution, in the sole determination of the CDFI Fund, of the noncompliance. Further, if an Affiliate of the Applicant is a prior CDFI Fund Awardee or Allocatee and if such entity (i) has submitted complete and timely reports to the CDFI Fund that demonstrate noncompliance with a previous assistance, allocation, or award agreement and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, allocation, or award agreement, the CDFI Fund will consider the Applicant's application under this NOFA pending full resolution, in the sole determination of the CDFI Fund, of the noncompliance.

4. *Default Status:* The CDFI Fund will not consider an application submitted by an Applicant that is a prior Awardee or Allocatee under any CDFI Fund program if, as of the applicable application deadline of this NOFA, the CDFI Fund has made a final determination that such Applicant is in default of a previously executed assistance, allocation, or award agreement(s). Further, an entity is not eligible to apply for an award pursuant to this NOFA if, as of the applicable application deadline of this NOFA, the CDFI Fund has made a final determination that an Affiliate of the Applicant is a prior Awardee or Allocatee under any CDFI Fund program and has been determined by the CDFI Fund to be in default of a previously executed assistance, allocation, or award agreement(s). Such entities will be ineligible to apply for an award pursuant to this NOFA so long as the Applicant's, or its Affiliate's, prior award or allocation remains in default status or such other time period as specified by the CDFI Fund in writing.

5. *Termination in Default:* The CDFI Fund will not consider an application submitted by an Applicant that is a prior Awardee or Allocatee under any CDFI Fund program if (i) within the 12-month period prior to the applicable application deadline of this NOFA, the CDFI Fund has made a final determination that such Applicant's prior award or allocation terminated in default of a previously executed assistance, allocation, or award agreement(s), and (ii) the final reporting period end date for the applicable terminated assistance, allocation, or award agreement(s) falls within the 12-month period prior to the application deadline of this NOFA. Further, an entity is not eligible to apply for an award pursuant to this NOFA if (i) within the 12-month period prior to the applicable application deadline, the CDFI Fund has made a final determination that an Affiliate of the Applicant is a prior Awardee or Allocatee under any CDFI Fund program whose award or allocation terminated in default of a previously executed assistance, allocation, or award agreement(s), and (ii) the final reporting period end date for the applicable terminated assistance, allocation, or award agreement(s) falls within the 12-month period prior to the application deadline of this NOFA.

6. *Undisbursed Award Funds:* The CDFI Fund will not consider an Applicant's application if the Applicant or an Affiliate of the Applicant is a prior Awardee under any CDFI Fund program and has undisbursed award funds (as defined below) as of this NOFA's application deadline. The Fund will include the combined undisbursed prior awards, as of this NOFAs application deadline, of the Applicant and affiliated entities, including those in which the affiliated entity Controls the Applicant, is Controlled by the Applicant, or shares common management officials with the Applicant as determined by the Fund.

Undisbursed BEA Program award funds will be included in the calculation of undisbursed awards for the Applicant (and any Affiliates) from three to five calendar years prior to the end of the calendar year of this NOFA's application deadline. Thus, for purposes of this NOFA, undisbursed awards made in FYs 2005, 2006, and 2007 will be included in the calculation for the Applicant's undisbursed award amounts if the funds have not been disbursed as of this NOFA's application deadline.

Undisbursed funds for the CDFI and NACA Programs will be calculated by adding all undisbursed award amounts made to the Applicant (and any Affiliates) two to five calendar years prior to the end of the calendar year of this NOFA. Therefore, undisbursed CDFI Program and NACA awards made in FYs 2005, 2006, 2007, and 2008 will be included in the undisbursed calculation as of this NOFA's application deadline.

Undisbursed awards can not exceed five percent of the total includable awards for the Applicant's BEA/CDFI/NACA awards, as of this NOFA's application deadline. (The total "includable" award amount is the total award amount from the relevant Fund program.) Please refer to an example of this calculation on the Fund's Web site, found in the Q&A document for the FY 2011 Funding Round.

The "undisbursed award funds" calculation does not include: (i) Tax credit allocation authority made available through the NMTC Program; (ii) award funds the Awardee has requested from the Fund by submitting a full and complete disbursement request before this NOFA's application deadline; (iii) award funds for an award that the Fund has terminated or de-obligated; or (iv) award funds for an award that does not have a fully executed assistance or award agreement. The Fund encourages Applicants to

request their undisbursed funds from the Fund at least 10 business days prior to this NOFA's application deadline.

7. *Contact the CDFI Fund:* Applicants that are prior CDFI Fund Awardees are advised to: (i) Comply with requirements specified in assistance, allocation, and/or award agreement(s), and (ii) contact the CDFI Fund to ensure that all necessary actions are underway for the disbursement or deobligation of any outstanding balance of said prior award(s). An Applicant that is unsure about the disbursement status of any prior award should contact the CDFI Fund via e-mail at *CDFI.disburseinquiries@cdfi.treas.gov.*

C. *Matching Funds:* Congress waived the matching funds requirements for the FY 2009 and the FY 2010 Funding Rounds, and it is possible that the matching funds requirements may be waived for the FY 2011 Funding Round as well. As of the publication date of this NOFA, however, such a waiver has not been enacted into law. Accordingly, the CDFI Fund encourages Applicants to include matching funds documentation as instructed in the application; if the matching funds waiver is enacted, the CDFI Fund will not consider matching funds documentation. An Applicant that does not include matching funds documentation in its application runs the risk of being determined to be ineligible for funding under the FY 2011 Funding Round if said matching funds waiver is not enacted. In light of the possibility of a waiver of the matching funds requirements, an Applicant who would not satisfy the matching funds requirements but is otherwise eligible under this NOFA should submit an application under this NOFA. The CDFI Fund will assess applicability of the matching funds requirements during the award selection phase based upon whether the Congressional waiver has been enacted at that time.

Accordingly, subject to the immediately preceding paragraph:

1. Applicants responding to this NOFA must obtain non-Federal matching funds from sources other than the Federal government on the basis of not less than one dollar for each dollar of FA funds provided by the CDFI Fund (matching funds are not required for TA grants). Matching funds must be at least comparable in form and value to the FA provided by the CDFI Fund. For example, if an Applicant is requesting a FA award from the CDFI Fund, the Applicant must show that it has obtained matching funds through commitment(s) from non-Federal sources that are at least equal to the amount requested from the CDFI Fund. Applicants cannot use matching funds from a prior FA award under the NACA or CDFI Program or under another Federal grant or award program to satisfy the matching funds requirement of this NOFA. If an Applicant seeks to use as matching funds monies received from an organization that was a prior Awardee under the NACA or CDFI Program, the CDFI Fund will deem such funds to be Federal funds, unless the funding entity establishes to the reasonable satisfaction of the CDFI Fund that such funds do not consist, in whole or in part, of NACA or CDFI Program funds or other Federal funds. For the purposes of this NOFA, BEA Program awards may not be used as matching funds. The CDFI Fund encourages Applicants to review the Regulations at 12 CFR 1805.500 *et seq.* and matching funds guidance materials on the CDFI Fund's Web site for further information.

2. Due to funding constraints and the desire to quickly deploy CDFI Fund dollars, the CDFI Fund will not consider for a FA award any Applicant that has no matching funds in-hand or firmly committed as of the application deadline of this NOFA. An Applicant for a FA award must demonstrate that it has eligible matching funds equal to no less than 25 percent of the amount of the FA award requested in-hand or firmly committed, on or after January 1, 2009, and on or before the application deadline. The CDFI Fund reserves the right to rescind all or a portion of a FA award and re-allocate the rescinded award amount to other qualified Applicant(s), if an Applicant fails to obtain in-hand 100 percent of the required matching funds by March 14, 2012 (with required documentation of such receipt received by the CDFI Fund not later than March 31, 2012), or to grant an extension of such matching funds deadline for specific Applicants selected to receive FA awards, if the CDFI Fund deems it appropriate. For any Applicant that demonstrates that it has less than 100 percent of matching funds in-hand or firmly committed as of the application deadline, the CDFI Fund will evaluate the Applicant's ability to raise the remaining matching funds by March 14, 2012.

3. *Matching Funds Terms Defined; Required Documentation.* (a) "*Matching funds in-hand*" means the Applicant has actually received the matching funds. If the matching funds are "in-hand," the Applicant must provide the CDFI Fund with acceptable written documentation of the source, form, and amount of the matching funds (*i.e.,* grant, loan, deposit, and equity investment). For a loan, the Applicant must provide the CDFI Fund with a copy of the loan agreement and promissory note. For a grant, the Applicant must provide the CDFI Fund with a copy of the grant letter or agreement for all grants of $50,000 or more. For an equity investment, the Applicant must provide the CDFI Fund with a copy of the stock certificate and any related shareholder agreement. Further, if the matching funds are "in-hand", the Applicant must provide the CDFI Fund with acceptable documentation that evidences its receipt of the matching funds proceeds, such as a copy of a check or a wire transfer statement.

(b) "*Firmly committed matching funds*" means the Applicant has entered into or received a legally binding commitment from the matching funds source that the matching funds will be disbursed to the Applicant. If the matching funds are "firmly committed," the Applicant must provide the CDFI Fund with acceptable written documentation to evidence the source, form, and amount of the firm commitment (and, in the case of a loan, the terms thereof), as well as the anticipated date of disbursement of the committed funds.

4. The CDFI Fund may contact the matching funds source to discuss the matching funds and the documentation provided by the Applicant. If the CDFI Fund determines that any portion of the Applicant's matching funds is ineligible under this NOFA, the CDFI Fund, in its sole discretion, may permit the Applicant to offer alternative matching funds as a substitute for the ineligible matching funds; provided, however, that (i) the Applicant must provide acceptable alternative matching funds documentation within two business days of the CDFI Fund's request and (ii) the alternative matching funds documentation cannot increase the total amount of Financial Assistance requested by the Applicant.

5. *Special Rule for Insured Credit Unions:* The Regulations allow an Insured Credit Union to use retained earnings to serve as matching funds for a FA grant in an amount equal to: (i) The increase in retained earnings that has occurred over the Applicant's most recent fiscal year; (ii) the annual average of such increases that has occurred over the Applicant's three most recent fiscal years; or (iii) the entire retained earnings that have been accumulated since the inception of the Applicant, as provided in the Regulations. For purposes of this NOFA, if option (iii) is used, the Applicant must increase its member and/or non-member shares or total loans outstanding by an amount that is equal to the amount of retained earnings that is committed as matching funds.

This amount must be raised by the end of the Awardee's second performance period, as set forth in its Assistance Agreement, and will be based on amounts reported in the Applicant's Audited or Reviewed Financial Statements or NCUA Form 5300 Call Report. The CDFI Fund will assess the likelihood of this increase during the application review process. An award will not be made to any Applicant that has not demonstrated that it has increased shares or loans by at least 25 percent of the requested FA award amount between December 31, 2009 and December 31, 2010, as demonstrated by the corresponding NCUA report.

IV. Application and Submission Information

A. *MyCDFIFund Accounts:* All Applicants must register user and organization accounts in myCDFIFund, the CDFI Fund's Internet-based interface. An Applicant must be registered as both a user and an organization in myCDFIFund as of the applicable application deadline in order to be considered to have submitted a complete application. As myCDFIFund is the CDFI Fund's primary means of communication with Applicants and Awardees, organizations must make sure that they update the contact information in their myCDFIFund accounts before the applicable application deadline. For more information on myCDFIFund, please see the "Frequently Asked Questions" link posted at *https://www.cdfifund.gov/myCDFI/Help/Help.asp.*

B. *Form of Application Submission:* Applicants must submit applications under this NOFA electronically. Applications sent by email, mail, facsimile, or other forms will not be accepted except in circumstances the CDFI Fund approves beforehand.

C. *Applications Submitted via Grants.gov:* For the FY 2011 Funding Round, in compliance with Public Law 106–107 and Section 5(a) of the Federal Financial Assistance Management Improvement Act of 1999, the CDFI Fund is accepting applications submitted through the Grants.gov electronic system. Applicants are encouraged to start the registration process upon review of the NOFA at *http://www.Grants.gov.* The process may take several weeks to fully complete. *See* the following link for information on getting started on Grants.gov: *http://grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf.* Please note that the CDFI Fund will not accept applications through myCDFIFund.

D. *Application Content Requirements:* Detailed application content requirements, including the required elements of the Comprehensive Business Plan, are found in the application and guidance. Each Applicant must provide, as part of its application submission, a Dun and Bradstreet Data Universal Numbering System (DUNS) number pursuant to OMB guidance (68 FR 38402). In addition, each application must include a valid and current Employer Identification Number (EIN). An electronic application that does not include an EIN is incomplete and cannot be transmitted to the CDFI Fund through Grants.gov. Applicants should allow sufficient time for the Internal Revenue Service (IRS) and/or Dun and Bradstreet to respond to inquiries and/or requests for identification numbers. Once an application is submitted, the Applicant will not be allowed to change any element of the application. The preceding sentences do not limit the CDFI Fund's ability to contact an Applicant for the purpose of obtaining clarifying or confirming application information.

E. Under the Paperwork Reduction Act (44 U.S.C. chapter 35), an agency may not conduct or sponsor a collection of information, and an individual is not required to respond to a collection of information, unless it displays a valid OMB control number. Pursuant to the Paperwork Reduction Act, the application has been assigned the following control number: 1559–0025.

F. *Application Deadlines:* 1. The following are the deadlines for submission of the NACA Program Funding Application, the CDFI Certification Application, and the Certification of Material Events form:

TABLE 2—FY 2011 NACA PROGRAM DEADLINES

[All eastern time deadlines]

Document	Must be received by:	Deadlines for contacting CDFI Fund staff
CDFI Certification Application	Thursday, December 2, 2010 by 5 p.m	Wednesday, December 1, 2010 by 5 p.m.
Certification of Material Events Form	Thursday, December 2, 2010 by 5 p.m	Wednesday, December 1, 2010 by 5 p.m.
NACA Program Funding Application	Wednesday, December 22, 2010 by 11:59 p.m	Monday, December 20, 2010 by 11:59 p.m.

2. *Late Delivery:* The CDFI Fund will neither accept a late application nor any portion of an application that is late; an application that is late, or for which any portion is late, will be rejected. The CDFI Fund will not grant exceptions or waivers. Any application that is deemed ineligible will not be returned to the Applicant.

G. *Intergovernmental Review:* Not applicable.

H. *Funding Restrictions:* For allowable uses of FA proceeds, please see the Regulations at 12 CFR 1805.301.

V. Application Review Information

A. *Format:* Funding applications must be single-spaced and use a 12-point font with 1-inch margins. Each section in the application that is scored has page limitations. Applicants are encouraged to read each section carefully and to remain within the page limitations for each section. The CDFI Fund will not consider responses beyond the specified page limitation in each section. Also, the CDFI Fund will read only information requested in the application and will not read attachments that have not been specifically requested in this NOFA or the application, such as the Applicant's five-year strategic or marketing plans.

B. *Criteria:* The CDFI Fund will evaluate each application on a 100-point scale using numeric scores with respect to the five sections required in the application. The CDFI Fund will score each section as indicated in the following table:

TABLE 3—APPLICATION SCORING CRITERIA

Application sections	Scoring points
Market Analysis	25
Business Strategy	25
Community Development Performance & Effective Use	20
Management	20
Financial Health & Viability	10

C. *Technical Assistance Proposal:* Any Applicant applying for a TA grant, either alone or in conjunction with a request for a FA award, must complete a Technical Assistance Proposal (TAP) as part of its application. The TAP consists of a summary of the organizational improvements needed to achieve the objectives of the Comprehensive Business Plan, a budget, and a description of the requested goods and/or services comprising the TA award request. The budget and accompanying narrative will be evaluated for the eligibility and appropriateness of the proposed uses of the TA grant (described above). In addition, if the Applicant identifies a capacity-building need related to any of the evaluation criteria above (for example, if the Applicant requires a market need analysis or a community development impact tracking/reporting system), the CDFI Fund will assess its plan to use the TA grant to address said needs.

1. *Non-Certified Applicants:* An Applicant that is not a Certified Native CDFI and that requests TA to address certification requirements must explain how the requested TA grant will assist the Applicant in meeting the certification requirements. The CDFI Fund will assess the reasonableness of the plan to become certified (as specified above in Section III, Eligibility Information; A.3. Native CDFI Certification Requirements), taking into account the requested TA. For example, if the Applicant does not currently make loans and therefore does not meet the Financing Entity requirement, it might describe how the TA funds will be used to hire a consultant to develop underwriting policies and procedures to support the Applicant's ability to start its lending activity.

2. *Recurring Activities:* An Applicant that requests a TA grant for recurring activities must clearly describe the benefit that would accrue to its capacity or to its Target Market(s) (such as plans for expansion of staff, market, products or annual conference attendance) as a result of the TA grant. If the Applicant is a prior CDFI Fund Awardee, it must describe how it has used the prior assistance and explain the need for additional CDFI Fund dollars over and above such prior assistance.

D. *Review and Selection Process:* 1. *Eligibility and Completeness Review:* The CDFI Fund will review each application to determine whether it is complete and the Applicant meets the eligibility requirements set forth above. An incomplete application does not meet eligibility requirements and will be rejected. Any application that does not meet eligibility requirements will not be returned to the Applicant.

2. *Substantive Review:* If an application is determined to be complete and the Applicant is determined to be eligible, the CDFI Fund will conduct the substantive review of the application in accordance with the criteria and procedures described in the Regulations, this NOFA, and the application and guidance. As part of the review process, the CDFI Fund may contact the Applicant by telephone, e-mail, mail, or through an on-site visit for the sole purpose of obtaining clarifying or confirming application information (such as statements of work, matching funds documentation, or DUNS numbers for example). After submitting its application, the Applicant will not be permitted to revise or modify its application in any way nor attempt to negotiate the terms of an award. If contacted for clarifying or confirming information, the Applicant must respond within the time parameters set by the CDFI Fund.

3. *Application Scoring; Ranking:* (a) *Application Scoring:* The CDFI Fund will evaluate each application on a 100-point scale, comprising the five criteria categories described above, and assign numeric scores. An Applicant must receive a minimum score in each evaluation criteria in order to be considered for an award.

(b) *Evaluating Prior Award Performance:* In the case of an Applicant that has previously received funding through any CDFI Fund program, the CDFI Fund will consider and will deduct points for: (i) The Applicant's noncompliance with any active award or award that terminated in the current calendar year in meeting its performance goals and measures, reporting deadlines, and other requirements set forth in the assistance or award agreement(s) with the CDFI Fund during the Applicant's two complete fiscal years prior to the application deadline of this NOFA; (ii) the Applicant's failure to make timely loan payments to the CDFI Fund during the Applicant's two complete fiscal years prior to the application deadline of this NOFA (if applicable); (iii) performance on any prior Assistance Agreement as part of the overall assessment of the Applicant's ability to carry out its Comprehensive Business Plan; and (iv) funds deobligated from a FY 2008, 2009, or 2010 FA award (if the Applicant is applying for a FA award under this NOFA) if (A) the amount of deobligated funds is at least $200,000 and (B) the deobligation occurred within the 12 months prior to the application deadline under this NOFA. Any award deobligations that result in a point deduction for an application submitted under this NOFA will not be counted against future applications for FA through the NACA Program. In the case of an Applicant that has previously received funding through any CDFI Fund program, the CDFI Fund will consider and may, in its discretion, deduct points for those Applicants that have in any proceeding instituted against the Applicant in, by, or before any court, governmental, or administrative body or agency received a final determination within the last three years indicating that the Applicant has discriminated on the basis of race, color, national origin, disability, age, marital status, receipt of income from public assistance, religion, or sex.

(c) *Ranking:* The CDFI Fund then will rank the applications by their scores, from highest to lowest.

4. *Award Selection:* The CDFI Fund will make its final award selections based on the rank order of Applicants by their scores and the amount of funds available. In the case of a tied score(s), Applicants will be ranked according to each Applicant's combined scores in the Market Analysis, Business Strategy, and Community Development Performance & Effective Use sections; then the score on the Financial Health and Viability section; then the score on the Management section. In addition, the CDFI Fund shall consider the institutional and geographic diversity of Applicants when making its funding decisions.

5. *Insured Native CDFIs:* In the case of Insured Depository Institutions and Insured Credit Unions, the CDFI Fund will consider the views of the Appropriate Federal Banking Agencies. Throughout the award review process, the CDFI Fund will consult with the Appropriate Federal Banking Agency about the Applicant's financial safety and soundness. If the Appropriate Federal Banking Agency identifies safety and soundness concerns, the CDFI Fund will assess whether the concerns cause or will cause the Applicant to be incapable of undertaking the activities for which funding has been requested. If it is determined the Applicant is incapable of meeting its obligations, the CDFI Fund reserves the right to deselect the Applicant from receiving an award. The CDFI Fund also reserves the right to require insured NACA Applicants to improve safety and soundness conditions prior to receiving an award disbursement. In addition, the CDFI Fund will take into consideration Community Reinvestment Act

assessments of Insured Depository Institutions and/or their Affiliates.

6. *Award Notification:* Each Applicant will be informed of the CDFI Fund's award decision either through notification in the Applicant's myCDFIFund account, via e-mail to the Applicant's Authorized Official Representative. This includes notification to Applicants who are not receiving an award if the decision is based on reasons other than completeness and eligibility. The CDFI Fund will provide feedback in a format and within a timeframe depending on available resources.

7. The CDFI Fund reserves the right to reject an application if information (including administrative errors) comes to the attention of the CDFI Fund that either adversely affects an Applicant's eligibility for an award, adversely affects the CDFI Fund's evaluation or scoring of an application, or indicates fraud or mismanagement on the part of an Applicant. If the CDFI Fund determines that any portion of the application is incorrect in any material respect, the CDFI Fund reserves the right, in its sole discretion, to reject the application. The CDFI Fund reserves the right to change its eligibility and evaluation criteria and procedures, if the CDFI Fund deems it appropriate; if said changes materially affect the CDFI Fund's award decisions, the CDFI Fund will provide information regarding the changes through the CDFI Fund's Web site. There is no right to appeal the CDFI Fund's award decisions. The CDFI Fund's award decisions are final.

VI. Award Administration Information

A. Assistance Agreement: Each Applicant that is selected to receive an award under this NOFA must enter into an Assistance Agreement with the CDFI Fund in order to receive disbursement of award proceeds. The Assistance Agreement will set forth certain required terms and conditions of the award, which will include, but not be limited to: (i) The amount of the award; (ii) the type of award; (iii) the approved uses of the award; (iv) the approved eligible market to which the funded activity must be targeted; (v) performance goals and measures; and (vi) reporting requirements for all Awardees. Applicants should review the OMB Guidance: Requirements for Federal Funding Accountability and Transparency Act Implementation (2 CFR part 170) to ensure that they have processes and systems in place to comply with the reporting obligations. FA and FA/TA Assistance Agreements under this NOFA generally will have three-year performance periods; TA-only Assistance Agreements generally will have two-year performance periods. If prior to entering into an Assistance Agreement with the CDFI Fund, information (including administrative error) comes to the attention of the CDFI Fund that either adversely affects the Awardee's eligibility for an award, or adversely affects the CDFI Fund's evaluation of the Awardee's application, or indicates fraud or mismanagement on the part of the Awardee, the CDFI Fund may, in its discretion and without advance notice to the Awardee, terminate the award or take such other actions as it deems appropriate. Moreover, if prior to entering into an Assistance Agreement with the CDFI Fund, the CDFI Fund determines that the Awardee or an Affiliate of the Awardee is in default of any Assistance Agreement previously entered into with the CDFI Fund, the CDFI Fund may, in its discretion and without advance notice to the Awardee, either terminate the award or take such other actions as it deems appropriate. For purposes of this section, the CDFI Fund will consider an Affiliate to mean any entity that meets the definition of Affiliate in the Regulations. The CDFI Fund reserves the right, in its sole discretion, to rescind an award if the Awardee fails to return the Assistance Agreement, signed by the Authorized Representative of the Awardee, and/or provide the CDFI Fund with any other requested documentation, within the deadlines set by the CDFI Fund. Each Awardee must provide the CDFI Fund with a good standing certificate (or equivalent documentation) from its State (or jurisdiction) of incorporation.

1. *Failure to Meet Reporting Requirements:* If an Awardee or an Affiliate of the Awardee is a prior Awardee or Allocatee under any CDFI Fund program and is not current on the reporting requirements set forth in the previously executed assistance, allocation, or award agreement(s), as of the date of the Assistance Agreement, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement until said prior Awardee or Allocatee is current on the reporting requirements in any previously executed assistance, allocation, or award agreement(s). Please note that the CDFI Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received. If said prior Awardee or Allocatee is unable to meet this requirement within the timeframe set by the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Assistance Agreement and the award made under this NOFA.

2. *Pending Resolution of Noncompliance:* If an Applicant is a prior Awardee or Allocatee under any CDFI Fund program and if: (i) It has submitted complete and timely reports to the CDFI Fund that demonstrate noncompliance with a previous assistance, award, or allocation agreement; and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award, or allocation agreement, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, pending full resolution, in the sole determination of the CDFI Fund, of the noncompliance. Further, if an Affiliate of the Awardee is a prior CDFI Fund Awardee or Allocatee and if such entity (i) has submitted complete and timely reports to the CDFI Fund that demonstrate noncompliance with a previous assistance, award, or allocation agreement, and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award, or allocation agreement, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, pending full resolution, in the sole determination of the CDFI Fund, of the noncompliance. If the prior Awardee or Allocatee in question is unable to satisfactorily resolve the issues of noncompliance, in the sole determination of the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Assistance Agreement and the award made under this NOFA.

3. *Default Status:* If, at any time prior to entering into an Assistance Agreement through this NOFA, the CDFI Fund has made a final determination that an Awardee that is a prior Awardee or Allocatee under any CDFI Fund program is in default of a previously executed assistance, allocation, or award agreement(s), the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, until said prior Awardee or Allocatee has submitted a complete and timely report demonstrating full compliance with said agreement within a timeframe set by the CDFI Fund. Further, if at any time prior to entering into an Assistance Agreement through this NOFA, the CDFI Fund has made a final determination that an Affiliate of the Awardee is a prior Awardee or Allocatee under any CDFI Fund

program and is in default of a previously executed assistance, allocation, or award agreement(s), the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, until said prior Awardee or Allocatee has submitted a complete and timely report demonstrating full compliance with said agreement within a timeframe set by the CDFI Fund. If said prior Awardee or Allocatee is unable to meet this requirement and the CDFI Fund has not specified in writing that the prior Awardee or Allocatee is otherwise eligible to receive an Award under this NOFA, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Assistance Agreement and the award made under this NOFA.

4. *Termination in Default:* If (i) within the 12-month period prior to entering into an Assistance Agreement through this NOFA, the CDFI Fund has made a final determination that an Awardee is a prior Awardee or Allocatee under any CDFI Fund program whose award or allocation was terminated in default of such prior agreement, and (ii) the final reporting period end date for the applicable terminated agreement falls within the 12-month period prior to the application deadline of this NOFA, the CDFI Fund reserves the right, in its sole discretion, to delay entering into or determine not to enter into an Assistance Agreement. Further, if (i) within the 12-month period prior to entering into an Assistance Agreement through this NOFA, the CDFI Fund has made a final determination that an Affiliate of the Awardee is a prior Awardee or Allocatee under any CDFI Fund program whose award or allocation was terminated in default of such prior agreement, and (ii) the final reporting period end date for the applicable terminated agreement falls within the 12-month period prior to the application deadline of this NOFA, the CDFI Fund reserves the right, in its sole discretion, to delay entering into or determine not to enter into an Assistance Agreement.

5. *Compliance with Federal Anti-Discrimination Laws:* If the Awardee has previously received funding through any CDFI Fund program, and if at any time prior to entering into an Assistance Agreement through this NOFA, the CDFI Fund is made aware of a final determination, made within the last three years, in any proceeding instituted against the Awardee in, by, or before any court, governmental, or administrative body or agency, declaring that the Awardee has discriminated on the basis of race, color, national origin, disability, age, marital status, receipt of income from public assistance, religion, or sex, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the award made under this NOFA.

B. *Reporting:* 1. *Reporting Requirements:* The CDFI Fund will collect information, on at least an annual basis, from each Awardee including, but not limited to, an Annual Report that comprises the following components: (i) Financial Reports (including an OMB A–133 audit, as applicable; however Financial Reports are not required of Sponsoring Entities); (ii) Institution Level Report; (iii) Transaction Level Report (for Awardees receiving FA awards); (iv) Financial Status Report form SF–269/SF–425 (for Awardees receiving TA grants); (v) Uses of Financial Assistance (for Awardees receiving FA awards); (vi) Explanation of Noncompliance (as applicable); and (vii) such other information as the CDFI Fund may require. Each Awardee is responsible for the timely and complete submission of the Annual Report, even if all or a portion of the documents actually is completed by another entity or signatory to the Assistance Agreement. If such other entities or signatories are required to provide Institution Level Reports, Transaction Level Reports, Financial Reports, or other documentation that the CDFI Fund may require, the Awardee is responsible for ensuring that the information is submitted timely and complete. The CDFI Fund reserves the right to contact such additional entities or signatories to the Assistance Agreement and require that additional information and documentation be provided. The CDFI Fund will use such information to monitor each Awardee's compliance with the requirements set forth in the Assistance Agreement and to assess the impact of the NACA Program. The Institution Level Report and the Transaction Level Report must be submitted through the CDFI Fund's Web-based data collection system, the Community Investment Impact System (CIIS). The Financial Reports may be submitted through CIIS. All other components of the Annual Report may be submitted electronically, as directed, by the CDFI Fund. The CDFI Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after notice to Awardees. Furthermore, in order to ensure compliance with reporting requirements, all Awardees will be required to participate in a post-award training session on the CDFI Fund's reporting requirements. Awardees who fail to participate in such training run the risk of having the award rescinded or future applications penalized by point deductions.

2. *Accounting:* The CDFI Fund will require each Awardee that receives FA and TA awards through this NOFA to account for and track the use of said FA and TA awards. This means that for every dollar of FA and TA awards received from the CDFI Fund, the Awardee will be required to inform the CDFI Fund of its uses. This will require Awardees to establish separate administrative and accounting controls, subject to the applicable OMB Circulars. The CDFI Fund will provide guidance to Awardees outlining the format and content of the information to be provided on an annual basis, outlining and describing how the funds were used. Each Awardee that receives an award must provide the CDFI Fund with the required complete and accurate Automated Clearinghouse (ACH) form for its bank account prior to award closing and disbursement.

VII. Agency Contacts

A. The CDFI Fund will respond to questions and provide support concerning this NOFA and the funding application between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through three business days prior to the application deadline. The CDFI Fund will not respond to questions or provide support concerning the applications that are received after 5 p.m. ET on said dates, until after the funding application deadline. Applications and other information regarding the CDFI Fund and its programs may be obtained from the CDFI Fund's Web site at *http://www.cdfifund.gov.* The CDFI Fund will post responses on its Web site to questions of general applicability regarding the NACA Program.

B. The CDFI Fund's contact information is as follows:

TABLE 4—CONTACT INFORMATION

Type of question	Telephone number (not toll free) *	E-mail addresses
NACA Program	202–622–6355	*cdfihelp@cdfi.treas.gov.*
Certification, Compliance Monitoring and Evaluation	202–622–6330	*cme@cdfi.treas.gov.*
Information Technology Support	202–622–2455	*ithelpdesk@cdfi.treas.gov.*

* Fax number for all offices: 202–622–7754.

C. *Information Technology Support:* People who have visual or mobility impairments that prevent them from creating a Target Market map using the CDFI Fund's Web site should call (202) 622–2455 for assistance (this is not a toll free number).

D. *Communication with the CDFI Fund:* The CDFI Fund will use the myCDFIFund Internet interface to communicate with Applicants and Awardees, using the contact information maintained in their respective myCDFIFund accounts. Therefore, the Applicant and any Subsidiaries, signatories, and Affiliates must maintain accurate contact information (including contact person and authorized representative, e-mail addresses, fax numbers, phone numbers, and office addresses) in its myCDFIFund account(s). For more information about myCDFIFund (which includes information about the CDFI Fund's Community Investment Impact System), please see the Help documents posted at *http://www.cdfifund.gov/ciis/accessingciis.pdf.*

VIII. Information Sessions and Outreach

The CDFI Fund may conduct webinars or host information sessions for organizations interested in applying to, or learning about, the CDFI Fund's programs. For further information, please visit the CDFI Fund's Web site at *http://www.cdfifund.gov.*

Authority: 12 U.S.C. 4703, 4704, 4706, 4707, 4717; 12 CFR part 1805.

Dated: October 29, 2010.

Donna J. Gambrell,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2010–27802 Filed 11–3–10; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0708]

Proposed Information Collection (Evidence for Transfer of Entitlement of Education Benefits) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) 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 the notice. This notice solicits comments on information needed to transfer a servicemember's educational assistance benefits to his or her dependents.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 3, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0708" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

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, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA'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: Evidence for Transfer of Entitlement of Education Benefits (38 CFR 21.7080).

OMB Control Number: 2900–0708.

Type of Review: Extension of a currently approved collection.

Abstract: Servicemembers on active duty may request to designate up to a maximum of 18 months of their educational assistance entitlement to their spouse, one or more of their children, or a combination of the spouse and children. VA will accept DOD Form 2366–1 as evidence that the servicemember was approved by the military to transfer entitlement. The servicemember must submit in writing to VA, the name of each dependent, the number of months of entitlement transferred to each dependent, and the period (beginning date or ending date) for which the transfer will be effective for each designated dependent. VA will use the information shown on DOD Form 2366–1 to determine whether the dependent qualifies to receive education benefits under the transfer of entitlement provision of law.

Affected Public: Individuals or households.

Estimated Annual Burden: 5,227.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 62,725.

Dated: October 29, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–27814 Filed 11–3–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0149]

Proposed Information Collection (Application for Conversion (Government Life Insurance)) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), 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 the notice. This notice solicits comments for information needed to convert to a permanent plan of insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 3, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0149 in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

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, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA'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: Application for Conversion (Government Life Insurance), VA Form 29–0152.

OMB Control Number: 2900–0149.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 29–0152 is completed by insured veterans to convert his/her term insurance to a permanent plan of insurance.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,125 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 4,500.

Dated: October 29, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–27815 Filed 11–3–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0068]

Proposed Information Collection (Application for Service-Disabled Veterans Insurance); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), 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 revision 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 determine a claimant's eligibility for service disabled insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 3, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0068 in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

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, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA'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: Application for Service-Disabled Veterans Insurance, VA Forms 29–4364, 29–4364c and 29–0151.

OMB Control Number: 2900–0068.

Type of Review: Revision of a currently approved collection.

Abstract: Veterans complete VA Forms 29–4364 and 29–0151 to apply for service-disabled veterans insurance,

designate a beneficiary and select an optional settlement. VA uses the data collected on VA Forms 29–4364 and 29–0151 to determine the claimant's eligibility for insurance.

VA Form 29–4364c is used by veterans who were rated unemployable or with certain severely disabling conditions. Veterans completing VA Form 29–4364c do not need to provide medical information to qualify for this insurance.

Affected Public: Individuals or households.

Estimated Annual Burden: 8,333 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 25,000.

Dated: October 29, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–27818 Filed 11–3–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0011]

Proposed Information Collection (Application for Reinstatement (Insurance Lapsed More Than 6 Months), and Application for Reinstatement (Non Medical—Comparative Health Statement)) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), 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 the notice. This notice solicits comments for information needed to reinstate a claimant's Government Life Insurance and/or Total Disability Income Provision.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 3, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0011 in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

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, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA'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.

Titles: Application for Reinstatement (Insurance Lapsed More than 6 Months), Government Life Insurance and/or Total Disability Income Provision, VA Form 29–352, and Application for Reinstatement (Non Medical—Comparative Health Statement), Government Life Insurance, VA Form 29–353.

OMB Control Number: 2900–0011.

Type of Review: Extension of a currently approved collection.

Abstract: VA Forms 29–352 and 29–353 are used to apply for reinstatement of insurance and/or Total Disability Income Provision that has lapsed for more than six months. VA uses the information collected to establish the applicant's eligibility for reinstatement.

Estimated Annual Burden:

a. VA Form 29–352—750 hours
b. VA Form 29–353—375 hours

Estimated Average Burden per Respondent:

a. VA Form 29–352—30 minutes
b. VA Form 29–353—15 minutes

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VA Form 29–352—1,500
b. VA Form 29–353—1,500

Dated: October 29, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–27817 Filed 11–3–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0539]

Proposed Information Collection (Application for Supplemental Service Disabled Veterans Insurance) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), 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 the notice. This notice solicits comments for information needed to determine a claimant's eligibility for disability insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 3, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0539" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

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, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA'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: Application for Supplemental Service Disabled Veterans Insurance (SRH), VA Form 29–0188 and 29–0189, and Application for Supplemental Service Disabled Veterans (RH) Life Insurance, VA Form 29–0190.

OMB Control Number: 2900–0539.

Type of Review: Extension of a currently approved collection.

Abstract: VA Forms 29–0188, 29–0189 and 29–0190 are completed by veterans to apply for Supplemental Service Disabled Veterans Insurance. VA uses the information collected to establish veterans' eligibility for insurance coverage.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,333 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 10,000.

Dated: October 29, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–27816 Filed 11–3–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0212]

Agency Information Collection (Veterans Mortgage Life Insurance Statement) Activity 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, 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 and includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 6, 2010.

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. 2900–0212" 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. 2900–0212."

SUPPLEMENTARY INFORMATION:

Title: Veterans Mortgage Life Insurance Statement, VA Form 29–8636.

OMB Control Number: 2900–0212.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans complete VA Form 29–8636 to decline Veterans Mortgage Life Insurance (VMLI) or to provide information upon which the insurance premium can be based. VMIL provides financial protection to cover eligible veterans' outstanding home mortgage in the event of his or her death. VMIL is available only to disabled veterans, who, because of their disability, have received a specially adapted housing grant from VA.

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 August 24, 2010, at page 52065.

Affected Public: Individuals or households.

Estimated Annual Burden: 113 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 450.

Dated: November 1, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–27851 Filed 11–3–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0011]

Agency Information Collection (Application for Reinstatement (Insurance Lapsed More than 6 Months), and Application for Reinstatement (Non Medical—Comparative Health Statement)) 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 *et seq.*), 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 December 6, 2010.

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. 2900–0011" 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. 2900–0011."

SUPPLEMENTARY INFORMATION:

Titles

a. Application for Reinstatement (Insurance Lapsed More than 6 Months), Government Life Insurance and/or Total Disability Income Provision, VA Form 29–352.

b. Application for Reinstatement (Non Medical—Comparative Health

Statement), Government Life Insurance, VA Form 29–353.

OMB Control Number: 2900–0011.

Type of Review: Extension of a currently approved.

Abstract: VA Forms 29–352 and 29–353 are used to apply for reinstatement of insurance and/or Total Disability Income Provision that has lapsed for more than six months. VA uses the information collected to establish the applicant's eligibility for reinstatement.

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 August 24, 2010, at pages 52066–52067.

Estimated Annual Burden

a. VA Form 29–352—750 hours.
b. VA Form 29–353—375 hours.

Estimated Average Burden per Respondent

a. VA Form 29–352—30 minutes.
b. VA Form 29–353—15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents

a. VA Form 29–352—1,500.
b. VA Form 29–353—1,500.

Dated: November 1, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–27853 Filed 11–3–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0539]

Agency Information Collection (Application for Supplemental Service Disabled Veterans Insurance) Activity 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, 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 and includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 6, 2010.

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. 2900–0539" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management 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. 2900–0539."

SUPPLEMENTARY INFORMATION:

Title: Application for Supplemental Service Disabled Veterans Insurance, (SRH) Life Insurance, VA Forms 29–0188, 29–0189 and 29–0190.

OMB Control Number: 2900–0539.

Type of Review: Extension of a currently approved collection.

Abstract: VA Forms 29–0188, 29–0189 and 29–0190 are completed by veterans applying for Supplemental Service Disabled Veterans Insurance. VA uses the information collected to establish veterans' eligibility for insurance coverage.

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 August 24, 2010, at page 52066.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,333 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 10,000.

Dated: November 1, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst Enterprise Records Service.

[FR Doc. 2010–27852 Filed 11–3–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0159]

Proposed Information Collection (Matured Endowment Notification) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), 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 the notice. This notice solicits comments on information needed to determine the disposition of proceeds of a matured endowment policy.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 3, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov*; or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0159 in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

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, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility;

(2) the accuracy of VBA'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: Matured Endowment Notification, VA Form 29–5767.

OMB Control Number: 2900–0159.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 29–5767 is used to notify the insured that his or her endowment policy has matured. The form also requests that the insured elect whether he or she prefers to receive the proceeds in monthly installment or in a combination of cash and monthly installment and to designate a beneficiary(ies) to receive the remaining proceeds.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,867 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 8,600.

Dated: October 29, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–27819 Filed 11–3–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0212]

Proposed Information Collection (Veterans Mortgage Life Insurance Statement) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), 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 the notice. This notice solicits comments for information needed to decline Veterans Mortgage Life Insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 3, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0212" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

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, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA'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: Veterans Mortgage Life Insurance Statement, VA Form 29–8636.

OMB Control Number: 2900–0212.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans complete VA Form 29–8636 to decline Veterans Mortgage Life Insurance (VMLI) or to provide information upon which the insurance premium can be based. VMIL provides financial protection to cover eligible veterans' outstanding home mortgage in the event of his or her death. VMIL is available only to disabled veterans, who, because of their disability, have received a specially adapted housing grant from VA.

Affected Public: Individuals or households.

Estimated Annual Burden: 113 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 450.

Dated: October 29, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–27820 Filed 11–3–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0663 (Pay Now Enter Info Page)]

Proposed Information Collection Activity: Comment Request

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Management (OM), 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 extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to electronically submit payment for debts owed.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 3, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to David Sturm, VA Debt Management Center, Bishop Henry Whipple Federal Building, P.O. Box 11930, St. Paul, MN 55111–0930 or e-mail to: *david.sturm@va.gov.* Please refer to "OMB Control No. 2900–0663" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: David Sturm at (612) 970–5702 or FAX (612) 970–5687.

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, OM invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OM's functions, including whether the information will have practical utility; (2) the accuracy of OM'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: Pay Now Enter Info Page.

OMB Control Number: 2900–0663.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants who participated in VA's benefit programs and owe debts to VA can voluntaril make online payments through VA's Pay Now Enter Info Page Web site. Data entered on the Pay Now Enter Info Page is redirected to the Department of Treasury's Pay.gov Web site allowing claimants to make payments with credit or debit cards, or directly from their bank account. At the conclusion of the transaction, the claimant will receive a confirmation acknowledging the success or failure of the transaction.

Affected Public: Individuals or households.

Estimated Annual Burden: 11,667 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Daily.

Estimated Number of Respondents: 70,000.

Dated: October 29, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–27821 Filed 11–3–10; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday,
November 4, 2010

Part II

Environmental Protection Agency

40 CFR Part 80

Regulation To Mitigate the Misfueling of Vehicles and Engines With Gasoline Containing Greater Than Ten Volume Percent Ethanol and Modifications to the Reformulated and Conventional Gasoline Programs; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2010–0448; FRL–9215–4]

RIN 2060–AQ17

Regulation To Mitigate the Misfueling of Vehicles and Engines With Gasoline Containing Greater Than Ten Volume Percent Ethanol and Modifications to the Reformulated and Conventional Gasoline Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a regulatory program to help mitigate the potential for misfueling of certain engines, vehicles and equipment with gasoline containing greater than 10 volume percent ("vol%") ethanol up to 15 vol% ethanol (E15). This proposal is in conjunction with the Agency's partial waiver, pursuant to Clean Air Act section 211(f)(4), which allows for the introduction into commerce of gasoline-ethanol blends containing up to 15 vol% ethanol for use in model year 2007 and newer on-highway light-duty motor vehicles. The E15 waiver is limited in scope to a portion of the light-duty fleet, and the proposed misfueling mitigation program will help avoid the misfueling of all other engines, vehicles, and equipment with unapproved fuels. This proposed rule would require all E15 gasoline fuel dispensers to have a label if a retail station chooses to sell E15 and seeks comment on separate labeling requirements for fuel blender pumps and fuel pumps that dispense E85. Similar to the prohibition in section 211(f)(1), the proposed rule would prohibit the use of gasoline containing greater than 10 vol% ethanol in vehicles and engines not covered by the partial waiver for E15. In addition, the proposed rule would require product transfer documents specifying ethanol content and Reid Vapor Pressure (RVP) to accompany the transfer of gasoline blended with ethanol and a national survey of retail stations to ensure compliance with the these requirements. The proposed rule would also modify the Reformulated Gasoline ("RFG") program by updating the Complex Model to allow fuel manufacturers to certify batches of gasoline containing up to 15 vol% ethanol.

DATES: Comments must be received on or before January 3, 2011. Under the Paperwork Reduction Act, comments on the information collection provisions are best assured of full consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before December 6, 2010, thirty days after date of publication in the **Federal Register**.

Hearing: We will hold a public hearing on November 16, 2010 at the Millennium Knickerbocker Hotel in Chicago, IL. The hearing will start at 10 a.m. local time and continue until everyone has had a chance to speak. If you want to testify at the hearing, notify the contact person listed under **FOR FURTHER INFORMATION CONTACT** by November 8, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0448, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: E15@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Air and Radiation Docket, Docket ID No. EPA–HQ–OAR–2010–0448, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. 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–2010–0448. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to "What Should I Consider as I Prepare My Comments for EPA?" in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Julia MacAllister, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; Telephone number: 734–214–4131; Fax number: 734–214–4816; E-mail address: *macallister.julia@epa.gov,* or Assessment and Standards Division Hotline; telephone number (734) 214–4636; E-mail address *asdinfo@epa.gov.*

SUPPLEMENTARY INFORMATION:

Does This Action Apply to Me?

Entities potentially affected by this action include those involved with the production, importation, distribution, marketing, or retailing of diesel fuel and production of gasoline. Categories and entities affected by this action include:

Category	NAICS [1] codes	SIC [2] codes	Examples of potentially regulated entities
Industry	324110	2911	Petroleum refineries.
Industry	325193	2869	Ethyl alcohol manufacturing.
Industry	424710	5171	Petroleum bulk stations and terminals.
Industry	424720	5172	Petroleum and petroleum products merchant wholesalers.
Industry	454319	5989	Other fuel dealers.
Industry	447190	5541	Gasoline service stations. Marine service stations. Truck stops.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action; however, other types of entities not listed in the table could also be affected. To determine whether your entity is affected by this action, you should examine the applicability criteria of Parts 79 and 80 of title 40 of the Code of Federal Regulations. If you have any question regarding applicability of this action to a particular entity, consult the person in the preceding **FOR FURTHER INFORMATION CONTACT** section.

What should I consider as I prepare my comments for EPA?

A. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the information that you claim to be CBI. For CBI information on a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

B. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. *Docket Copying Costs.* You may be charged a reasonable fee for photocopying docket materials, as provided by 40 CFR Part 2.

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I. Overview

In today's action, the U.S. Environmental Protection Agency (EPA or the Agency) is proposing regulations to mitigate the potential for misfueling of vehicles and engines with gasoline containing up to 15 vol% ethanol (E15).[1] These regulations are being proposed in conjunction with today's action by EPA granting of a partial waiver for ethanol blends up to 15 vol% ethanol under section 211(f)(4) of the Clean Air Act (CAA or the Act). This partial waiver will allow the introduction into commerce of E15 for use in 2007 model year (MY) and newer light-duty motor vehicles. In partially granting the E15 waiver, EPA imposed a number of conditions on the refiners and renewable fuel producers subject to the waiver. These conditions are designed to help ensure that E15 is introduced into commerce for use in MY2007 and newer light-duty motor vehicles and flexible-fueled vehicles, and not for use in any other vehicles or engines. Some of the regulatory provisions proposed today parallel those conditions and are expected to be a more efficient way to help ensure that the conditions of the E15 partial waiver decision are met and to minimize in-use emissions increases that might result from misfueling vehicles and engines with E15. The proposed safeguards would also promote the successful introduction of E15 into commerce.

We are proposing four requirements as part of our misfueling mitigation regulations. The first requirement, consistent with the partial waiver being granted today, is a prohibition against using E15 in MY2000 and older motor vehicles, heavy-duty gasoline engines and vehicles, on and off-highway motorcycles,[2] and nonroad engines, vehicles, and equipment.[3] This prohibition is similar in nature to the prohibition on producers of fuels and fuel additives under section 211(f)(1); however, the prohibition in section 211(f)(1) only applies to these upstream parties. The prohibitions proposed today would apply at the retail level as well as upstream. The conditions on the partial waiver and the regulations proposed today are similar in nature and have a common goal—ensuring that E15 is used in appropriate motor vehicles covered by the partial waiver, and is not used in other motor vehicles and engines. Since the Agency is deferring a decision for MY2001–2006 light-duty motor vehicles, we are not proposing a prohibition with respect to the fuel used in these motor vehicles at this time. DOE testing of MY2001–2006 light-duty motor vehicles is ongoing and EPA expects to make a waiver determination for these vehicles shortly after the results of the DOE testing are available. If EPA does not grant an E15 waiver for MY2001–2006 light-duty motor vehicles, then we would expect to include the same prohibitions for these MY motor vehicles in the final rulemaking.

Second, we are proposing labeling requirements for fuel pumps that dispense E15 to effectively inform consumers regarding the appropriate fuel to be used in vehicles and engines. Third, EPA proposes that product transfer documents (PTDs) from refiners, gasoline terminals, and oxygenate blenders specify the ethanol content or approved level of ethanol addition, of the fuel being sold to retail stations or wholesale purchaser-consumer to ensure that retail stations and wholesale purchaser-consumers know the level of ethanol content they are buying so that, in turn, the retail pumps can be properly labeled. Fourth, EPA proposes a national survey requirement on ethanol producers and the blenders of E15 (*e.g.,* refiners, gasoline terminals, oxygenate blenders) to ensure that retail station pumps are in fact being labeled properly. EPA is seeking comment on including an RVP component to this national E15 labeling survey to help ensure that summertime RVP requirements are being met throughout the gasoline distribution chain. To avoid confusion for consumers when pumps are not labeled, the Agency is also seeking comment on requiring the labeling of non-E15 pumps. The Agency has used such misfueling mitigation strategies to implement several fuel programs over the past thirty years, including the unleaded gasoline program, the RFG program, and the diesel sulfur program. The Agency believes that the misfueling mitigation measures proposed in this rulemaking, coupled with the E15 waiver and a substantial consumer education and outreach effort by industry, can be an effective strategy to help reduce misfueling and the associated emissions impacts while enabling the use of E15 in appropriate vehicles.

The misfueling mitigation program proposed today generally mirrors the misfueling conditions in today's partial waiver decision. While the waiver provides an opportunity for a fuel or fuel additive manufacturer to meet the conditions, the Agency believes that the proposed safeguards would provide the most practical method of addressing the purposes and satisfying the conditions of today's partial waiver decision.

These misfueling mitigation regulations are proposed under CAA section 211(c), based on the projected emission increases that would be avoided by deterring the use of E15 in older motor vehicles, heavy-duty gasoline engines and vehicles, motorcycles and nonroad products. Engineering judgment supported by test data, where available, forms the basis for our technical review and conclusions. Our engineering assessment described in Section VI identifies a number of emissions related concerns with the long-term use of E15 in MY2000 and older light-duty motor vehicles, heavy-duty gasoline engines and vehicles, motorcycles, and nonroad products. For motor vehicles these concerns include the potential for catalyst deterioration or catalyst failure as well as material compatibility issues that could lead to extremely elevated exhaust and evaporative emissions. For nonroad products and for motorcycles the misfueling concerns include not only the potential for elevated exhaust and evaporative emissions but also the potential for engine failure from overheating. While it is not possible to quantify precisely the frequency at which motor vehicles and nonroad products might experience these problems with the use of E15, we believe that emissions related problems could potentially occur with enough frequency that the resulting emission benefits from avoiding misfueling would outweigh the relatively low cost imposed by the proposed regulations. This would justify the proposed rule,

[1] For purposes of this preamble, E15 refers to gasoline-ethanol blended fuels that contain greater than 10 vol% and no more than 15 vol% ethanol content.

[2] For purposes of this preamble on and off-highway motorcycles are referred to collectively as "motorcycles."

[3] For purposes of this preamble, nonroad engines, vehicles, and equipment are referred to as "nonroad products."

even if a very low percentage of vehicle and engines experiences problems.

As described below in Section VI and in the E15 partial waiver decision document,[4] our assessment indicates that manufacturers have designed at least MY2007 and newer light-duty motor vehicles to be durable for use on gasoline blends up to E15. This conclusion is primarily based on the recently completed catalyst durability test program conducted by the Department of Energy (DOE) wherein they tested 19 vehicle models representative of the Tier 2 motor vehicle fleet out to their full useful life. The study found that Tier 2 motor vehicles continued to meet their emissions standards after operating on E15 for full useful life mileage accumulation. Additionally, according to our analysis of the DOE test data, for Tier 2 motor vehicles we found no statistically significant increases in the emissions of regulated pollutants for motor vehicles operating on E15, and no apparent material compatibility issues, when compared to vehicles that were operated on E0.[5] These results confirm our engineering assessment that MY2007 and newer motor vehicle's emissions should be less sensitive to the increased ethanol content in E15. This engineering assessment is based on the advances in motor vehicle materials and technology in response to in-use experience with E10 and the requirement that motor vehicles comply with a series of important new EPA emission requirements over the years, *e.g.,* enhanced evaporative emission standards and E10 durability testing, supplemental FTP emission standards, CAP2000 in-use durability requirements, and the Tier 2 motor vehicle standards themselves.

For MY2001–2006 light-duty motor vehicles, it is currently less clear whether they could experience significant emission increases when fueled on E15 like MY2000 and older motor vehicles, or continue to function properly like the newer 2007 and newer motor vehicles. On the one hand we believe that many of the same elements for ethanol compatibility of MY2007 and newer light-duty motor vehicles also apply to MY2001–2006 light-duty motor vehicles (*e.g.,* enhanced evaporative emission standards, SFTP, CAP2000). On the other hand, they were not all required to demonstrate evaporative emission system durability on E10 or to upgrade their catalyst and emission control systems to the extent needed to comply with the Tier 2 standards. Furthermore, currently available test data on these model year vehicles is much more limited. DOE is in the process of developing relevant data for these model year vehicles. Specifically, DOE is conducting catalyst durability testing on six motor vehicle models certified to NLEV standards and two motor vehicles certified to Tier 1 standards scheduled to be completed in November, 2010. Additionally, a study of in-use motor vehicles by Rochester Institute of Technology on E20[6] suggests such motor vehicles may operate acceptably on E20—and by interpolation E15. However, the mileage accumulation of RIT test vehicles is limited and the study is still ongoing until November 2010. This additional information, as well as information gathered through comment on this proposal and any final decision on a section 211(f) waiver for MY2001–2006 light-duty motor vehicles, will be considered in the decisions made for the final rule.

In addition to misfueling mitigation measures, today's action also proposes slight modifications to the Reformulated Gasoline and Antidumping fuels programs to open the way for refiners and importers to produce and certify gasoline containing up to 15 vol% ethanol. To measure compliance with the RFG and anti-dumping standards, the emissions performance of gasoline is calculated using a model, called the Complex Model, which predicts the emissions of each regulated pollutant based on the measured values of certain gasoline properties. For gasoline to be sold in the U.S., it must comply with the RFG and Antidumping standards and refiners are required to certify that their fuel meets the standards by using the Complex Model. Currently, the equations in the model are limited to an oxygen content of no more than 4.0% by weight in gasoline, which is the maximum possible amount of oxygen in E10. EPA is proposing to modify the Complex Model to allow fuel manufacturers to certify batches of E15 fuel.

Finally, EPA proposes to require that Reid Vapor Pressure (RVP) be identified on PTDs from fuel refineries to oxygenate blenders for conventional gasoline to ensure that EPA summertime RVP requirements are met. This is necessary because the waiver announced today is for blends that meet the summertime gasoline volatility standards for conventional gasoline.[7] In order to introduce a fuel that meets both the Federal summertime RVP standards and contains between 10 and 15 vol% ethanol, fuel refiners would have to create a fuel or blendstock that has approximately 1.0 psi lower RVP than a fuel or blendstock intended for E10 due to the interaction between gasoline volatility and ethanol when blended. Oxygenate blenders would need to know the RVP of a blendstock or have the intended ethanol content of a blendstock be specified on the PTD to ensure that they know the correct amount of ethanol that should be blended into a fuel. The Agency is not proposing to change RFG PTD requirements found at 40 CFR 80.77 since RVP is carefully controlled throughout the distribution chain in order to comply with summertime RFG VOC emissions performance standards.

II. Background

A. Statutory Authority

CAA section 211(f)(1) makes it unlawful for any manufacturer of any fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use in motor vehicles manufactured after model year 1974 unless it is substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act.

Section 211(f)(4) of the Act provides that upon application by any fuel or fuel additive manufacturer, the Administrator may waive the prohibition of section 211(f)(1). A waiver may be granted if the Administrator determines that the applicant has established that the fuel or fuel additive, and the emission products of such fuel or fuel additive, will not cause or contribute to a failure of any emission control device or system (over the useful life of the motor vehicle, motor vehicle engine, nonroad engine or nonroad vehicle in which such device or system is used) to achieve compliance with the emission standards to which the vehicle or engine has been certified. In other words, the Administrator may grant a waiver for an

[4] *See Partial Grant and Partial Denial of Clean Air Act Waiver Application Submitted by Growth Energy to Increase the Allowable Ethanol Content of Gasoline to 15 Percent; Decision of the Administrator* elsewhere in this issue of the **Federal Register.**

[5] *See Partial Grant and Partial Denial of Clean Air Act Waiver Application Submitted by Growth Energy to Increase the Allowable Ethanol Content of Gasoline to 15 Percent; Decision of the Administrator* elsewhere in this issue of the **Federal Register.**

[6] *The effect of E20 ethanol fuel on vehicle emissions,* B Hilton and B Duddy, Center for Integrated Manufacturing Studies, Rochester Institute of Technology, June 26, 2009. *See* Docket ID No. EPA–HQ–OAR–2010–0448.

[7] *See* section IV.A. for more information on the 1.0 psi RVP waiver.

otherwise prohibited fuel or fuel additive if the applicant can demonstrate that the fuel or fuel additive will not cause or contribute to engines, vehicles or equipment failing to meet their emissions standards over their useful life.

EPA previously issued a "substantially similar" interpretive rule for unleaded gasoline which allows oxygen content up to 2.7% by weight for certain ethers and alcohols.[8] E10 contains approximately 3.5% oxygen by weight, which means E10 is not "substantially similar" to certification fuel under the current interpretation. As explained at 44 FR 20777 (April 6, 1979), E10 received a waiver of the substantially similar prohibition by operation of law since EPA did not grant or deny a waiver request for a fuel containing 90% unleaded gasoline and 10% ethyl alcohol within 180 days of receiving that request. This waiver by operation of law was based on the then current terms of CAA section 211(f)(4), which has subsequently been amended.

Section 211(c)(1) of the Act allows the Administrator, by regulation, to "control or prohibit the manufacture, introduction into commerce, offering for sale, or sale of any fuel or fuel additive for use in a motor vehicle, motor vehicle engine, or nonroad engine or nonroad vehicle (A) if, in the judgment of the Administrator, any fuel or fuel additive or any emission product of such fuel or fuel additive causes, or contributes, to air pollution or water pollution (including any degradation in the quality of groundwater) that may reasonably be anticipated to endanger the public health or welfare, or (B) if emission products of such fuel or fuel additive will impair to a significant degree the performance of any emission control device or system which is in general use, or which the Administrator finds has been developed to a point where in a reasonable time it would be in general use were such regulation to be promulgated." Today's proposed misfueling regulations are based on this authority in section 211(c)(1), as well as our recordkeeping and information collection authority under sections 208 and 114.

B. E15 Waiver Request

On March 6, 2009, Growth Energy and 54 ethanol manufacturers submitted an application to EPA for a waiver under section 211(f)(4) of the CAA. This application sought a waiver for ethanol-gasoline blends of up to 15 vol% ethanol.[9] On April 21, 2009, EPA published notice of the receipt of the application, and, as required by CAA section 211(f)(4) of the Act, EPA requested public comment on all aspects of the waiver application, to assist the Administrator in determining whether the statutory basis for granting the waiver request for ethanol-gasoline blends containing up to 15 vol% ethanol had been met. (*See* 74 FR 18228).

In a separate action today, EPA waived the prohibition in CAA section 211(f)(1) to allow introduction into commerce of E15 for use in MY2007 and newer light-duty motor vehicles, including passenger cars, light-duty trucks and medium duty passenger vehicles (hereafter light-duty motor vehicles). EPA is deferring a decision concerning MY2001–2006 light-duty motor vehicles, and has denied the waiver for all other motor vehicles.[10] EPA's partial waiver decision is based on a determination that E15 will not cause or contribute to a failure of MY2007 and newer light-duty motor vehicles to achieve compliance with the emissions standards to which they were certified under section 206 of the CAA over their useful lives. EPA is still evaluating the effect of E15 on MY2001–2006 light-duty motor vehicles to determine whether a waiver of CAA section 211(f)(1) is appropriate for use of E15 in those motor vehicles. EPA also decided that it could not make such a determination and therefore was denying the waiver for all other motor vehicles, including MY2000 and older light-duty motor vehicles. EPA requests comment and additional information regarding the use of E15 in MY 2000 and older motor vehicles.

EPA issued the partial waiver with several conditions, some of which would be fulfilled by the safeguards being proposed today. The conditions apply to the upstream parties subject to the waiver (refiners, producers of ethanol and oxygenate blenders that introduce E15 into commerce), and are designed to ensure that when E15 is introduced into commerce, it will only be used in the appropriate light-duty motor vehicles. Some of the conditions call for the ethanol blenders, fuel manufacturers, and fuel additive manufacturers (ethanol producers) to take various actions to control the distribution and use of their product so that E15 is only used in approved motor vehicles. The partial waiver imposes different conditions on the different parties. Ethanol blenders, fuel manufacturers, and ethanol producers that introduce E15 into commerce are all responsible for making sure that appropriate labeling occurs on fuel pumps to mitigate potential misfueling. However, this condition, in particular, may be difficult for these parties to satisfy given their limited control over actions taken at retail, which, as discussed below, prompted today's proposal for fuel pump labels. All three parties are also responsible for conducting fuel pump labeling surveys to ensure that pumps are properly labeled and that the correct ethanol blends are loaded into the appropriate tanks at retail stations. Ethanol blenders and fuel manufacturers must also use PTDs to properly document information regarding the ethanol blends to help ensure proper blending and distribution.

In June 2010 EPA received a request from ADM to consider, within the context of the E15 waiver application, a waiver for E12 for all motor vehicles.[11] As discussed in the E15 waiver decision document, EPA concluded that there was insufficient basis to support such a waiver for motor vehicles or nonroad products beyond the MY2007 and newer model year light-duty motor vehicles for which the E15 waiver was being granted.

C. Reasons for the Proposed Actions in This Rulemaking

The proposed rules would directly prohibit or control the distribution and use of E15. The rules would apply to parties such as retail stations that are not directly subject to the conditions on the waiver. Collectively, these provisions would mitigate misfueling and maximize the likelihood that E15 is only used in approved motor vehicles. This would also promote the successful introduction of E15 into commerce. The specific provisions are discussed in detail in Sections III–V.

In this action, the Agency is proposing to use its authority to help minimize the potential for emissions increases associated with misfueling with E15. Importantly, the proposed safeguards would also assist the ethanol producers and blenders in carrying out the conditions of the waiver. EPA realizes that ethanol blenders, fuel manufacturers, and ethanol producers

[8] *See* 56 FR 5352 (February 11, 1991).

[9] Since E15 has greater than 2.7 wt% oxygen content, E15 needs a waiver under CAA section 211(f)(4).

[10] *See Partial Grant and Partial Denial of Clean Air Act Waiver Application Submitted by Growth Energy to Increase the Allowable Ethanol Content of Gasoline to 15 Percent; Decision of the Administrator* elsewhere in this issue of the **Federal Register.**

[11] Woertz, P.A. Letter to Lisa P. Jackson. 7 June 2010. *See* Docket ID EPA–HQ–OAR–2009–0211.

may have difficulty satisfying the conditions outlined in the E15 partial waiver decision, particularly the fuel pump labeling requirements. Most retail stations are independently owned and operated, which may make it difficult for the ethanol blenders, fuel manufacturers, and ethanol producers to ensure that labels are properly placed on fuel pumps dispensing E15. Under CAA section 211(f)(4), EPA is limited in what kind of conditions it can place on a waiver decision and on whom those conditions may be placed. For example, EPA placed the partial waiver conditions on the ethanol blenders, fuel manufacturers, and ethanol producers, the parties subject to the prohibition in section 211(f)(1), and not on the retail stations. This makes it difficult to ensure effective or complete pump labeling and misfueling mitigation. Without Agency action that requires the provisions proposed in today's rulemaking (*i.e.* fuel pump labeling, PTDs, and a national survey), the conditions contained in the E15 partial waiver decision would likely make the distribution of E15 impracticable. However, under CAA section 211(c), EPA has the authority to adopt appropriate controls or prohibitions on the distribution and sale of fuels and fuel additives to avoid emissions increases. EPA's proposed use of this authority would also assist the ethanol blenders, fuel manufacturers, and ethanol producers in carrying out the conditions of the partial waiver so the conditions on the E15 partial waiver are properly implemented. Today's rulemaking also provides EPA with additional tools for regulatory oversight of the ethanol blenders, fuel manufacturers, and ethanol producers introducing E15 into commerce.

D. Federalism Implications

As mentioned in Section II.A, the proposed prohibition regarding use of E15 in MY2000 and older vehicles, heavy-duty gasoline engines and vehicles, motorcycles, and nonroad engines, vehicles, and equipment is based on the authority in section 211(c)(1) of the Act, as well as our recordkeeping and information collection authority under sections 208 and 114. Section 211(c)(4)(A) of the CAA provides that no State or political subdivision thereof may prescribe or attempt to enforce "for purposes of motor vehicle emission control" any control or prohibition "respecting any characteristic or component of a fuel or fuel additive" in a motor vehicle or motor vehicle engine if EPA has prescribed a control or prohibition applicable to such characteristic or component of the fuel or fuel additive under section 211(c)(1). This prohibition applies to all States except California, as provided in section 211(c)(4)(B). Also, section 211(c)(4)(A) applies only to controls or prohibitions respecting any characteristics or components of fuels or fuel additives for motor vehicles or motor vehicle engines, that is, highway vehicles. Therefore, a State control or prohibition would be preempted under section 211(c)(4)(A), only if it is "for the purposes of motor vehicle emission control." Further, even if a State rule is established for purposes of motor vehicle emission control, it will not be preempted under section 211(c)(4)(A) unless it is for the same "characteristic or component of a fuel or fuel additive in a motor vehicle or motor vehicle engine" for which EPA has prescribed a control or prohibition under section 211(c)(1)(A). Today's action proposes a rule that would limit the ethanol content in fuel used in certain vehicles and engines as well as proposes misfueling mitigation measures to effectuate that limitation.

The Agency is not aware of any State rules or laws that would be preempted by today's proposed rule if adopted. States have not controlled ethanol volumes in gasoline for purposes of motor vehicle emission control. Also, our rule would not require States to change their existing labels. The rule as proposed would impose no substantial direct costs, nor would it have any substantial direct effects on State or local governments. EPA requests comments on the issue of preemption of State fuel programs.

Further, EPA consulted with State and local officials early in the process of developing the proposed action to permit them to have meaningful and timely input into its development. EPA met with members of the National Association of Clean Air Agencies (NACAA) to discuss the nature of today's proposed rule. Additionally, we provided State and local governments an opportunity to provide comment on the implementation of misfueling mitigation measures for a partial E15 waiver in both the RFS2 NPRM (*see* 74 FR 25016) and the E15 waiver request notice (*see* 74 FR 18228). We received comments from only one State on this issue in the RFS2 NPRM, and it supported efforts for properly labeling fuel pumps containing gasoline-ethanol blends.

III. Misfueling Mitigation Measures

As explained above, CAA section 211(c) grants the Agency authority to control or prohibit the distribution of a fuel or fuel additive when it will significantly impair emission controls or the emission products from that fuel will cause or contribute to air pollution that we reasonably anticipate may endanger public health or welfare. As more fully discussed in Section VI, we are proposing to prohibit use of E15 in MY2000 and older light-duty motor vehicles, and in all heavy-duty gasoline engines and vehicles, motorcycles and nonroad products based on the projected increased emissions that would occur from using E15 in those motor vehicles and nonroad products. We are also proposing to prohibit gasoline retail stations and wholesale purchaser-consumer facilities from selling E15 for use in these products if pumps at those locations are not properly labeled. Since the Agency is deferring a decision for MY2001–2006 light-duty motor vehicles, we are not proposing a prohibition for fuel used in these motor vehicles at this time. DOE testing of MY2001–2006 light-duty motor vehicles is ongoing and EPA expects to make a waiver determination for these vehicles shortly after the results of the DOE testing are available. If EPA does not grant an E15 waiver for MY2001–2006 light-duty motor vehicles, then we would expect to include the same prohibitions for these MY motor vehicles in the final rulemaking .[12]

EPA is proposing a misfueling mitigation strategy to effectuate those proposed prohibitions and to more generally limit the use of E15 to MY2007 and newer light-duty motor vehicles as approved today in the E15 partial waiver decision. We believe that there are four important components to an effective misfueling mitigation strategy for reducing the potential for misfueling with E15. First, effective labeling is a key factor. Labeling is needed to inform consumers of the potential impacts of using E15 in vehicles and engines not approved for its use, to mitigate the potential for intentional and unintentional misfueling of these vehicles and engines. Labeling is also done at the point of sale where the consumer most likely will be choosing which fuel to use. Second, retail stations and wholesale purchaser-consumers need assurance regarding the ethanol content of the fuel that they purchase so they can direct the fuel to the appropriate storage tank and properly label their fuel pumps. The use of proper

[12] Even though we are not proposing an actual prohibition for motor vehicles MY2001–2006, it is still unlawful to use E15 in these motor vehicles until an E15 waiver is granted for these motor vehicles.

documentation in the form of PTDs has proven to be an effective means of both ensuring that retail stations know what fuel they are purchasing and as a possible defense for retail stations in cases of liability in the event of a violation of EPA standards. Third, national labeling and fuel sampling surveys are necessary to ensure that retail stations are complying with labeling requirements, ethanol blenders are not blending more than the stated amount of ethanol on PTDs, and assuring downstream compliance for fuel refiners. The Agency has used this general strategy to implement several fuel programs over the past thirty years, including the unleaded gasoline program, the RFG program, and the diesel sulfur program. EPA solicits comments on all of these provisions as more fully described below.

The fourth component of an effective misfueling mitigation strategy is effective public outreach and consumer education. Outreach to consumers and stakeholders is critical to mitigate misfueling incidents that can result in increased emissions and vehicle or engine damage. Consumers will need to be engaged through a variety of media to ensure that accurate information is conveyed to the owners and operators of vehicles and engines.

The misfueling mitigation program proposed today generally mirrors the misfueling conditions in today's partial waiver decision. While the waiver provides an opportunity for a fuel or fuel additive manufacturer to meet the conditions, the Agency believes that the proposed the measures would provide the most practical method of meeting the purposes of and satisfying the conditions of today's partial waiver decision.

A. Labeling Requirements

Today's rule proposes to require that retailers and wholesale purchaser-consumers who choose to sell or dispense E15 must label any dispensers of this gasoline-ethanol blend. We are also seeking comment on requiring that dispensers of other gasoline-ethanol blends that contain 10 vol% ethanol or less to be labeled at such time as a retail station chooses to dispense E15 to help alleviate any confusion to consumers. Additionally, we seek comment on requiring labels for E85 pumps and blender pumps.

1. E15 Labels

We are proposing requirements that gasoline pumps dispensing E15 be labeled. The label would have to indicate that the fuel contains up to 15 vol% ethanol—that is, the fuel is a gasoline-ethanol blend that contains greater than 10 vol% ethanol but not more than 15 vol% ethanol. Retailers and wholesale purchaser-consumers who choose to sell E15 would be required to label pumps dispensing E15, clearly indicating that the fuel should not be used in MY2000 and older motor vehicles, motorcycles, heavy-duty gasoline engines and vehicles, or any nonroad products. However, EPA also proposes that the label would be modified if the E15 waiver is extended to earlier model year vehicles and/or nonroad products.

Based on the Agency's experience with fuel pump labeling for Ultra-Low Sulfur Diesel (ULSD) and Low Sulfur Diesel (LSD) (*see* 40 CFR 80.570), there are four important elements to an effective label for misfueling. The Agency proposes that the language of the E15 label would have four components: (1) An information component; (2) a legal approval component; (3) a technical warning component; and (4) a legal warning component. Together, these four components highlight the critical information necessary to inform consumers about the impacts of using E15.

a. Information Component

The first component informs consumers of the maximum ethanol content the fuel may contain. For E15, the Agency proposes that the information component of the label should contain two aspects, both an acronym for the fuel (in this case E15) and a description of what the acronym means (in this case informing consumers that the fuel may consist of a range of ethanol up to a maximum of 15 vol% ethanol by volume). We propose that this component of the label read:

This fuel contains 15% ethanol maximum

We propose that this label be applied to any fuel dispenser with greater than 10% ethanol but not more than 15 vol% ethanol. Thus, in the case of any mid-grade fuel that might be blended from E10 and E15, it would also be required to have the E15 label.

b. Legal Approval Component

The second component of the label language would include information that informs consumers of what vehicles and engines are approved to use E15, mirroring EPA's decisions taken in the waiver context. Since EPA granted a partial waiver of E15 limiting its legal use to MY2007 and later light-duty motor vehicles, its use is only permitted in these motor vehicles. Based on the partial waiver, the Agency proposes that this portion of the label read as follows:

Use only in:
2007 and newer gasoline cars
2007 and newer light-duty trucks
Flex-fuel vehicles.

As discussed elsewhere in today's proposal, if EPA decides to include more model years in a subsequent waiver decision based on the findings of the testing program, then the model year distinction on the label would also need to be adjusted accordingly. We anticipate this will occur before this rulemaking is finalized, and we will make that adjustment in the final rule. Therefore, the proposed language could read as follows:

Use only in:
2001 and newer gasoline cars
2001 and newer light-duty trucks
Flex-fuel vehicles.

c. Technical Warning Component

The third component of the label language would alert consumers that use of E15 in other engines, vehicles, and equipment might cause damage to these products. Our experience with past labeling provisions supports the need for both the legal and technical warning so that consumers are informed of the reason for the prohibition. As discussed more fully in Section VI, it appears that use of E15 in these particular products may not only lead to increased emissions but also has the potential, even if limited in nature, to lead to damage of motor vehicle and nonroad product components. Without this component to the label, consumers may more likely be tempted to misfuel—particularly if the price in the marketplace for E15 is lower than E10. Therefore, EPA proposes the following language: "This fuel might damage other vehicles or engines."

d. Legal Warning Component

The fourth component of the label would inform consumers that using E15 in a vehicle or engine not approved for E15 use violates Federal law. This is similar to the approach used to mitigate the use of LSD in 2007 and newer on-highway diesel engines. Based on that experience, EPA believes that explicitly notifying consumers that E15 is prohibited by Federal law for use in MY2000 and older motor vehicles, heavy-duty gasoline engines and vehicles, on and off-highway motorcycles, and all nonroad products will result in consumers being less likely to misfuel.

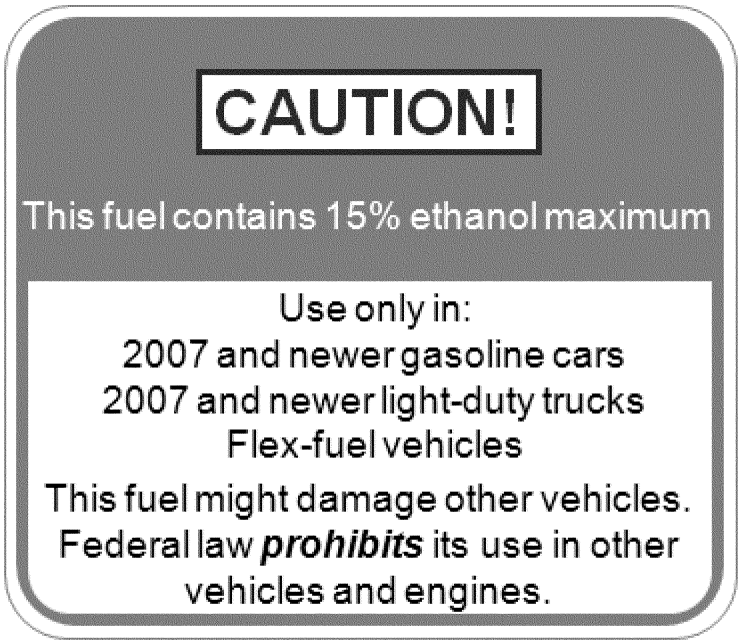
Based on the language currently used on the LSD label (*see* 40 CFR 80.570), the Agency proposes that the label read

as follows: "Federal law prohibits its use in other vehicles and engines."

The Agency has traditionally had "WARNING" language appear before the legal warning component to better draw consumers' attention to the prohibition of using a fuel in certain vehicles and engines (*e.g.* LSD in 2007 and newer highway diesel vehicles). After consultation with stakeholders, it was suggested that the Agency should both change "WARNING" to "CAUTION!" and place this language at the top of the label. This would draw consumer attention to the label and help mitigate both intentional and unintentional misfueling. Therefore, we propose to have the word "CAUTION!" appear at the top of the label before the information component. The Agency also considered the use of the word "ATTENTION" instead of "WARNING" or "CAUTION." We specifically seek comment on using the term "CAUTION!" versus "WARNING" or "ATTENTION". In addition, the Agency is also interested in whether using "STOP", with or without including a depiction of a stop sign, would be an appropriate way to draw consumers' attention to the label. We seek comment on whether there are other words that would better convey the message to consumers.

e. E15 Label Proposal

Taken together, the Agency proposes the following E15 label:



EPA seeks comment on all aspects of the label language. For example, we seek comment on whether any additional label language should be required or whether any language should be removed. In particular, we seek comment on ways to portray the information in ways that are the most concise and meaningful to consumers. EPA proposes that the pump labels for E15 be required to be placed on pumps that will dispense E15 prior to any commercial sale of E15.

One issue that arose from the labeling provisions of the diesel sulfur program was that the diesel sulfur labeling provisions were written in a way that allowed flexibility in color and design, causing retailers difficulty with coming up with a suitable design that satisfied EPA labeling requirements at the least possible cost. To help address this issue, stakeholders met with EPA to discuss standardized label designs that would both satisfy EPA diesel sulfur requirements and make it easier for retail stations to procure labels. Labeling templates were designed and made available to retail stations to use. Based on this experience, we are proposing more explicit specifications for the E15 label, covering not only the content, but also the appearance of the E15 pump label.

In today's rulemaking, we are proposing similar appearance and placement requirements for the E15 labels that were required for the diesel sulfur program labels. We propose that the titles of the labels (*e.g.,* E15) must be 24-point, white, bold Arial font, the "CAUTION!" text should also be red, uppercase 16-point bold type, the text in the labels which describes the ethanol content of the fuel must be 20-point type and that all other required language in the labels must be 14-point black, Arial font. We propose that the word "prohibits" be in 14 point, black, bold, italic, Arial font. All text should be centered with the arrangement and spacing of the text consistent with the illustration. We further propose that the label be 3.625" width by 3.125" height and that the background for the area which includes "CAUTION!", the title (*i.e.* "E15"), and the ethanol content (*i.e.,* "15% Ethanol Maximum) shall be 1-inch wide and neon-orange in color, except that a rectangular white background large enough to encompass "CAUTION!" shall be superimposed on this neon-orange background. While we believe it is important to propose these specific label appearance requirements to aid in consumer recognition and avoid unnecessary burden on retailers in developing their own designs, we also recognize that there is a great deal of variation in the design of fuel pumps and dispensers throughout the nation. Consequently, we not only seek comment on all visual aspects of our proposed label, but also suggest that if changes are deemed necessary, regulated and other interested parties work together to provide us with a consensus recommendation in their comments, if possible.

In addition to content and appearance, the placement of the label on the pump is also of concern given the limited space available on the fuel pump itself. In the diesel sulfur program

we required that labels must be placed on the vertical surface of each pump housing and on each side that has gallon and price meters and that labels be on the upper two-thirds of the pump in a location where they are clearly visible (*see* 40 CFR 80.570(d)). We propose the same placement requirements for the E15 labels. However, since most States require labels for gasoline blended with ethanol and the Federal Trade Commission (FTC) requires labels specifying minimum octane levels across grades of gasoline, the addition of the proposed E15 label may impact placement of other labels required by State or Federal law. Furthermore, FTC has proposed a mid-level ethanol gasoline-blend label (described below) in addition to its octane label which may further confuse consumers and make E15 label placement difficult. The Agency seeks comment on the proposed placement of the E15 label in order to most effectively mitigate misfueling, while at the same time avoid interference with other labels on the pumps.

2. Additional Fuel Pump Labeling Requirements

In addition to the E15 label proposed above, the Agency is seeking comment on three additional fuel pump labels that would provide consistent labeling across all gasoline fuel pumps. First, the Agency seeks comment on requiring a label on gasoline dispensing fuel pumps that are dispensing fuels which contain ethanol in concentrations up to 10 vol% ("E10 label").[13] We further seek comment on whether E10 labels should be required at a retail station only if and when E15 is made available for sale at a particular retail station. Such an E10 label would have similar appearance and location requirements to the E15 label and the required label language would follow a similar form to that of the E15 label so as to standardize labels for consumers.

The purpose of such a label would be to enhance the effectiveness of the E15 label to protect against consumer misfueling and the associated emissions impacts. Without such labels, consumers may be confused regarding whether an unlabeled pump was appropriate for their vehicle or engine, undercutting the effectiveness and confidence in the E15 label. This approach is consistent with the labeling requirements we used in the diesel sulfur program where we required the use of labels specifying which type of diesel fuel (low-sulfur diesel, ultra-low sulfur diesel, *etc.*) was being dispensed from each pump dispensing diesel fuel.

However, since increasing the number of labels will increase the total cost to retail stations by requiring that all gasoline dispensing fuel pumps at a station be labeled, we seek comment on the appropriateness of such a requirement. The Agency seeks comment on the following E10 label language:

E10
(Contains up to 10% Ethanol)
For use in all gasoline vehicles and engines.

The Agency also seeks comment on requiring a label on pumps distributing E85 fuel. E85 is fuel that contains up to 85 vol% ethanol and at least 15 vol% gasoline, used by flex fuel vehicles (FFVs).[14] As we noted in the RFS2 NPRM, fuel retailers expressed concern that if E85 were priced low enough to encourage FFV owners to fuel on it more frequently, then owners of non-FFVs would also be enticed to misfuel on it (*see* 74 FR 24977). This could cause the vehicles and equipment to operate very poorly, increasing emissions, as well as cause potential long-term damage and long-term emissions increases. We believe that in most cases fuel pump labels warning that the use of E85 in non-flex fuel vehicles is illegal, can damage the vehicle, and can void vehicle manufacturer warranties may be a sufficient disincentive to mitigate intentional misfueling. Non-FFVs and nonroad products were not designed for operation on E85 and may experience serious emissions increases, operability, and driveability issues, particularly with prolonged use (*e.g.* accelerated catalyst deterioration, fuel system component failures, *etc.*).

Such an E85 label would have similar appearance and location requirements to the E15 label (discussed above) and the required label language would follow a similar form to that of the E15 label. The Agency seeks comment on the following E85 label language:

E85
(Contains up to 85% Ethanol)
For use in flex-fuel vehicles only.
WARNING
Federal law ***prohibits*** use in all other vehicles and engines.
May damage these vehicles and engines.

We request comment on whether the proposed labeling requirements would provide sufficient warning to consumers not to refuel non-flex-fuel vehicles with E85. Additionally the Agency seeks comment on the label language for the E85 label.

The Agency also seeks comment on requiring labels for so-called blender pumps. Blender pumps allow station owners to blend E85 and gasoline in their storage tanks to create intermediate gasoline-ethanol blends. This allows either station owners or potentially FFV drivers to choose which gasoline-ethanol blend they prefer, based on operating characteristics and price. During both the RFS2 and E15 waiver request comment periods, the Agency received several comments asking us to require labeling provisions for blender pumps to address misfueling. Similar to E85, consumers may misfuel their non-FFVs and engines on ethanol blends greater than 10% (greater than 15% for 2007 and newer light-duty motor vehicles) due to possible price differences between intermediate ethanol blends and gasoline. Non-FFVs and nonroad products were not designed for operation on such high levels of ethanol and may experience serious emission, operability, and driveability issues, particularly with prolonged use (*e.g.* accelerated catalyst deterioration, fuel system component failures, *etc.*).

Such a blender pump label would have similar appearance and location requirements to the E15 label (discussed above) and the required label language would follow a similar form to that of the E15 label. The Agency seeks comment on the following two blender pump label language options. The first option's language addresses a situation where a vehicle operator can "dial" their own gasoline-ethanol blend level.

E15–E85
(Contains between 15% and 85% ethanol)
For use in flex-fuel vehicles.
WARNING
Federal law ***prohibits*** use in all other vehicles and engines.
May damage these vehicles.

The second option's language is to provide for a specific blend of higher than 15 vol% ethanol content within this range, in which case the station owner would replace the option 1's language with the specific value. The language for option 2 would be as follows:

EXX
(Contains up to XX% Ethanol)
For use in flex-fuel vehicles.
WARNING
Federal law ***prohibits*** use in all other vehicles and engines
May damage these vehicles and engines.

On this label, "XX" is the exact maximum ethanol content a fuel dispensed from a particular blender

[13] If the fuel contains no ethanol, it could be labeled as such.

[14] FFVs are vehicles or engines that are designed to run on gasoline or gasoline-ethanol blends up to E85.

pump setting is expected to dispense that is greater than 15 vol% ethanol.

The blender pump labels would not need to specify blends containing between 10 and 15% ethanol because any such fuel pumps would be required to display the E15 label. However, since a blender pump may dispense several intermediate ethanol blends (*e.g.* E20, E30, E40, *etc.*), the label should specify a range of ethanol content from E15 through E85. Therefore, under this second option the blender pump would have multiple labels for each of the blends that the pump dispenses.

3. Stakeholder Labeling Suggestions

In anticipation of this proposal, EPA met with several stakeholders to discuss the potential label language used for the E15 label language. To date, the Agency has received label language suggestions from Growth Energy.[15] AllSAFE and the American Petroleum Institute provided EPA with their public comments to the FTC labeling proposal.[16] Copies of these labeling recommendations may be viewed in the docket.[17] We have considered the suggestions in these comments for our proposal, but nevertheless seek comment on whether and if so how to modify our label proposals based on these and other suggestions.

4. FTC Labeling Proposal

On February 26, 2010, the Federal Trade Commission (FTC) issued a proposed rulemaking that proposes explicit requirements for gasoline-ethanol blends that contain more than 10 vol% ethanol and less than 70 vol% ethanol ("Mid-Level Ethanol blends") (*see* 75 FR 12470). Since the FTC labeling proposal did not contemplate the granting of a waiver for E15, it would have to be modified to be consistent with our recent E15 partial waiver decision. In addition, as discussed above, we believe it is important that the label contain certain components and language necessary to both inform and warn the consumer that are not fully captured in the FTC labels.

Therefore, EPA is working with FTC to develop coordinated labeling requirements and seeks comment on how best to achieve this outcome. Preferably, one label would be developed that meets EPA and FTC labeling requirements, since imposing separate labeling requirements may confuse consumers and would ultimately limit the effectiveness of labeling to mitigate misfueling. Requiring two separate labels would also create issues concerning the placement of the E15 label and may impose an unnecessary burden on retail stations. Finally, we also believe that to ensure the effectiveness of all gasoline pump labels, it is important that they be of similar type and format (*i.e.* those for E10, E15, E85, and blender pumps).

5. Labeling Requirements and Liability for Misfueling

It is important to note that compliance with the labeling requirements specified in this rule does not protect responsible parties from liability for misfueling. Today's regulations not only impose labeling requirements but also a prohibition of the sale or offer for sale of E15 for use in unapproved engines, vehicles, and equipment (*see* section III.G below). Compliance with the labeling requirement does not ensure that the responsible parties have not made prohibited sales. In addition, our regulations do not address issues of common law or contract liability between private parties.

B. Product Transfer Document Requirements

Product transfer documents (PTDs) are customarily generated and used in the course of business and are familiar to parties who transfer or receive blendstocks, base gasoline for oxygenate blending and oxygenated gasoline. In addition, EPA has historically put in place certain requirements for PTDs for reformulated gasoline blends and blendstocks to help ensure downstream compliance with our fuel standards. The introduction of E15 into the marketplace results in the need for additional information on the PTDs that accompany the transfer of gasoline and the base gasoline/gasoline blendstocks used for oxygenate blending, both for reformulated gasoline and conventional gasoline. The type of additional information needed is different upstream versus downstream of the point of ethanol addition. We believe that the additions discussed below to existing PTDs are necessary to minimize misfueling, to help ensure downstream compliance with our fuel standards, and thereby to support the introduction of E15.

1. PTD Requirements Downstream of the Point of Ethanol Addition

Downstream of the point where ethanol blending takes place, information on the maximum ethanol concentration in the ethanol blend is needed to help ensure that fuel shipments are delivered into the appropriate storage tanks at retail and fleet fueling facilities.[18] Information on the maximum Reid Vapor Pressure (RVP) of E0, E10 and E15 blends is needed on PTDs to help ensure that the fuel is compliant with the applicable summertime RVP requirements. The RVP reported on the PTD for E10 and E15 blends could be based on the intended RVP that the manufacturer of the blendstock for oxygenate blending designed for as identified on the PTD for the blendstock.[19] Therefore, RVP testing after the addition of ethanol would not be necessary to provide the information on RVP that would be required on the PTD.

We are proposing that the following statements would be included on the PTDs for the various fuel blends:

For E0: "E0: Contains no ethanol.
The RVP does not exceed [Fill in appropriate value]"
For E10: "E10: Contains between 9 and 10 volume percent ethanol
The RVP does not exceed [Fill in appropriate value]"
For E15: "E15: Contains up to 15 volume percent ethanol
The RVP does not exceed [Fill in appropriate value]"
For EXX: "EXX—Contains up to XX% ethanol.

"EXX" refers to fuels blends above E15 up to and including E85 and fuel blends below 9 volume percent ethanol. The maximum potential ethanol content of the fuel would be required to be specified on the PTD in the place of "XX".

We request comment on whether additional language on E10 PTDs is needed to inform parties that a blend containing between 9 and 10 volume percent ethanol which benefits from the 1 psi RVP waiver may not be commingled with an E0 or E15 blend.[20] We request comment on whether any other additional information should be

[15] Buis, T. Letter to Karl Simon. 4 April 2010. *See* Docket ID No. EPA–HQ–OAR–2010–0448.

[16] *See* Docket ID No. EPA–HQ–OAR–2010–0448.

[17] Federal Trade Commission, "# 335; FTC File No. R811005; 16 CFR Part 306: The Federal Trade Commission Rule For Automotive Fuel Ratings, Certification and Posting: Notice of Proposed Rulemaking and Request for Comments." September 2010. Available at *http://www.ftc.gov/os/comments/fuelratingnprm/index.shtm.*

[18] Currently, ethanol blending typically takes place at the terminal. Evaluations are underway which may facilitate the shipment of ethanol-gasoline blends by pipeline to terminals. Hence, although the proposed PTD requirements regarding maximum ethanol content currently would typically apply to parties downstream of the terminal, parties upstream of the terminal may need to include information on maximum ethanol concentration on product PTDs in the future.

[19] This is dependent on the proper amount of ethanol being added to the blendstock, and on the product being segregated from all products with a different RVP.

[20] Such as, "Designed for the special RVP provisions for ethanol blends. Do not blend with gasoline containing less than 9 vol% ethanol or E15."

provided on the PTDs for ethanol fuel blends.

2. PTD Requirements Up to and Including the Point of Ethanol Addition

Upstream of the point where E10 and E15 blends are manufactured, information is needed on the PTDs for base gasoline or gasoline blendstock used for oxygenate blending (BOB) [21] to facilitate ethanol blender compliance with the applicable EPA summertime RVP requirements.[22] This information would need to include the maximum potential RVP of the BOB and the maximum ethanol concentration that may be added to the BOB.

To satisfy these needs, we are proposing that PTDs for BOBs for use in the manufacture of ethanol blends that are subject to summertime RVP controls include the maximum RVP of the BOB. We are also proposing that such PTDs in non-RFG areas indicate what ethanol concentration is suitable to be blended with the BOB. The RFG requirements found at 40 CFR 80.77 already contain requirements that PTDs indicate what oxygenate and oxygenate amount are suitable to be blended with the reformulated blendstocks for oxygenate blending (RBOBs).

We are proposing that the following statements would be included on the PTDs for BOBs in non-RFG areas:

"Suitable for blending with ethanol at a concentration up to 15 volume % ethanol" or, in the case of a BOB designed to take advantage of the 1psi allowance for E10 in 40 CFR 80.27(d)(2):

"Designed for the special RVP provisions for ethanol blends that contain between 9 and 10 volume % ethanol"

"The RVP of this blendstock/base gasoline for oxygenate blending does not exceed [Fill in appropriate value]"

As we are proposing and seeking comment on blendstock commingling prohibitions in addition to those already in place for RFG (*see* section III.D.) we also request comment on whether additional information is needed on the PTDs for BOBs to help ensure that these blending restrictions are observed. We request comment on whether the following language should be added to the PTD for a BOB designed to take advantage of the 1psi allowance for E10 in order to help prevent downstream violations of the RVP standards: "The use of this gasoline to manufacture a gasoline-ethanol blend with less than 9 vol% ethanol or E15 may cause an RVP violation." We request comment on whether any additional information should be provided on the PTDs for BOBs.

3. General PTD Requirements

We are proposing that on each occasion when any person transfers custody and/or ownership of any gasoline or base gasoline/gasoline blendstock used for oxygenate blending, the transferor would be required to provide the transferee with an appropriate PTD identifying the gasoline/blendstock/base gasoline and its characteristics (as defined below), as well as such general information as the names and addresses of the transferor and transferee, the volume of product being transferred, the location of the product on the date of transfer, and specific information described in this preamble. We are proposing that all parties would be required to retain PTDs for a period of not less than five years and would be required to provide them to EPA upon request. Five years is the normal record retention requirement for 40 CFR part 80 fuels programs, such as the reformulated gasoline (RFG) program.

We are proposing that PTDs would be required to be used by all parties in the distribution chain down to the point where the product is sold, dispensed, or otherwise made available to the ultimate consumer. We are proposing that product codes could be used to convey the information required as long as the codes are clearly understood by each transferee. However, we believe that product codes alone would not be sufficient for transfers to truck carriers, retailers, or wholesale-purchaser consumers. Hence, we are proposing that the full proposed text would need to be included on the PTD for transfers to truck carriers, retailers, or wholesale-purchaser consumers.

Parties would be afforded significant freedom with regard to the form PTDs take under this proposal, although we are proposing that the PTDs would be required to travel in some manner (paper or electronically) with the volume of blendstock or fuel being transferred. The addition of the proposed information to PTDs would not require any additional testing of fuel composition. Adoption of these proposed changes would add a one-time burden to program and implement new product codes and statements, as well as a continuing small burden associated with using product codes and statements on PTDs. Given this and the fact that PTDs are used in the course of business, we believe that the proposed new PTD requirements could be readily accommodated by industry. The increased burden which would result from the adoption of these proposed PTD requirements is detailed in section IX.B. of this preamble.

C. Retail Fuel Dispenser Label and Fuel Ethanol Content Survey

To help mitigate the potential for misfueling, oversight of fuel retailer compliance with the proposed E15 labeling requirements and of the actual ethanol content of the dispensed fuel in comparison to the information on the label is needed. To provide adequate oversight, EPA conditioned the E15 partial waiver on a requirement that ethanol blenders, ethanol producers, ethanol importers, petroleum refiners, and petroleum importers participate in a survey of compliance at fuel retail facilities.[23] The E15 partial waiver decision specified that an EPA-approved survey plan is to be in place prior to introduction of E15 to the marketplace and that the results of the survey must be provided to EPA for use in its enforcement and compliance assurance activities.

Today's notice contains our proposal on requiring a survey as part of a misfueling mitigation program. This proposal covers how the required survey should be formulated and conducted. As discussed in section III.G., we are proposing that the survey could be used to meet the periodic sampling and testing elements of a regulated party's affirmative defenses to presumptive liability in cases where instances of noncompliance with the applicable maximum ethanol content specification are discovered. Should EPA finalize the additional labeling requirements that we requested comment on in section III.A.2. of this proposal, evaluation of retailer compliance with these labeling requirements would also be included in the survey. Regardless of whether we finalize labeling provisions, testing on the ethanol content of the fuel delivered from all non-FFV dispensers would need to be included in the survey to help mitigate misfueling.

The survey requirements that we are proposing are based on an existing

[21] For purposes of this discussion, the blendstock or base gasoline (BOB) is typically referring to the fungible base gasoline produced at a refinery for the specific intention of adding ethanol. The fungible gasoline produced for this purpose is subject to all of the 40 CFR parts 79 and 80 regulations applicable to gasoline. However, under 40 CFR 80.101(d)(4), a refiner with direct control of the ethanol addition to the actual gasoline produced by that refiner may consider the final fuel including the ethanol when complying with part 79 and 80 regulations.

[22] *See* section IV of this preamble for a discussion of the RVP requirements for E15 and E10.

[23] *See Partial Grant and Partial Denial of Clean Air Act Waiver Application Submitted by Growth Energy to Increase the Allowable Ethanol Content of Gasoline to 15 Percent; Decision of the Administrator* elsewhere in this issue of the **Federal Register.**

survey of compliance with the EPA labeling requirements for retail diesel fuel dispensers, and with the maximum allowable sulfur content of the diesel fuel delivered from these dispensers under EPA's ULSD program. EPA recently codified the requirements for this diesel fuel survey in a direct final rule that became effective on July 12, 2010.[24] The reformulated gasoline (RFG) program also utilizes a compliance survey program to ensure seasonal RFG area requirements are met for predicted emissions performance based on average area fuel parameters. Based on the ULSD and RFG programs, we are proposing two options for obligated parties to satisfy the survey requirement. Survey Option 1 allows individual obligated parties to elect to individually survey gasoline and retail stations anywhere their fuel might be sold. Survey Option 2 allows obligated parties to form a consortium that contracts an independent survey association to conduct a national ethanol content and E15 labeling survey.

For Survey Option 1, we propose that obligated parties choosing the individual survey option must survey labels and ethanol content at retail stations wherever their gasoline may be distributed if it may be blended as E15. Prior to conducting such a survey a survey plan would have to be approved by EPA. We seek comment on all aspects related to Survey Option 1.

For Survey Option 2, we propose that the survey would consist of a nationwide program of sampling and testing designed to provide oversight of all retail stations that sell gasoline. Details of the proposed survey requirements are similar to those included in the ULSD and RFG programs. We propose that the survey organization would be required to submit survey plans on an annual basis that would be applicable from January 1 through December 31. We propose that EPA would review the first survey plan within two months of its receipt. We propose that the survey organization would be required to submit subsequent survey plans to EPA for approval by November 1 of the year proceeding the calendar year in which the sampling and testing program would be implemented. The Agency also proposes that proof that the amount of money necessary has been paid to the surveyor is sent to EPA no later than December 15 of the year proceeding the calendar year in which the sampling and testing program would be implemented. For the first annual survey, we propose that proof of payment be submitted to the Agency no later than one month before the sampling and testing program would be implemented. We seek comment on the deadlines for both the survey plan and proof of payment for the survey for the first survey and on subsequent surveys.

We propose that the sampling and testing program would ensure comprehensive geographic coverage nationally representative of gasoline sold at retail outlets by providing proportionate coverage of gasoline across three sampling strata. These three strata generally refer to: (1) Densely populated areas, which include Metropolitan Statistical Areas and the reformulated gasoline control areas; (2) transportation corridors, which are based on interstate highways outside the densely populated areas;[25] and (3) rural areas, which include all areas not included in the previous two strata. These areas would be subdivided into clusters, generally based on groupings of counties. The specific criteria used for selecting sampling areas for each survey plan would be subject to EPA approval. We seek comment on all aspects of the proposed elements that a survey plan should include.

Comment is specifically requested on the criteria which should be used to determine the minimum sample size for the survey. The sampling and testing program would need to both accurately estimate the proportion of retail stations that are non-compliant with E15 labeling and ethanol content requirements and provide a credible deterrent to deliberate or inadvertent violations of downstream enforcement standards. For the ULSD survey program, we require a minimum of 5,250 samples annually. For a national survey looking at all gasoline retail stations, we believe the minimum number of samples needs to be greater because there are more than three times the number of retail stations that sell gasoline compared with stations that sell diesel. We propose that the survey take a minimum of 7,500 samples spread across four quarterly surveys. We also propose a sample size equation similar to the one used to determine sample sizes for the ULSD survey program (*see* equation in the proposed regulations at 80.1502(b)(4)(v)(A)). This equation bases sample size on the proportion of retail stations that are non-compliant. We seek comment on both the minimum number of samples and the method for determining samples sizes.

Since initially E15 may be introduced into commerce in a limited geographical area, it may not be necessary to carry out the full survey or to carry it out nationwide. One way to potentially resolve this issue would be to limit the areas required to be surveyed to areas that are known to have E15 being distributed. Unfortunately, there are no reliable real-time data that show when E15 is first introduced into an area and it could take awhile for the proposed annual survey program to incorporate these new geographic areas. Additionally, the borders of such areas are difficult to define and constantly shift in response to market forces. This approach also undermines one of the stated purposes of the survey program, namely that the survey program helps deter either intentional or unintentional violations by increasing the likelihood of violators being randomly caught. If EPA allows only certain areas to be surveyed while excluding others, some parties may manufacturer, blend, or distribute E15 without properly identifying the fuel as E15 or properly labeling the fuel dispenser as dispensing E15. By the time the survey program caught up, motor vehicles and nonroad products not approved for E15 use may have been misfueled for a long time. On the other hand, if there were ways to properly identify areas that are distributing E15 real time, then limiting the survey to only those areas could considerably reduce the cost of compliance with the proposed survey requirements. The Agency seeks comment on ways to possibly limit surveys to only those areas that have E15 being introduced into commerce.

Another option to limit survey requirements would be to require a national survey, but have a lower minimum sample size that gradually increases over time. Since the proposed approach for determining sample sizes above 7,500 discussed above is based on the proportion of retail stations that are noncompliant with ethanol content and/or E15 labeling requirements, if there is very little E15 being introduced into the marketplace, the proportion of noncompliant retail stations would be small. In this case, 7,500 samples may be substantially higher than the number of samples required by the proposed method for determining sample sizes. Since this is most likely to occur at the beginning of the survey program, the survey program could gradually increase the annual minimum sample

[24] Alternative Affirmative Defense Requirements for Ultra-Low Sulfur Diesel and Gasoline Benzene Technical Amendment, 75 FR 26121, May 11, 2010.

[25] Transportation corridors would include areas immediately adjacent to the highways themselves and a swath within several miles on each side of the highway. For any given survey, a certain length of any specific highway might be deemed appropriate as a sampling unit or cluster.

size to reduce the burden to industry. For example, the Agency may only require a minimum of 2,000 samples the first full survey year (2012), 4,000 samples in 2013, 6,000 samples in 2014, and 7,500 samples in 2015. We seek comment on this gradual minimum sample size approach and all other issues related to determining the minimum number of samples for a national ethanol content and E15 labeling survey.

We also are proposing that the independent survey association would ship fuel samples on the same day that the sample was collected and that the sample be analyzed for ethanol content within 24 hours from the time the samples were acquired. Although having such a short delivery time for fuel samples to be analyzed may increase costs, this time period is both consistent with other fuel survey programs and would allow ethanol content and E15 labeling violations found by the survey to be corrected quickly to mitigate misfueling. We seek comment on the proposed amount of time allowed for samples to be shipped for the analysis of ethanol content.

For both survey options, we require that survey plans would include a methodology for determining when the survey samples will be collected, the locations of the retail outlets where the samples will be collected, the number of samples to be included in the survey, procedures that would prevent the advance notification of retail stations, and how individual retail stations will be determined for sampling. We propose that samples at retail stations be taken from all gasoline dispensers and have the samples tested for ethanol content and that retail stations be selected randomly with the probability of selection proportionate to the volume of gasoline sold at the retail outlet. We also propose that ethanol content be measured in accordance with a test method that meets the requirement of 40 CFR 80.46(g). We seek comment on these requirements for survey plans and whether any additional requirements are necessary. We also seek comment on all matters related to the national ethanol content and E15 labeling survey proposed today.

D. Program Outreach

Effective outreach to consumers and stakeholders is often essential to the successful implementation of environmental protection programs. To implement the RFS program, for example, EPA provides training seminars for stakeholders and manages dedicated telephone and e-mail support lines. Various industry representatives and organizations provided program information and coordination to their members and customers as well as to facilitate the introduction of new program requirements this past July.

In the case of E15, outreach to consumers and stakeholders may be critical to help mitigate misfueling incidents that can result in increased emissions or vehicle or engine damage. The potential for E15 misfueling incidents exists because consumers tend to choose the lowest priced fuel, and E15 may cost less than E10 since ethanol currently tends to be less expensive than gasoline.

A recent example of successful outreach to consumers and stakeholders is the coordinated work done in support of the ULSD program. ULSD was a new fuel with the possibility of consumer misfueling that could result in engine damage. With ULSD, the fuel industry trade association API took the lead in working with stakeholders to establish the Clean Diesel Fuel Alliance (CDFA), a collaboration of public and private organizations designed to ensure a smooth program transition by providing comprehensive information and technical coordination. The organizations represented in the CDFA include engine manufacturers, fuel retailers, trucking fleets, DOE and EPA. CDFA efforts to educate ULSD users include developing technical guidance and educational information, including a Web site (*http://www.clean-diesel.org*), as well as serving as a central point of contact to address ULSD-related questions.

The CDFA outreach model could prove beneficial in this case. EPA anticipates that all parties that may be involved in bringing higher gasoline-ethanol blends to market would participate in a coordinated industry-led consumer education and outreach effort. In the context of this program, potential key participants include ethanol producers, fuel manufacturers, automobile, engine and equipment manufacturers, States, non-governmental organizations, parties in the fuel distribution system, EPA, DOE, and USDA. Potential education and outreach activities a public/private group could undertake include serving as a central clearinghouse for technical questions about E15 and its use, promoting best practices to educate consumers or mitigate misfueling instances, and developing educational materials and making them available to the public.

Some stakeholders have also suggested that a Web site be created to inform consumers of the potential impacts of E15 on older motor vehicles, heavy-duty gasoline engines and vehicles, motorcycles, and nonroad products. Stakeholders have further suggested that, if a unique misfueling Web site is created, then EPA should require the Web site address to be displayed on the E15 label. EPA seeks comment on the appropriateness of a unique misfueling Web site and of including such a Web site address on the E15 label.

E. What other means of mitigating misfueling were considered?

EPA believes that the proposed misfueling mitigation approach will effectively and sufficiently mitigate misfueling based on our past experience. The Agency employed a similar and relevant misfueling mitigation program when ULSD was introduced in 2006. Retail stations and wholesale purchaser-consumers were required to have fuel dispenser labels indicating whether the diesel being dispensed was 500 ppm (low sulfur diesel or LSD) or 15 ppm (ULSD). MY2007 and newer on-highway diesel vehicles and engines were required to use ULSD and prohibited from using LSD. At the beginning of the ULSD program, we were aware of several instances where consumers, after checking the labels, had difficulty finding ULSD in some areas. Consumers were informed that misfueling would result in significant engine damage. We are not aware of any significant instances when misfueling occurred during this labeling program. This indicates that EPA outreach and information provided by the engine manufacturers, Clean Diesel Fuel Alliance, and other stakeholders, was effective in educating consumers and mitigating misfueling. Additionally, we feel that product transfer document requirements and the ULSD survey program were vital in implementing and enforcing this fuel transition. Based on the success of the ULSD program, we believe that similar requirements for E15 will be sufficient and successful.

Some have argued that the ULSD program example is not applicable in this case since the MY2007 and newer on-highway diesel vehicles and engines were at risk from misfueling, whereas for E15, it is primarily older motor vehicles (*i.e.*, MY2000 and older motor vehicles) that are at risk. While EPA believes that the potential for engine repair costs applies in both cases, the Agency also believes that similar misfueling mitigation measures can be effective for E15 as well. Coupled with an effective outreach and public education program, the proposed mitigation measures should deter

misfueling and encourage consumers to pay close attention to the E15 labels. Some have also argued that the ULSD program is not applicable because the ULSD program focused primarily on commercial truck drivers, who may be more cognizant of fuel choices due to the potential impact on their commercial investments, than the general public. We believe that consumers are also concerned about their private vehicles, and that the potential costs associated with misfueling (discussed below in section III.F) will have just as much of an impact in informing consumer fuel choices. As long as fuel dispensers are properly labeled and consumers are adequately informed of the associated risks of misfueling nonroad products and older motor vehicles on E15, we believe the proposed misfueling mitigation program will be effective.

While EPA believes that the misfueling mitigation provisions included in today's proposal will address potential misfueling concerns, we recognize that these provisions are not the only potential means for addressing misfueling concerns. EPA has received many suggestions for mitigating misfueling. For example, API conducted a scoping study, "Evaluation of Measures to Mitigate Misfueling of Mid- to High-Ethanol Blend Fuels at Fuel Dispensing Facilities," that includes many of these suggestions. That study may be found in the docket.[26]

One suggestion in API's study was to have full service attendants at gas stations that ensure E15 is only used in appropriate motor vehicles. While such a measure may be effective, its overall effectiveness is unknown and it would be a large burden on service stations to employ service attendants for this purpose. This option would come at an extremely large cost, and there would need to be significant training of new employees. API estimates the average annual cost per service station at $67,500 and the annual nationwide cost at $10.6 billion. Another suggestion was to have separate islands at service stations, with one for blends at E10 and below, and one for mid- and high-gasoline-ethanol blends. It was noted that this measure would also likely cause congestion at the pumps, be inconvenient for the consumer, reduce the number of pumps available for higher-demand fuels, and not prevent intentional misfueling. API estimates the cost of separate islands at $700 per station and $40 million nationwide, though they did not cost out the consumer implications.

Another option discussed is a measure in which keypads or touchscreens would be made available at each pump to allow consumers to input data about their motor vehicle or simply answer "yes" or "no" to the question of whether their motor vehicle is an FFV or non-FFV. If the motor vehicle is appropriate for the fuel, then the pump would allow fueling. If existing dispensers do not already have display screens, this strategy would require retail stations to install keypads or touchscreens at an approximate cost of $5,000 for dispensers that may be retrofitted, with the cost prohibitive for dispensers that may not be retrofitted. There may also be an additional cost per station of $10,000—$20,000 to install a central controller to accept motor vehicle information. Such a strategy may cause some congestion at the pumps. Intentional misfueling would not be prevented through such measure.

Also discussed in the report was a strategy in which retail stations would have a video or audio presentation play when a mid- to high- gasoline-ethanol blend pump is lifted from the dispenser. The presentation would provide information to the consumer about E10+, which motor vehicles may fuel with it, and why other motor vehicles should not. Optionally, the consumer could be required to confirm fueling with E10+ at the end of the presentation. The cost of such an alternative for those stations without display screens, is estimated to be $5,000; if the existing dispenser could not be retrofitted with a display screen, there would be additional and considerable costs incurred for replacing a dispenser. Costs for this option could be as high as $20,000 per station.

API also suggested that a different colored hand warmer or a different type of nozzle grip for fuel pumps with E15+ may help alert consumers to the new type of fuel without a large burden on retail stations. Hand nozzles for E15+ would be a different color than for other gasoline types, or would have a different texture from other hand grips. To be effective, one color or one type of grip should be used for E15+ on a national basis. Consumers would know by the color and/or texture that those pumps were for E15+. Some concerns about this option are that it would not be possible to distinguish nozzles that dispense both E10 and E15, some consumers may not notice the warmer or grip, and this would not prevent intentional misfueling. However, API believes that nozzle grips with different textures would be noticeable to most consumers, even those who do not read the pump labels. Also, hand nozzle grips are easy to install and replace as needed. API has estimated the cost at $5 to $11 per nozzle with a national cost of $800,000 to $1.6 million.

While many of the strategies discussed in the API study may be effective in communicating with the consumer about E15, EPA believes that the combination of pump labels, regulatory prohibition on misfueling, PTDs, a survey, and consumer outreach will adequately mitigate misfueling by consumers. The labels on the fuel pumps will notify consumers that the pump is for E15 and only certain MY motor vehicles should use that fuel. Consumer outreach will give the consumer more in-depth information, such as why older MY motor vehicles, heavy-duty gasoline engines and vehicles, motorcycles, and nonroad products should not fuel with E15 and what damage may occur from misfueling. The PTDs will help ensure that E15 is identified as such through the distribution chain, which will help prevent inadvertent mislabeling of fuel. Finally, a survey will identify where mislabeling (or no labeling) of E15 has occurred so that appropriate labels are used.

Other options that have been suggested may be too expensive, difficult to implement, and/or otherwise not likely acceptable to consumers. As such, EPA does not deem it appropriate to include these options in today's proposal. We seek comment on any other measures not proposed in the rule that the regulated industries and other interested parties feel may be necessary to mitigate misfueling. We seek comment on any other cost-effective mitigation measures that may be appropriate. If EPA considers requiring any other mitigation measures that are suggested by commenters in the final rule, EPA will conduct appropriate analyses of such measures, including the impacts on small businesses, before deciding whether to include such mitigation measures in the final rule.

F. Cost of Compliance

The cost of compliance with the provisions being proposed today include the periodic capital costs of labeling fuel dispensers, the onetime costs of the PTD requirements, and the annual cost of the survey requirements. The cost of the proposed labeling requirements is estimated at $1.04 million per year on an annualized basis. The cost of the proposed PTD

[26] American Petroleum Institute, "Evaluation of Measures to Mitigate Misfueling of Mid- to High-Ethanol Blend Fuels at Fuel Dispensing Facilities," EPA Docket # EPA–HQ–OAR–2010–0448.

requirements is estimated at $0.56 million per year on an annualized basis. The cost of the proposed survey requirements is estimated at $2.05 million per year. The total cost of all of the proposed requirements is estimated at $3.65 million per year. These estimated costs are detailed in the following sections. As discussed in section III.F.4, we believe that these costs will be more than offset by the avoided costs of repairing engines/vehicles that could otherwise have been damaged by misfueling in the absence of the implementation of the proposed requirements.

1. Labeling Costs

Our estimate of the cost of the proposed E15 fuel dispenser labeling requirement includes the cost to the fuel retailer of purchasing the label, the administrative cost to ensure that all gasoline dispensers are labeled appropriately, and the labor cost to replace fuel dispenser labels. Based on our past experience with labeling programs, the RFS2 NPRM and industry input, the cost of an E15 label is estimated to be $5.00 per label.[27] There are approximately 162,000 retail gas stations in the U.S. according to National Petroleum News.[28] The RFS2 Final RIA estimates that there is an average of 7.7 gasoline refueling positions per retail station.[29] Thus, for a retail facility that has 8 refueling positions, the total cost if all of the dispenser labels are replaced would be $40.00. A number of fuel retailers are small businesses. However, we believe that the minor cost of label replacement would not represent a significant additional burden to any fuel retailer. Specifically, making the conservative assumption that there will be the maximum number of pumps (8) even for small stations and assuming an 8 year life before labels need to be replaced, the annualized cost to a service station is $5 per year. The amount of gasoline sold at a small service station is estimated to be approximately 60,000 gallons/month.[30] Assuming an average cost of gasoline at $2.31/gal (per the EIA 2009 national average regular grade gasoline price) the annual revenue for a small service station from its gasoline sales is approximately $1.7 million.[31] Thus, the cost of the labels represents less than 0.001% of the total annual revenue of a small gas station from its gasoline sales.[32]

Although we are requesting comment on whether all gasoline fuel dispensers should be labeled,[33] today's notice only includes proposed labeling requirements for E15 fuel dispensers. Nevertheless, we are assuming all gasoline refueling positions would be relabeled for the purposes of estimating the costs of this proposal. This approach provides a conservatively high estimate of costs if only the proposed E15 labeling requirements are finalized. By multiplying the average number of gasoline refueling positions per retail facility, by the number of fuel retailers, and the cost per label, we arrived at an estimated cost of $6.23 million to replace all of the labels at gasoline refueling positions at all fuel retailers in the U.S. We assumed an 8 year label life before it needs to be replaced. Amortizing the periodic labeling costs using a 7% cost of capital, we estimate the annualized cost to comply with the proposed labeling provisions to be approximately $1.04 million per year. We request comments on these estimated costs.

2. PTD Costs

Section IX.B. of today's preamble contains a discussion of the costs of the PTD requirements proposed in today's notice.[34] There would be a one-time cost of $5.1 million to regulated parties to modify the formatting of their existing PTDs to accommodate the new information which would be required as a result of the implementation of today's proposal. After the one-time modification of PTD formatting is complete, we believe that there would be no significant additional costs associated with communicating the additional information that would be required by today's proposal to downstream parties in the distribution system (either in electronic or paper form). By amortizing the one-time reformatting costs over a period of 15 years at a 7% cost of capital, we arrive at an annualized cost of $560,000 for the proposed PTD requirements. We request comment on these estimated costs.

3. Survey Costs

The estimated costs of the proposed ethanol content and labeling survey are based on experience with the existing RFG and ULSD surveys and discussions with industry. The RFG survey includes all of the elements required in the proposed nationwide survey except the survey of compliance with the proposed labeling requirements. We estimate that the cost of adding the proposed survey of compliance with the proposed labeling requirements to the existing RFG survey at $50,000 per year. The cost to implement all of the proposed survey provisions for conventional gasoline is estimated at $2 million per year. Thus, the total cost of the proposed survey requirements is estimated to be $2.05 million per year.[35] We request comments on this estimate.

4. Avoided Motor Vehicle and Nonroad Product Repair Costs

We believe that proposed labeling and associated survey and PTD provisions will be an effective tool at mitigating unintentional misfueling based on our experience with other labeling provisions (such as ULSD). The resulting prevention of misfueling will not only minimize the potential emission increases that could result (as discussed in section VI.I.), but also avoid potentially costly highway motor vehicle, heavy-duty gasoline engines and vehicles, motorcycles, and nonroad product repairs that would be anticipated to far exceed the cost of the labels. For example, based on a poll of automobile repair facilities, fuel pump and catalyst replacements average $427 and $1,250, respectively. Similarly, for nonroad equipment, the cost for a fuel line repair of handheld equipment (*e.g.* trimmers, chainsaws) or non-handheld equipment (*e.g.* lawnmowers, generators) could cost $100-$400 (based on information received from repair facilities in Ann Arbor, Michigan and vicinity) and replacing this same equipment can range from $100 (consumer handheld) to $5,000 (commercial grade garden tractor) should the engine fail.[36] While there are no data to estimate the frequency at which these repairs or other potential complications (discussed in section VI) associated with misfueling on E15 might

[27] RFS2 NPRM RIA page 581 (EPA–420–D–09–001; May, 2009); available at: *http://www.epa.gov/otaq/renewablefuels/420d09001.pdf*).

[28] National Petroleum News, "2008 marketfacts", states that there were 161,768 gasoline retail facilities in 2008 *http://www.npnweb.com.*

[29] RFS2 Final RIA, page 232 (EPA–420–R–10–006; February 2010); available at: *http://www.epa.gov/otaq/renewablefuels/420r10006.pdf*).

[30] The National Association of Convenience Stores (NACS) 2006 State of the Industry Report states that for motor fuel retail stations that sell less than 75,000 gallons of all motor fuels, the average monthly throughput is 57,778 gallons.

[31] Energy Information Administration (EIA) annual national average gasoline price data *http://www.eia.gov/dnav/pet/pet_pri_gnd_dcus_nus_a.htm.*

[32] *See* section IX.D. of this notice for additional discussion of potential impacts from today's proposal on small businesses.

[33] Including E0, E10, E15, EXX, and E85 fuel dispensers. *See* section III.A. of this notice.

[34] Section III.B. contains a discussion of the proposed PTD requirements.

[35] *See* section III.C. for a discussion of the proposed survey provisions.

[36] While this analysis is focused on small SI engines, note that other nonroad equipment/vehicle categories can incur higher expenses due to the higher complexity of the equipment/vehicle compared to small SI engines.

occur, even if these potential complications were avoided on a tiny fraction of MY2000 and older motor vehicles and nonroad products as a result of the regulations (as opposed to actions taken independently by industry in response to conditions on the partial waiver), the savings would still far exceed the costs of compliance. We request comment on this assessment.

G. Compliance and Enforcement

1. What are the prohibited acts?

There is a long-standing prohibition, under CAA section 211(f)(1), that fuel manufacturers may not introduce gasoline-ethanol blends containing greater than 10 vol% ethanol into commerce for use in non-flex-fuel vehicles. The partial waiver modifies this prohibition so that gasoline-ethanol blends containing up to 15 vol% ethanol may legally be introduced into commerce by fuel manufacturers for use in MY2007 and later light-duty motor vehicles. The waiver does not apply to any MY heavy-duty gasoline engine or vehicle, motorcycle, or nonroad product.

We are proposing that all parties would be prohibited from selling, introducing into commerce or causing or allowing the sale or introduction into commerce of gasoline that has an ethanol content above 10 vol% ethanol into MY 2000 and older light-duty motor vehicles, any heavy-duty gasoline engine or vehicle, any motorcycle, and any nonroad product. We are also proposing that fuel distributors who transport or store a gasoline-ethanol blend, base gasoline or blendstock for ethanol blending would be prohibited from increasing the ethanol content to exceed the value noted on the PTD.[37] Since the Agency is deferring a decision for MY2001–2006 motor vehicles, we are not proposing a prohibition for fuel used in these motor vehicles at this time. DOE testing of MY2001–2006 light-duty motor vehicles is ongoing and EPA expects to make a waiver determination for these vehicles shortly after the results of the DOE testing are available. If EPA does not grant an E15 waiver for MY2001–2006 light-duty motor vehicles, then we would expect to include the same prohibitions for these MY motor vehicles in the final rulemaking. Even though we are not proposing an actual prohibition for motor vehicles MY2001–2006, it is still unlawful for fuel manufacturers to introduce E15 into commerce for use in these motor vehicles unless we grant an E15 waiver for these motor vehicles.

In addition to this general misfueling prohibition, there are several other prohibited acts that we are proposing in conjunction with the regulatory provisions being proposed today. We are proposing that retailers and wholesale purchaser consumers would be prohibited from dispensing E15 unless they comply with the proposed dispenser labeling requirements in section III.A. of today's preamble. We are proposing that ethanol blenders would be prohibited from introducing E15 into commerce without complying with the proposed ethanol content survey requirements in section III.C. of today's preamble.

In addition, there are several RVP related prohibitions that exist today that may need to be modified in light of E15. There is an existing prohibition with respect to exceeding applicable summertime RVP requirements.[38] We are proposing to prohibit the commingling of an E10 gasoline-ethanol blend with either E0 or E15 due to potential concerns about causing a violation of summertime RVP requirements unless the E10 blend had not taken advantage of the 1 psi RVP waiver. For the same reasons, prohibitions on the commingling of BOBs is necessary. Therefore we are proposing certain prohibitions against commingling conventional gasoline BOBs similar to the prohibitions for reformulated blendstocks for oxygenate blending (RBOBs) in 40 CFR 80.78 under the RFG program. Specifically, we are proposing to prohibit commingling an E10 BOB (produced to take advantage of the 1 psi RVP waiver) with an E15 BOB unless the resulting mixture is designated as an E10 BOB. We request comment on whether other modifications to these existing RVP related regulatory requirements are needed as a result of the introduction of E15.

2. What are the proposed liability and penalty provisions for noncompliance?

Today's proposed rule contains prohibition and liability provisions that are similar to those of the other fuels programs in 40 CFR Part 80.[39] Under the proposed regulation, regulated parties would be liable for committing certain prohibited acts, such as selling or distributing gasoline-ethanol blends with an ethanol content that exceeds the maximum for the intended end-use category of vehicles/engines, or causing/contributing to others committing prohibited acts. In addition, parties would be liable for a failure to meet certain affirmative requirements or causing others to fail to meet their affirmative requirements. All parties in the fuel distribution system would be liable for a failure to fulfill the recordkeeping and PTD requirements.

a. Presumptive Liability

All EPA fuels programs include a presumptive liability scheme for violations of prohibited acts. Under this approach, liability is imposed on two types of parties: (1) The party in the fuel distribution system that controls the facility where the violation was found or has occurred; and (2) those parties, typically upstream in the fuel distribution system from the initially listed party (such as any distributor of the fuel), whose prohibited activities could have caused the program nonconformity to exist.[40] This presumptive liability scheme has worked well in enabling us to enforce our fuels programs since it creates comprehensive liability for essentially all the potentially responsible parties. The presumptions of liability may be rebutted by establishing an affirmative defense.

To clarify the inclusive nature of these presumptive liability schemes, today's proposed rule would explicitly include as prohibitions causing another person to commit a prohibited act and causing the presence of a non-conforming gasoline-ethanol blend (such as a blend designated as containing less than 15 vol% ethanol which actually contains a greater concentration of ethanol) to be in the distribution system. This is consistent with the provisions and implementation of other fuels programs.

Today's proposed rule, therefore, provides that most parties involved in the chain of distribution would be subject to a presumption of liability for committing prohibited actions and causing violations by other parties. For example, an ethanol blender could be held presumptively liable for causing a gasoline-ethanol blend that exceeds the maximum ethanol content stated on the product's PTD to be present in the distribution system unless the blender provides an affirmative defense to

[37] A violation of this prohibition could cause or contribute to vehicle misfueling downstream.

[38] *See* 40 CFR 80.27.

[39] *See* section 80.5 (penalties for fuels violations); section 80.23 (liability for lead violations); section 80.28 (liability for volatility violations); section 80.30 (liability for diesel violations); section 80.79 (liability for violation of RFG prohibited acts); section 80.80 (penalties for RFG/CG violations); section 80.395 (liability for gasoline sulfur violations); section 80.405 (penalties for gasoline sulfur regulations).

[40] An additional type of liability, vicarious liability, is also imposed on branded refiners under these fuels programs.

demonstrate that it did not cause the exceedance. An ethanol blender could cause such an exceedance by adding too much ethanol to a blend or making an error on the PTD that they prepare. An ethanol manufacturer could be held presumptively liability for causing an exceedance of the maximum ethanol content requirements unless it could demonstrate that the ethanol it produced could not have caused the downstream violation.[41] Like other fuels regulations, a refiner also would be subject to a presumption of vicarious liability for violations by any downstream facility that displays the refiner's brand name, based on the refiner's ability to exercise control at these facilities. Carriers, however, would be liable only for violations arising from product under their control or custody and not for causing non-conforming gasoline to be in the distribution system, except where specific evidence of causation exists. A carrier might cause an exceedance of the ethanol content stated on the PTD for product in its custody by commingling products with dissimilar ethanol contents. For example, a carrier might cause the ethanol content of a product designated as E15 to exceed 15 vol% ethanol by transporting the product in a tank truck that had previously transported E85 that had not been properly drained.

b. Affirmative Defenses for Liable Parties

This proposal also includes affirmative defenses for each party that is deemed liable for a violation. Additionally, all presumptions of liability are rebuttable. The proposed defenses are similar to the defenses available to parties for violations of the RFG and diesel sulfur regulations. We believe that these defense elements set forth reasonably attainable criteria to rebut a presumption of liability. We are proposing that the affirmative defense require a party to demonstrate all of the following: (1) The party did not commit or cause the violation; (2) the party has PTDs indicating that the fuel was in compliance at its facility; and (3) except for retailers and wholesale purchaser-consumers, the party conducted a quality assurance program. For parties other than tank truck carriers, we are proposing that the quality assurance program would be required to include periodic sampling and testing of gasoline-ethanol blends for their ethanol content. For tank truck carriers, we are proposing that the quality assurance program would not need to include periodic sampling and testing of the gasoline-ethanol blend, but in lieu of sampling and testing, the carrier would be required to demonstrate evidence of an oversight program for monitoring compliance, such as appropriate guidance to drivers on compliance with applicable requirements and the periodic review of records concerning the quality of gasoline-ethanol blends and their delivery.

With respect to the assessment of liability for the introduction of E15 into any engines, vehicles or equipment that are not covered by the partial waiver for use of E15, EPA would typically not hold a self-service fuel retailer liable for customer misfueling if the retailer has labeled their dispensers appropriately and did not condone or facilitate such misfueling.

We are proposing that participation in the ethanol content survey could be used to meet some or all of the periodic sampling and testing elements of a regulated party's (*e.g.* branded refiners, ethanol blenders, and fuel distributors) affirmative defenses to presumptive liability in cases where instances of noncompliance with the applicable maximum ethanol content specification are discovered.[42] In addition to participation in the survey, we are proposing that ethanol blenders would be required to periodically test the accuracy of their equipment/methods used to add ethanol to gasoline. We are proposing that all other regulated parties could satisfy all of the periodic sampling and testing elements of their affirmative defenses to presumptive liability by participating in the survey.

As in other fuel regulations, branded refiners would be subject to more stringent standards for establishing a defense because of the control such refiners have over branded downstream parties. Under today's rule, in addition to other presumptive liability defense elements, we are proposing that branded refiners would also be required to show that the violation was caused by an action by another person in violation of law, an action by another person in violation of a contractual agreement with the refiner, or the action of a distributor not subject to a contract with the refiner for the transportation of the gasoline.

Based on experience with other fuels programs, we believe that a presumptive liability approach would increase the likelihood of identifying persons who cause violations of the prohibited acts in today's proposal. We normally do not have the information necessary to establish the cause of a violation found at a downstream facility. We believe that those persons who actually handle the fuel are in the best position to identify the cause of the violation, and that a rebuttable presumption of liability would provide an incentive for parties to be forthcoming with information regarding the cause of the violation. In addition to identifying the party that caused the violation, providing evidence to rebut a presumption of liability would serve to establish a defense for the parties that are not responsible. Presumptive liability is familiar to both the petroleum industry and EPA, and we believe that this approach would make the most efficient use of EPA's enforcement resources. For these reasons we are proposing a liability scheme based on a presumption of liability. We request comment on the proposed liability provisions.

c. Penalties for Violations

CAA section 211(d)(1) provides for penalties for violations of the fuels regulations. These penalty provisions subject any person that violates any requirement or prohibition of the rule to a civil penalty of up to $27,500 for every day of each such violation and the amount of economic benefit or savings resulting from the violation. Pursuant to 40 CFR 19.4, the amounts of civil penalties for these violations increased to $37,500 per day, plus the amount of any economic benefit or savings resulting from the violation, for violations that occurred after January 12, 2009. Today's proposal would subject any person who violates any of the proposed requirements or prohibitions to a civil penalty up to $37,500 for every day of each such violation and the amount of the economic benefit or savings resulting from the violation.

We propose that a violation of the requirements in today's notice would constitute a separate day of violation for each day the gasoline giving rise to the violation remains in the fuel's distribution system. The length of time the gasoline in question remains in the distribution system would be deemed to be twenty-five days unless there is evidence that the fuel remained in its distribution system a lesser or greater amount of time. These proposed penalty provisions are similar to those in the RFG, Tier 2 sulfur, and diesel sulfur programs. We request comment on the proposed penalty provisions.

[41] For example, an ethanol manufacturer might cause a downstream exceedance of maximum ethanol content requirements if they did not add the required amount of denaturant.

[42] *See* section III.C. of today's notice for a discussion of the ethanol content survey and section IV for a discussion of the RVP survey.

IV. Other Measures To Ensure Compliance

A. The 1.0 psi RVP Waiver for E10 Blends

One concern that was raised in the comment periods on the E15 waiver and RFS2 NPRM in addition to stakeholder meetings prior to this proposal was whether E15 would qualify for the 1.0 psi RVP waiver permitted under the Clean Air Act (CAA) section 211(h) for conventional gasoline. As discussed in the partial waiver decision document, we believe that E15 blends with higher volatility would cause vehicles to violate their evaporative emission standards in-use. Consequently, the waiver announced today is for E15 blends that meet the summertime gasoline volatility standards for conventional gasoline without any 1.0 psi RVP waiver, and the regulatory provisions proposed today reflect this decision. Furthermore, EPA interprets section 211(h)(4) of the CAA as limiting the 1.0 psi waiver to gasoline-ethanol blends that contain 10 vol% ethanol, including limiting the provision concerning "deemed to be in full compliance" to the same 10 vol% blends. EPA implemented CAA section 211(h)(4) through 40 CFR 80.27(d) which provides that gasoline-ethanol blends that contain at least 9 vol% ethanol and not more than 10 vol% ethanol qualify for the 1.0 psi waiver of the applicable RVP standard. Nevertheless, we seek comment on whether section 211(h) of the CAA could be interpreted such that E15 is eligible for the RVP provisions in section 211(h)(4) and whether this would have any impact on our E15 waiver decision.

In order to introduce a fuel that meets both the Federal summertime RVP standards and contains between 10 and 15 vol% ethanol, fuel refiners would have to create a fuel or blendstock that has approximately 1.0 psi lower RVP than a fuel or blendstock intended for E10 due to the interaction between gasoline volatility and ethanol when blended. Oxygenate blenders would need to know the RVP of a blendstock or have the intended ethanol content of a blendstock be specified on the PTD to ensure that they know the correct amount of ethanol that should be blended into a fuel. If an oxygenate blender or retail station blended more than 10 vol% ethanol into a fuel or blendstock produced with the expectation of taking advantage of the 1 psi waiver that applies to E10, the resulting blend would be in violation of summertime RVP standards.

Having E10 and E15 at different RVP levels in-use also raises the potential that mixtures of the two at retail would cause the blend to exceed the summertime RVP requirements. Many retail stations only have two underground storage tanks and those tanks typically contain regular and premium grade fuels. Since, in many cases, midgrade gasoline is made by blending regular and premium grade gasoline, the possibility exists that a midgrade fuel blended from a high-RVP E10 fuel and a low-RVP E15 fuel would exceed summertime RVP requirements. This fuel would not receive the 1.0 psi RVP waiver and selling such a fuel would violate RVP requirements.

These RVP related complications could be avoided by refiners producing a lower RVP blendstock for E10 as well. While there are cost and supply considerations refiners and fuel distributors may find it in their best interest to do so given the flexibility it affords. Regardless, the Agency believes that it would be possible to help alleviate some of these challenges with the slight modifications to the PTDs and the national fuel survey requirements discussed in Section III of this proposal. RFG already has similar requirements to those that we are proposing in today's rulemaking, and given the effectiveness we have had with the RFG program, we believe that the proposed approach would be an effective means of allowing fuel manufacturers to ensure that the correct amount of ethanol was blended into the appropriate blendstock or finished fuel with only slight additions at minimal costs. We believe that these PTD proposals are appropriate under our authority under sections 208 and 114 of the Clean Air Act.

1. National RVP Survey

In section III.C., we described our proposal for a national E15 labeling and ethanol content survey that is intended to ensure that fuel pumps would be properly labeled if retail stations chose to sell E15. In order to determine if the proposed labeling requirements are being met and the ethanol content is consistent with the label, fuel sampling and testing would be required to determine the ethanol content. Since fuel refiners will have difficulty ensuring that downstream summertime RVP requirements are met in non-RFG areas, adding testing for RVP to this survey would be a low-cost [43] approach to enforcing downstream RVP standards and help provide an affirmative defense for upstream parties in the event of a violation downstream. We seek comment on whether RVP survey requirements should be included as part of the national ethanol survey proposed in section III.C.

2. RVP and E15 Underground Storage Tank Transition

Another issue associated with the RVP standards is the potential comingling of a higher RVP E10 fuel that received the 1.0 psi RVP waiver with a lower RVP E15 that met summertime RVP requirements in underground storage tanks when a retail station decides to transition from selling E10 to E15. If the retail station does not completely remove all E10 from a tank before E15 is added to the tank, the retail station would create a fuel that violates RVP standards. The resulting blend would be above 10 vol% ethanol and would not qualify for the 1.0 psi waiver, but would have an RVP above the requirement for E0 and E15.

Section 211(t) of the Clean Air Act, as amended by the Energy Policy Act of 2005, allows retail stations to blend compliant RFG batches of non-ethanol blended and ethanol-blended gasoline in storage tanks twice a year as long as the duration of the blended period is no longer than 10 consecutive calendar days. However, the authority granted to the Agency for the transition of fuels in underground storage tanks was specifically limited to that case and we do not believe this provision authorizes a blending down of E10 and E15 over time in non-RFG areas.

We seek comment on the issue of tank transition from E10 to E15 fuels and if there are ways that the Agency could address this issue.

B. Credit for RFG Downstream Oxygenate Blending

Pursuant to 40 CFR 80.69, refiners of RBOB are permitted to take credit for downstream oxygenate blending toward compliance with RFG standards. To do so the refiner must direct the downstream oxygenate blender on the PTD to add a particular type and amount of oxygenate. However, these provisions may require some reconsideration. In light of the addition of E15 to the RFG marketplace, it may be more difficult to ensure that 15 vol% ethanol is in fact added downstream if the RBOB would also meet all other finished gasoline specifications with the addition of just 10 vol% ethanol. Oxygenate blenders could also be left in the untenable position of having a supply of RBOB for E15 blending and an inability to blend more than 10 vol%

[43] Based EPA discussions with industry, the costs of for RVP survey requirements as part of the E15 labeling survey would add approximately $200,000 dollars per year to the total costs of the survey.

ethanol. We request comment regarding how the final regulation should address this issue. For example, the regulation could limit the refiner's claimed ethanol content to 10 vol% ethanol unless: (A) The final blend would not comply with all gasoline specifications (*e.g.,* octane) without the addition of 15 vol% ethanol, or (B) until such time as the RBOB surveys for a particular RFG area indicates that there is a sufficient, stable market demand for E15. We request comment on this and other approaches to resolve this issue.

V. Modification of the Complex Model

A. Background of RFG Requirements

Reformulated gasoline (RFG) is gasoline that is required to be sold in certain parts of the country, and is required to be reformulated to meet certain performance standards for emissions of smog forming and toxic air pollutants. In 1990 Congress amended the CAA to require that RFG be sold in cities with the worst ozone pollution problems. In addition, other cities with significant smog problems were provided the opportunity to voluntarily opt-in to the RFG program. RFG is currently used in portions of 17 States and the District of Columbia. About 30% of gasoline sold in the U.S. is reformulated. In the 1990 Amendments, Congress also required that conventional gasoline (CG, or non-RFG) sold in the rest of the country become no more polluting than gasoline sold in 1990. Often referred to as "anti-dumping", this requirement ensures that refiners do not "dump" into conventional gasoline fuel components that are restricted in RFG and that increase environmentally harmful emissions.

EPA introduced the RFG program in 1995, as required by the CAA. The RFG program established emissions performance standards for volatile organic compounds (VOCs), nitrogen oxides (NO_X), and toxics. These standards are based on percent reductions from the average emissions of these pollutants in 1990 model year vehicles operated on a specified baseline gasoline. The program required an oxygen minimum standard of 2.0% by weight, however the Energy Policy Act of 2005 removed that requirement. For conventional gasoline, the program establishes emissions standards for exhaust toxics and NO_X designed to ensure that an individual refinery's or importer's gasoline will not have higher levels of these pollutants than the refinery's or importer's 1990 gasoline.

Refiners of RFG must comply with the RFG standards separately for each refinery. Refiners of conventional gasoline may comply separately for each refinery, or they may aggregate their refineries. Importers comply with both the RFG and conventional gasoline standards for the aggregate of the gasoline they import during the year.

B. The Complex Model

To measure compliance with the RFG and anti-dumping standards, the emissions performance of gasoline is calculated using a model, called the Complex Model, which predicts the emissions level of each regulated pollutant based on the measured values of certain gasoline properties. These properties are: Aromatics, olefins, sulfur, Reid Vapor Pressure (RVP), benzene, oxygen and distillation points, as well as the content of ethanol, ETBE, TAME and MTBE. Refiners and importers are required to measure these properties in each batch of gasoline they produce or import, using a prescribed test method, and calculate the emissions level of each pollutant for each batch of gasoline using the Complex Model. The emissions level as computed by the Complex Model is compared to the baseline emissions for each pollutant, and the percent reduction is then calculated. The standards for VOC, NO_X and toxics are stated in terms of percent reductions from the baseline. Thus, for fuel to comply with the standards, the percent reduction computed by the Complex Model must be equal to or greater than the standard for each pollutant. Under the Clean Air Act, baseline emissions must be based on 1990 vehicle technology, not current fleets, nor off-road equipment.

For gasoline to be sold in the U.S., it must comply with the standards. Refiners are therefore required to certify that their fuel meets the standards by using the Complex Model. Currently, the equations in the model are limited to an oxygen content of no more than 4.0% by weight in gasoline, which is the maximum amount of oxygen in gasoline containing 10 vol% ethanol, or E10.[44] In order for refiners to produce gasoline that will contain 15 vol% ethanol, the model must be modified to predict the effect of the additional oxygen.

The applicability of the Complex Model to gasoline certification has become limited as EPA's more recent clean gasoline standards take effect and provide even greater emission reductions beyond those of the RFG program. The NO_X emission performance requirements for RFG and conventional gasoline have not been required since January 1, 2007 when the Tier2 gasoline average sulfur standard of 30 ppm took effect (*see* 40 CFR 80.101(c)(3)(i)). Finally, beginning January 1, 2011, the air toxics emission standards for gasoline will be deemed met by compliance with the new MSAT2 nationwide benzene standard for gasoline, the volatility standard, and sulfur standard (*see* 40 CFR 80.41(e)(2) and (3)). The result is that beginning January 1, 2011, only the VOC equation in the Complex Model will continue to be binding and only for RFG. For conventional gasoline, there are no VOC performance standards; only RVP limits. Thus, compliance with the anti-dumping regulations does not require use of the Complex Model to evaluate VOC emissions.

The one exception to this is small refiners that take advantage of the option for delayed compliance with the MSAT2 benzene standard until January 1, 2015. They would still need the Complex Model for air toxics emission performance compliance during this interim period. However, since no small refiners are currently producing RFG, it would only be for CG. For CG, since refiners typically certify CG as E0, with oxygenate blended downstream, they should be unaffected by the increase in ethanol content from E10 to E15. Therefore, it appears that the only equation that needs to be modified in the Complex Model to allow refiners and importers to certify gasoline containing E15 after January 1, 2011 is the VOC equation.

Because emissions performance at issue is specified in the Act as the emissions performance of 1990 vehicle technology, we are not able to use current emission test data on motor vehicles using E15 gasoline as a basis for evaluating appropriate changes to the VOC equation. The test results from today's vehicle fleet would not represent the 1990 vehicle technology required to calculate the emission baseline. Instead, we relied on a study conducted in 1994 by Guerrieri, *et al.,* that examined the exhaust emissions from 1990 vehicles using gasoline with ethanol levels varying from 0 to 40 volume percent.[45] Figure V.B–1 shows data reported by Guerrieri *et al.*[46] The figure shows the average values of

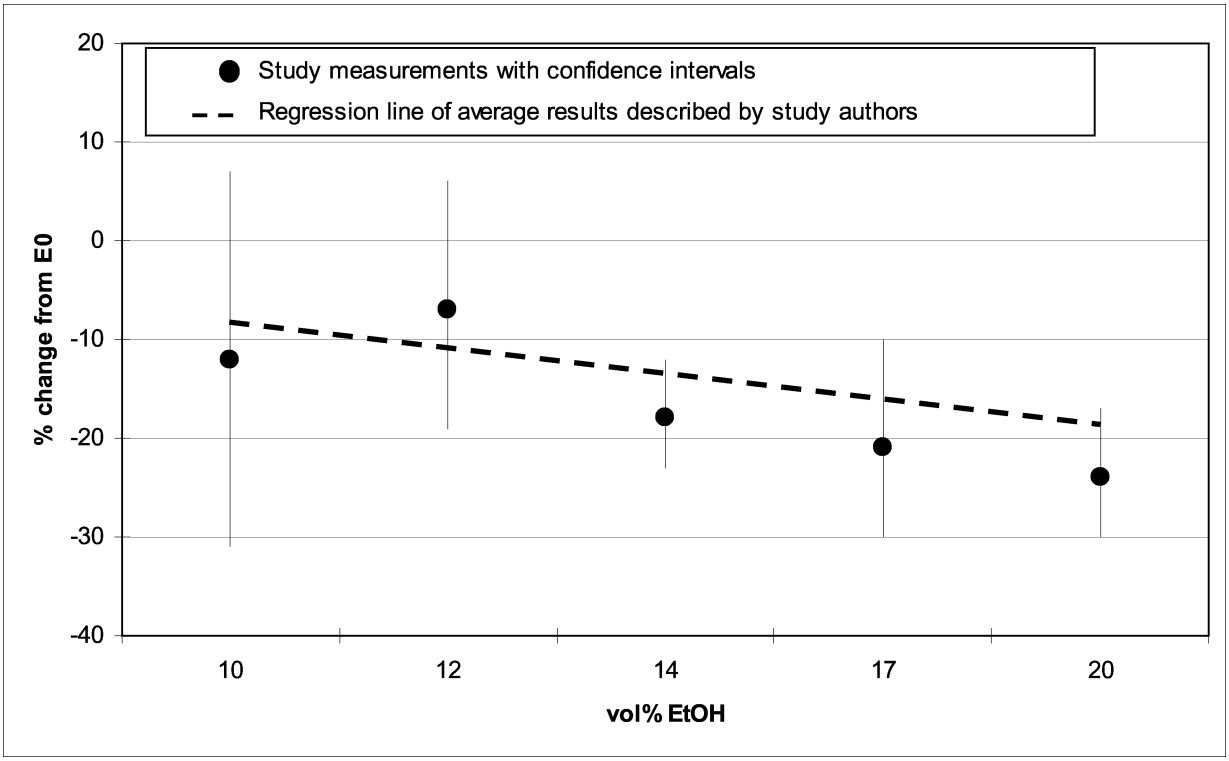
[44] Because the percent by weight of oxygen in the fuel varies depending on the density of the fuel, the limit in the Complex Model is currently 4.0% by weight to reflect the maximum amount of oxygen associated with E10. In most fuels, however, this volume is equivalent to 3.5% by weight oxygen.

[45] Guerrieri, David Al., Peter Caffrey, and Venkatesch Rao; *Investigation Into the Vehicle Exhaust Emissions of High Percentage Ethanol Blends*"; SAE Technical Paper Series; 950777; presented at International Congress and Exposition; Detroit, Michigan; March, 1995.

[46] Guerrieri, *et al.;* op. cit.

hydrocarbon emissions (representative of VOC) at several ethanol levels relevant to this discussion, as well as the uncertainty bars at each value. The study data showed that on average exhaust hydrocarbon emissions increased from E10 to E12, but then decreased beyond E12. While the study does not provide sufficient data to determine the precise VOC emission effect between E10 and E15, the linear regression results presented in the study (also shown in Figure V.B–1) indicate a decreasing trend in hydrocarbon emissions with increased ethanol in gasoline. Based on the study findings, we are reasonably confident that the average VOC emissions for ethanol blends greater than E10 up to and including E15 will be no worse than for E10, for 1990 technology motor vehicles. This outcome is consistent with our engineering judgment. As discussed in Section VI.C the general trend across vehicles of all ages is that the addition of ethanol to gasoline tends to lower VOC emissions due to its enleanment effect during open loop operation.

Figure V.B-1: Illustration of results of study by Guerrieri, *et al* for Total Hydrocarbons (THC)



Because the data available on 1990 vehicles is limited, we are not proposing to change the Complex Model to indicate decreasing VOC emissions with increased ethanol content between E10 and E15. Instead, we are proposing to modify the application of the Complex Model equations to treat VOC exhaust emissions at ethanol levels greater than E10 and up to E15 the same as for E10. We are therefore proposing in today's rule to modify the Complex Model to allow up oxygen levels up to 5.8% by weight to be input to the model but that the VOC emissions effects would be modeled the same as if it contained 4.0% by weight oxygen.[47] This will provide flexibility for the Complex Model to be used over a broader range of ethanol content. We request comment on whether the data and rationale discussed above are an appropriate basis for the proposed adjustment to the Complex Model to account for E15.

VI. Why are we proposing misfueling mitigation measures?

In previous sections we proposed to prohibit the use of E15 in MY2000 and older motor vehicles, heavy-duty gasoline engines and vehicles, motorcycles, and all nonroad products (which includes marine applications). This section provides the technical rationale supporting this decision. As discussed below, it appears that the unique physical and chemical properties of ethanol may impact these products when they are using gasoline-ethanol blends, particularly as many of these products were not designed to operate on such fuels. The potential impacts could be the impairment of the performance of their emission control devices or systems, which would likely lead to increased HC, CO and/or NO_X emissions.

Light-duty motor vehicles (*i.e.,* passenger cars and light-duty trucks) have evolved significantly over time, mainly in response to increasingly tighter emission standards, but also to improve fuel economy, vehicle driveability, and vehicle durability. The primary advancements in emissions control have been in the control of the air-to-fuel (A/F) ratio matched with advancements in catalyst formulations and designs with each new generation of motor vehicles. Today's motor vehicles are far more sophisticated and up to 99% less polluting than they were in the 1970s while also more tolerant of variables like fuel composition (*i.e.,* RVP, oxygen content). However, MY2000 and older light-duty motor vehicles have not benefitted from these

[47] The level of 5.8% by weight of oxygen is the potential maximum oxygen level associated with E15 due to lighter than average gasoline components. The typical weight of oxygen in E15 is 5.2%.

advancements in technology and could experience combustion and material compatibility problems leading to increased emissions if operated on E15. While motorcycles (highway and off-highway), heavy-duty gasoline engines and vehicles, and nonroad products have also evolved over time, since they have not been regulated as long, and have much more diverse applications, they do not reflect the same level of advanced technology across the board as do today's light-duty motor vehicles. Consequently, their engines and emission control systems may also be impacted in ways that affect emission performance if operated on E15.

On the other hand, the Agency believes that newer light-duty motor vehicles (vehicles designed to meet Tier 2 emissions standards) were designed with significantly more robust emission controls and fuel system components to regularly use gasoline-ethanol blends. For MY2001–2006 light-duty motor vehicles, EPA does not have enough data on which to base a decision at this point in time. DOE testing of MY2001–2006 light-duty motor vehicles is ongoing and will factor into the Agency's decisions for the final rule.

The sections that follow discuss in more detail the history of ethanol use in the U.S., the chemical and physical differences between ethanol and gasoline, and how these differences, especially combustion enleanment and material compatibility, could impact exhaust and evaporative components and emissions. Specifically, we discuss the ability of the following groups of vehicles and engines to handle E15: (1) MY2000 and older light-duty motor vehicles; (2) heavy-duty gasoline engines and vehicles; (3) motorcycles; (4) nonroad products; (5) MY2007 and newer light-duty motor vehicles; and (6) MY2001–2006 light-duty motor vehicles.

A. History of Ethanol Use in the U.S.

Any assessment of the impacts of E15 use in vehicles, engines, and equipment must begin with an understanding of the degree to which they were designed for the use of low level gasoline-ethanol blends. E10 is currently blended in significant quantities in most gasoline distributed and sold in most States, but this was not always the case. Most auto manufacturers today support the use of E10 in their vehicles and engines since their designs have evolved over time in response to the growing use of E10 across the country. However, the total fleet is made up of old and new vehicles, engines, and equipment with varying technologies and therefore varying compatibility with gasoline-ethanol blends.

Ethanol and ethanol-gasoline blends have a long history as automotive fuels in the United States. Inexpensive crude oil prices kept ethanol from making a significant presence in the transportation sector until the end of the 20th century when tax subsidies and environmental programs helped to spur growth. On November 9, 1978, the U.S. passed the Energy Tax Act which defined "gasohol" as a blend of gasoline with 10% alcohol by volume (excluding alcohol made from petroleum, natural gas or coal) and offered the fuel an excise tax exemption to encourage its use.[48] While the ethanol tax subsidy has been modified over the years, conventional ethanol continues to receive a $0.45/gallon tax credit and cellulosic ethanol is eligible for a $1.01/gallon credit.

Environmental programs have also been an important contributor to ethanol expansion in the United States. First, in the late 1980s and early 1990s, ethanol was used as a gasoline oxygenate (along with MTBE) to help reduce carbon monoxide (CO) emissions in various CO nonattainment areas. Then, ethanol was used as part of the requirements for reformulated gasoline in the worst ozone nonattainment areas beginning in the mid 1990s.

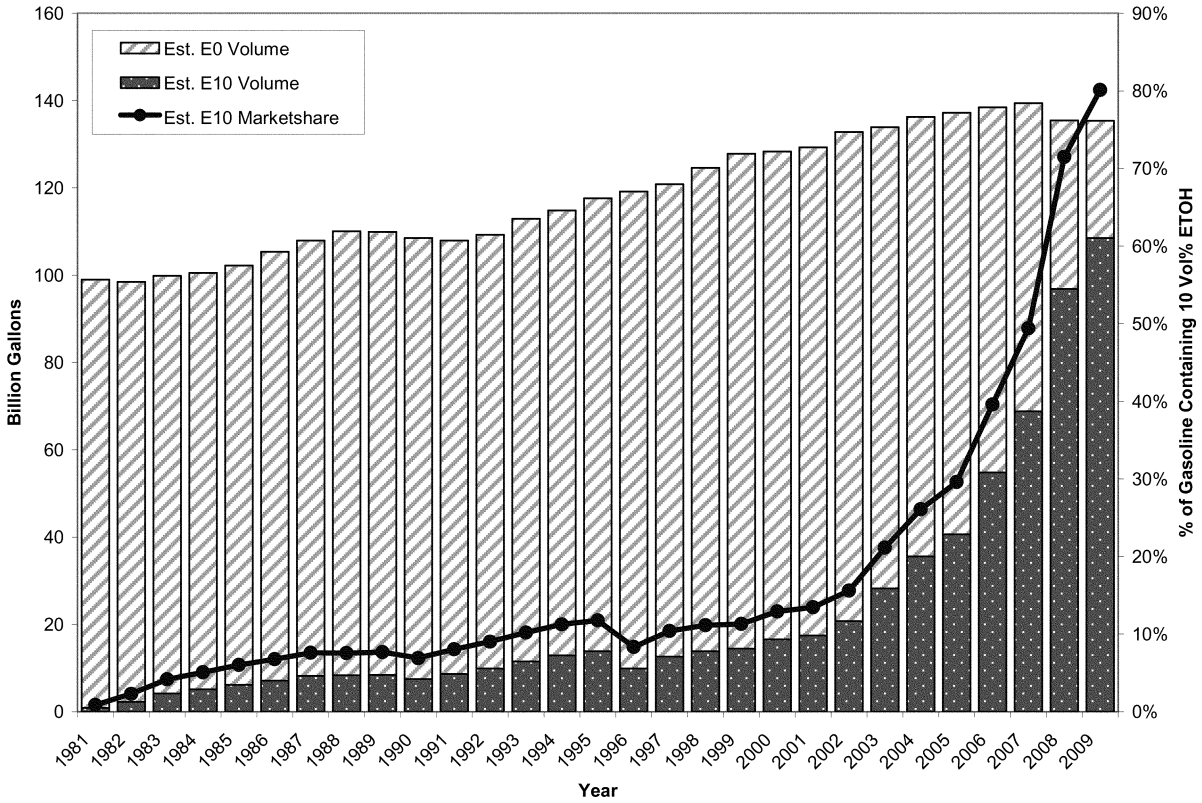
Tax subsidies and environmental programs resulted in the growth of the fuel ethanol market such that by the late 1990s, E10 represented slightly more than 10% of gasoline nationwide. By 1999, 35 States were blending ethanol into at least a portion of their gasoline.[49] However, its use remained concentrated in the Midwest, *e.g.,* Illinois, Ohio, and Minnesota. Ethanol did not begin expanding significantly beyond the Midwest until the early 2000s when States started banning the use of Methyl Tertiary-butyl Ether (MTBE) due to groundwater concerns. Ethanol quickly became the primary oxygenate in the gasoline market. With the removal of the RFG oxygen mandate by the Energy Policy Act of 2005 (EPAct), MTBE was removed from gasoline almost entirely by 2006. Ethanol replaced MTBE, broadening the fuel's use into California, the East Coast, and other RFG areas. From 2000 to 2006, the share of gasoline containing 10% ethanol by volume ("E10 market share") more than doubled as shown in Figure VI.A.-1. According to fuel survey and certification data, ethanol is the only oxygenate currently used in any significant quantity today.

[48] Refer to the Energy Tax Act of 1978, Public Law 95–618, enacted November 9, 1978.

[49] EIA, Motor Gasoline Outlook and State MTBE Bans, Table 2, available at: *http://www.eia.doe.gov/emeu/steo/pub/special/mtbeban.html* and FHWA, Estimate Use of Gasohol, 1999, available at: *http://www.fhwa.dot.gov/ohim/hs99/tables/mf33e.pdf.*

Figure VI.A.-1

Growth in E10 Market Share Over Time



Since 2006, E10's market share has continued to rise. The increase can be attributed primarily to rising crude oil prices which led to very favorable ethanol blending economics over most of the past 4–5 years, but also to the market certainty provided by the Renewable Fuel Standard (RFS) established by EPAct and later modified by the Energy Independence and Security Act of 2007 (EISA). EPAct required 7.5 billion gallons of renewable fuel to be blended into transportation fuel by 2012. In 2007, EISA expanded the RFS to 36 billion gallons by 2022. On March 26, 2010, EPA promulgated final RFS2 regulations to implement the EISA volumes.[50] While there are a number of renewable fuels that can be used to meet the RFS2 requirements, EPA projects a large percentage will come from ethanol. According to EIA, ethanol comprised 9.4% of total U.S. motor gasoline sales during the first half of 2010.[51] In other words, over 90% of motor gasoline sold today is E10.

As E10's market share has increased over the last few years, its prevalence has also expanded nationwide. A map showing today's estimated E10 penetration by State is provided in Figure VI.A–2. This State-level information, provided by HART Energy Consulting, does not reflect California's recent shift from 5.7 to 10 vol% ethanol. While vehicles, engines, and equipment in the Midwest have been experiencing E10 use for a number of years, this is not the case in most of the country. Even in much of the Midwest, E10 has become the dominant fuel only recently. It took many years for States to reach 25% E10 saturation and even longer for States to reach 50% E10 saturation. As shown in Figure VI.A–3, 23 States (including the District of Columbia) just recently reached 50% saturation between 2008 and 2009.[52] Alaska is the only State without significant ethanol blending. According to HART, only 10% of Alaska's gasoline is currently comprised of E10.

[50] 75 FR 14670 (March 26, 2010).

[51] Refer to EIA Monthly Energy Review September 2010 (Tables 10.3 and 3.7c, respectively).

[52] 1999–2004 state E10 marketshares based on FHWA ethanol and EIA total motor gasoline sales. 2005 ethanol usage based on EIA's National Emission Inventory Estimates. 2007–2009 based on HART estimates.

Figure VI.A-2

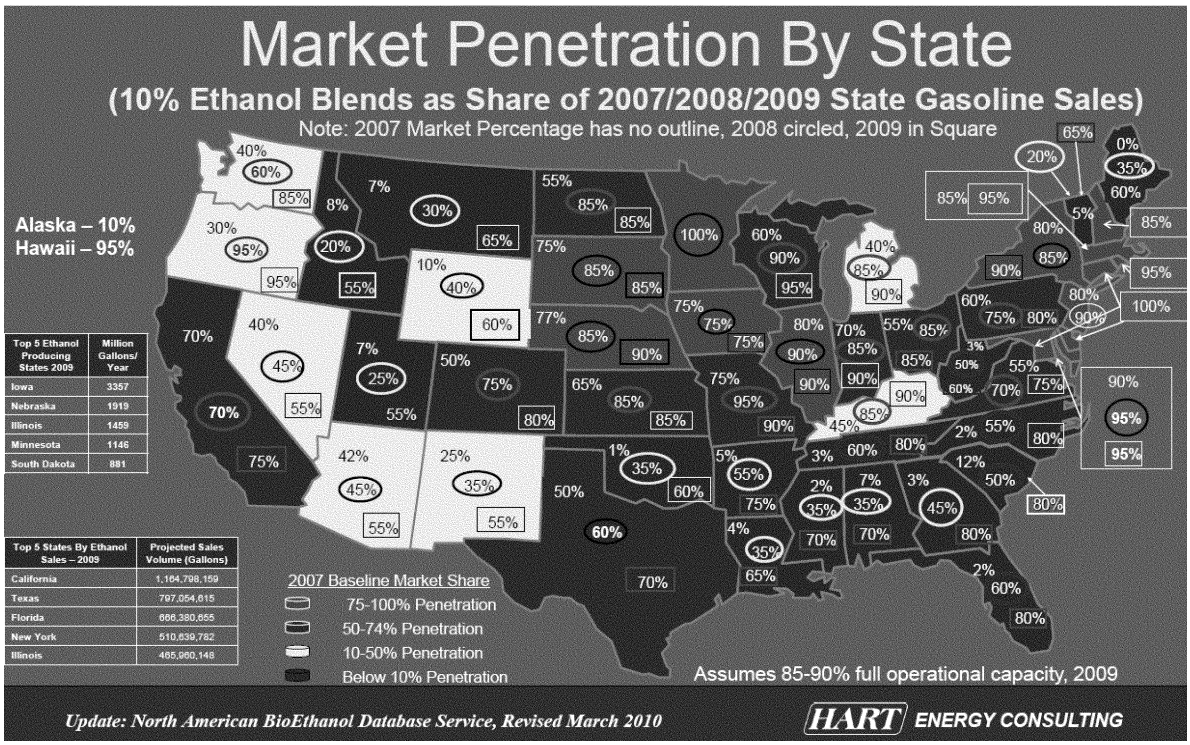
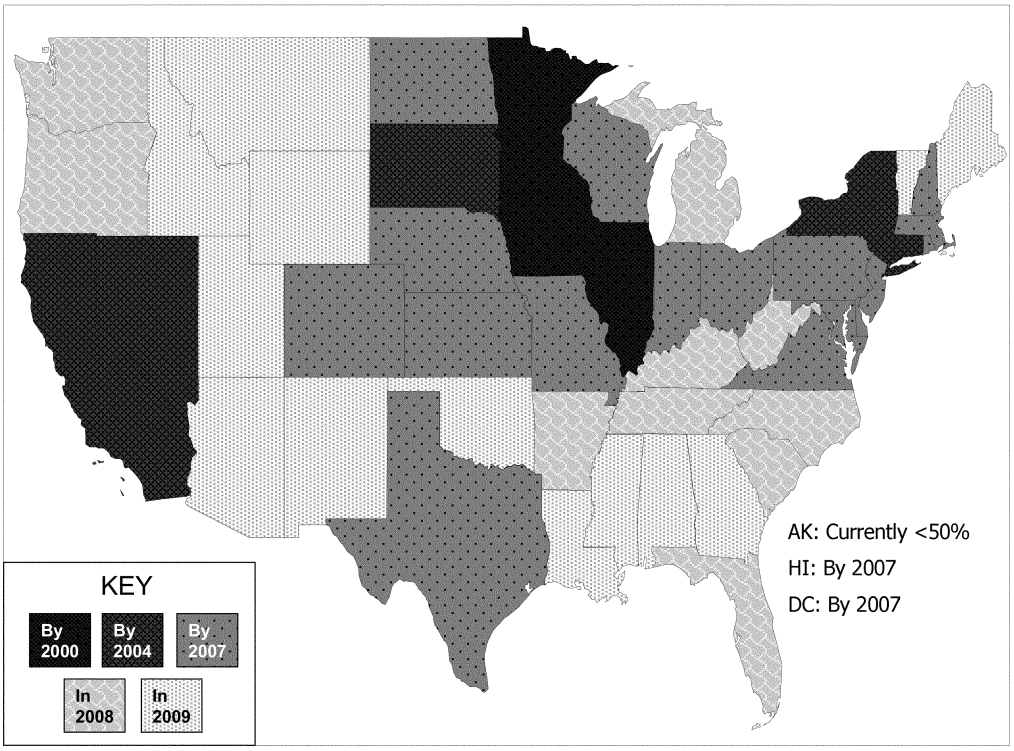


Figure VI.A-3

States Reaching 50% E10 Saturation by Year



B. Chemical and Physical Differences Between Ethanol and Gasoline

Understanding the chemical and physical differences between gasoline and ethanol is helpful in determining how increased ethanol concentrations in gasoline may impact vehicle and engine technologies and whether emission differences may occur. Throughout most of the 20th century, engines and vehicles were designed to run on gasoline. Engines can and have been designed for the use of ethanol, and in the case of FFVs, have been designed to operate effectively on both.[53] Over the last couple of decades, manufacturers have also taken varying steps to redesign their gasoline engines to be more compatible with blends of gasoline and ethanol up to 10 vol%.

Gasoline is a complex mixture of several hundred hydrocarbon molecules (organic compounds containing carbon and hydrogen) ranging in carbon number from four to twelve that are produced from various refinery streams. In contrast, fuel ethanol contains only one kind of molecule with two carbon atoms. Alcohols such as ethanol are derived from hydrocarbons by replacing the hydrogen atoms in their parent hydrocarbon (ethane is the parent of ethanol) with one or more hydroxyl groups containing oxygen and hydrogen.

Gasoline quality specifications are provided by ASTM D4814,[54] while ethanol quality specifications for blending in gasoline are provided by ASTM D4806.[55] Several properties of ethanol, as compared to typical gasoline and toluene, are listed below in Table VI.B–1. Since toluene is a common hydrocarbon used as an octane enhancer in gasoline, it is included below for comparison purposes.[56] Ethanol has been used successfully in gasoline for several decades as a volumetric fuel extender due to its beneficial Research Octane Number and Motor Octane Number blending values.

TABLE VI.B–1—PROPERTIES OF ETHANOL, GASOLINE AND TOLUENE [57] [58] [59]

Property	Gasoline (typical properties)	Toluene	Ethanol
Chemical Formula	Mixed C_4 to C_{12} Hydrocarbons	C_7H_8	CH_3CH_2OH.
Molecular Weight	95–115	92	46.
Oxygen Weight Percent		0	34.7.
Boiling Point °F	85–437	231	173.
Specific Gravity 60 °F/60 °F	0.72–0.78	0.87	0.79.
Research Octane Number	91–100	111	111.
Motor Octane Number	82–92	95	92.
(R + M)/2	87–92	103	102.
Net Heat of Combustion BTU/Gal [60]	117,000	126,000	76,000.
Latent Heat of Vaporization BTU/Gal [61]	800	1130	2600.
Solubility in Water, gram/100g H_2O	Trace	Trace	Infinite.
Stoichiometric A/F Ratio, Mass Air/Mass Fuel	14.6	13.5	9.0.
Vapor Flammability Limits Percent by Volume	0.6–8		3.5–15.
Vapor Pressure @ 100 °F psi	9–13		2.5.

Because gasoline is composed of different molecules of different lengths, it has a boiling range as well as a distillation curve. On the other hand, because ethanol is composed of a single type of molecule, it has a single boiling point and lacks the characteristic distillation curve of gasoline. Functional groups such as ethanol's hydroxyl group generally determine how a molecule will behave.

The question with the use of E15 is whether or not the vehicles, engines, equipment, and products that are designed for the properties of gasoline and/or E10 are also designed for the properties of E15. Some property differences between E10 and E15 may be dealt with in fuel blending such that the base gasoline can be adjusted in advance to accommodate the ethanol. This adjustment will ensure that the resulting blend meets a target specification for properties such as volatility and octane rating. On the other hand, some property differences between E10 and E15 are inherent to the ethanol fraction and cannot be accounted for by blending. For example, the impact of E15 versus E10 on engine combustion is a potential concern. How a vehicle or engine adapts to combust fuels with different ethanol concentrations depends on the vehicle hardware and software control strategies. Vehicles and engines operating on E15 may have hotter exhaust temperatures than the same vehicles and engines running on E10. In addition, material compatibility is time, temperature, and concentration dependent. Some material effects with E15 are possible that may not have been experienced with E10 in the past.

The following sections describe in greater detail the chemical and physical differences of gasoline and ethanol, particularly focusing on the effects of these differences when ethanol is blended with gasoline. This discussion lays the foundation for vehicle and engine specific discussion in sections VI.C.–VI.I.

1. Impact on the A/F Ratio—Combustion Enleanment

When gasoline is combusted in an engine, the stoichiometric A/F ratio (*i.e.,* the ideal ratio for complete combustion of the fuel and air into carbon dioxide and water vapor) is approximately 14.7 times the mass of air to fuel (14.7:1). For gasoline, any mixture less than 14.7:1 is

[53] In the U.S., the most common FFVs are also known as "E85" vehicles. They are designed to run on gasoline or a blend of up to 85 vol% ethanol (E85) and are equipped with modified components designed specifically to be compatible with ethanol's chemical properties.

[54] ASTM D4814, Standard Specification for Automotive Spark Ignition Fuel.

[55] ASTM D4806, Standard Specification for Denatured Fuel Ethanol for Blending with Gasoline for Use in Automotive Spark Ignition Fuel.

[56] SAE J1297, revised July, 2007, Surface Vehicle Information Report, Alternative Fuels.

[57] SAE J1297, revised July, 2007, Surface Vehicle Information Report, Alternative Fuels. Note: The values in Table 1 should be considered for relative comparisons only.

[58] SAE 861178, "The Properties and Performance of Modern Automotive Fuels," P. Dorn, A.M. Mourao, and S. Herbstman, Texaco Research Center, Beacon, N.Y.

[59] SAE 912413 "An Overview of the Technical Implications of Methanol and Ethanol as Highway Motor Vehicle Fuels," Frank Black, U.S. Environmental Protection Agency, Research Triangle Park, N.C.

[60] BTU/Gal = 279 J/L

[61] BTU/Gal = 279 J/L

considered to be a rich mixture (excess fuel), and any mixture more than 14.7:1 is a lean mixture (excess air/oxygen) given ideal test fuel and complete combustion. The addition of oxygenates such as ethanol (with its hydroxyl group) to gasoline alters the stoichiometric A/F ratio and therefore affects combustion. Engines/vehicles equipped with feedback controls can adjust the A/F ratio to stoichiometric conditions—around 14.0:1 for E10 and 13.8:1 for E15 (the ratio is lower as ethanol contains oxygen so less air is needed). However, for gasoline engines that do not have the ability to react to the desired stoichiometric A/F ratio for a different fuel (*e.g.,* gasoline-ethanol blends), combustion is enleaned. E10 would result in approximately 4% enleanment when compared with gasoline, E15 would result in approximately 6% enleanment. This means E10 and E15 have 4% and 6% more oxygen, respectively, than the stoichiometric A/F ratio.

Fuel metering components are sized to deliver an A/F mixture that optimizes emission performance, power output, fuel economy, and durability. If an engine is allowed to operate at a mixture that is leaner than it is designed for (too much oxygen for a given amount of fuel), it may run at a somewhat higher combustion temperature. This in turn can lead to changes in exhaust temperatures which may affect catalyst durability, and, especially in the case of nonroad products, engine durability, causing an increase in emissions. In addition, combustion instability from lean mixtures, which can cause misfire, can then lead to accelerated catalyst performance degradation or damage.

2. Polarity and Affinity for Water

Water is one of the most polar molecules (an uneven distribution of charge with the hydrogen atoms being positively charged and the oxygen atom negatively charged) while ethanol is only slightly polar and a hydrophilic (meaning water loving) molecule because of its hydroxyl group. Ethanol dissolves in water when the two are mixed together. Unlike ethanol, gasoline is considered to be a non-polar and hydrophobic hydrocarbon molecule which means that it does not attract water in the same way as ethanol does. As a result, gasoline and water are only very slightly soluble. If enough water is added to straight gasoline, two layers will form, known as phase separation: a water layer and a gasoline layer.

Ethanol is soluble in gasoline though to a lesser extent than it is in water. If a gasoline-ethanol blend is saturated with water, a reduction in ambient temperature may cause the ethanol and gasoline to separate into two layers. However, the presence of ethanol in gasoline will allow more water to be absorbed by the gasoline-ethanol blend before phase separation occurs. Some level of water carried through the fuel distribution system is generally acceptable and likely unavoidable given fuel exposure to moisture and humidity in normal dispensing and storage, either at the fuel station or on-board. However, excessive water in the fuel can lead to phase separation that can in turn cause stalling or permanent damage to most internal combustion engines.

3. Material Compatibility

The hydroxyl group of ethanol also reacts with natural rubber materials. Certain elastomers exposed to alcohols may swell or soften and lose strength.[62] Some plastics and fiberglass can become brittle leading to cracks and leaks.[63] Table VI.B.2.–1 shows the effects of gasoline and ethanol on some of the many elastomers that have been developed.[64] As noted from this table, polyfluorocarbons have been shown to be compatible with ethanol and ethanol blends. As discussed below in VI.C.2., the physical interaction of ethanol with certain elastomers also leads to increased permeation of ethanol and hydrocarbons through the walls of components made from such materials.

TABLE VI.B.2–1—EFFECTS OF GASOLINE AND ETHANOL ON ELASTOMERS

Elastomer	Volume swell (%) after 72 hour immersion in:		
	Gasoline	Ethanol	E10
Fluorocarbon (FKM)	0	2	3
Polyester urethane	11	19	37
Fluorosilicone (FMQ)	14	6	18
Butadiene-acrylonitrile (NBR)	43	8	51
Polyacrylate (ACM)	44	101	136
Chlorosulfonated polyethylene (CSM)	49	1	56
Ethylene-propylenediene terpolymer (ePDM)	137	13	124
Natural Rubber (NR)	169	2	176

Adapted from SAE 912413 "An Overview of the Technical Implications of Methanol and Ethanol as Highway Motor Vehicle Fuels," Frank Black, U.S. Environmental Protection Agency, Research Triangle Park, N.C.

4. Corrosion

Ethanol can also contribute to corrosion due to galvanic coupling or the absorption of water. Alcohols are better electrical conductors compared to gasoline so gasoline-ethanol blends could promote galvanic corrosion and galvanic-couple effects between electrochemically dissimilar alloys in the fuel system.[65, 66] The National Ethanol Vehicle Coalition and the Petroleum Equipment Institute have demonstrated that aluminum is sensitive to corrosion from ethanol. In addition, water in gasoline-ethanol blends can cause corrosion of metallic materials (such as brass, cast iron, copper, and various types of steel) as the

[62] SAE 912413 "An Overview of the Technical Implications of Methanol and Ethanol as Highway Motor Vehicle Fuels," Frank Black, U.S. Environmental Protection Agency, Research Triangle Park, N.C.

[63] SAE 912413 "An Overview of the Technical Implications of Methanol and Ethanol as Highway Motor Vehicle Fuels," Frank Black, U.S. Environmental Protection Agency, Research Triangle Park, N.C.

[64] Discussion of additional studies evaluating the impacts of gasoline-ethanol blends on materials used in vehicles and nonroad engines, vehicles, and equipment can be found in the subsections that follow.

[65] SAE 750124, "Racing Experiences with Methanol and Ethanol-Based Motor-Fuel Blends," T. Powell, Automotive Engineering Congress and Exposition, Detroit, Michigan, February 24–28, 1975.

[66] SAE 912413 "An Overview of the Technical Implications of Methanol and Ethanol as Highway Motor Vehicle Fuels," Frank Black, U.S. Environmental Protection Agency, Research Triangle Park, N.C.

water/ethanol layer becomes acidic if phase separation occurs.[67] The presence of water in the fuel distribution system also provides a suitable habitat for the growth of microbes which excrete acids that in turn are also detrimental to metallic fuel storage systems.[68] Contaminants in water may also impact additives used in finished fuel that are designed to maintain the integrity of the finished fuel.[69, 70, 71] Because of these corrosion concerns, actions are usually taken to accommodate ethanol in ethanol production, storage, and distribution systems, as well as in vehicles and engines. Such actions include the careful selection of materials and/or the use of appropriate ethanol compatible coatings on susceptible metal parts that come into contact with the ethanol fuel, as well as the use of corrosion and biocide additives.

5. Solvency

Ethanol can also act as a solvent for various materials. As such, ethanol has historically been known to remove or dissolve components built up in the fuel storage, handling and delivery systems (*e.g.* fuel tank, fuel lines, injectors, *etc.*). Once these components are loosened or partially dissolved, they are transported through the fuel system, and if excessive, may cause fuel filter, injector plugging or other component problems, all of which can lead to poor operability and degraded emission performance. Gasoline-ethanol blends may also pick up contaminants from storage tanks and delivery trucks. The amount of build-up is related to a combination of fuel composition properties and fuel usage patterns (*i.e.,* regular fuel usage versus infrequent, *etc.*). Non-automotive equipment may experience fuel filter plugging related more to extended storage periods where gasoline can deteriorate and lead to more deposits requiring a plugged fuel filter replacement.

6. Volatility

Fuel volatility is a measure of a fuel's vapor pressure or its tendency to vaporize. When ethanol is blended into gasoline, the hydrogen bonding between the ethanol molecules is weakened significantly and the alcohol "depolarizes." This results in higher Reid Vapor Pressures (RVP) for gasoline containing ethanol. Ethanol's effects on RVP have been well documented,[72, 73, 74] where low level ethanol blends, in general, will increase gasoline RVP by up to one pound per square inch with the maximum effect occurring at approximately 3 vol% ethanol concentration. The RVP of the base fuel will also influence just how much increase will occur by the addition of ethanol.[75] Increases in RVP result in increased vapor generation and increased evaporative emissions.

Additionally, while ethanol at certain levels may raise the general volatility of the gasoline-ethanol blend, because of ethanol's single boiling point and high latent heat of vaporization, the ethanol fraction may cause combustion difficulties and increased emissions during the start of some spark-ignition engines when the engines are cold, particularly at colder start temperatures. Further, once the engine is hot, the single boiling point can also cause difficulty in operating and starting a hot engine as observed in older motor vehicles when ethanol first became available. The ethanol would reach its boiling point in the fuel system and result in what is known as "vapor lock."

C. Model Year 2000 and Older Light-Duty Motor Vehicles

Ethanol impacts motor vehicles in three primary ways. First, as discussed in Section VI.B.1 above, ethanol enleans the A/F ratio which leads to increased exhaust gas temperatures and therefore potentially incremental deterioration of emission control hardware and performance over time. Second, over time, enleanment caused by ethanol can ultimately lead to catalyst failure. Third, ethanol can cause material compatibility issues which may lead to other component failure. Ultimately, all of these impacts may lead to exhaust and/or evaporative emission increases.

1. Enleanment

MY2000 and older light-duty motor vehicles have much less sophisticated emissions control systems compared to today's motor vehicles and, as described below, may experience conditions that lead to both immediate emission increases and increases over time if operated on E15. Vehicles produced prior to the mid-1980s were equipped primarily with carbureted engines. The A/F ratio of the carburetor is preset at the factory based on the expected operating conditions of the engine such as ambient temperature, atmospheric pressure, speed, and load. As a result, carburetors have "open loop" fuel control which means that the air and fuel are provided at a specified, predetermined ratio that is not automatically adjusted during motor vehicle operation. As fuel composition can vary, an engine with a carburetor and open loop fuel control would never know whether it achieved the desired A/F ratio. Since the motor vehicles at this time operated "open loop" all of the time with no ability to react for changes in the A/F ratio, the addition of ethanol to the fuel tended to make the A/F ratio leaner—closer to stoichiometry, which had the immediate effect of reducing HC and CO emissions, but increasing NO_X emissions. However, some of these older open loop systems already operate at the lean edge of combustion on current commercial fuels so an increase in ethanol may cause them to begin to misfire resulting in HC and CO increases.

As a result of the Clean Air Act, EPA established standards and measurement procedures for exhaust, evaporative, and refueling emissions of criteria pollutants. From 1975 into the 1980s, motor vehicles became equipped with catalytic converters, first with catalysts capable of oxidizing HC and CO, and then, in response to EPA's "Tier 0" standards, with three-way catalysts that also reduced NO_X. Motor vehicles produced in the 1980s and even more so in the 1990s as a result of more stringent California and Federal (*e.g.,* "Tier 1") standards evolved to incorporate more sophisticated and durable emission control systems. These systems generally included an onboard computer, oxygen sensor, and electronic fuel injection with more precise closed-loop fuel compensation and therefore A/F ratio control during more of the engine's operating range. However, even

[67] Nakaguichi, G.M., "Ethanol Fuel Modifications for Highway Vehicle Use-Final Report," U.S. DOE Contract EY–76–C–04–3683, NTIS document ALO–3683–T1, Washington, DC July, 1989.

[68] Microbiologically Influenced Corrosion of Galvanic Steel, Frederick J. Passman, PhD, Biodeterioration Control Associates, Princeton, NJ, USA., ASTM Workshop on Fuel Corrosivity, July, 2010.

[69] Behavior of Corrosion Inhibitor Acids In Fuel/Water Blends, Andrew McKnight, PhD, Innospec, Newark, DE, USA, ASTM Workshop on Fuel Corrosivity, July 2010.

[70] Interaction of Contaminants with Pipeline Corrosion Inhibitors, Joseph Stark, PhD, Baker Hughes, Sugarland, TX, USA, ASTM Workshop on Fuel Corrosivity, July 2010.

[71] Diesel Soap—Formation and Related Problems, Richard Chapman, BP Global Fuel Technology, Naperville, IL, USA, ASTM Workshop on Fuel Corrosivity, July 2010.

[72] J.L. Keller, "Methanol and Ethanol Fuels for Modern Cars, 44th Refinery Mid-year Meeting/Session on Fossil Fuels in 1980's, Reprint No. 08–79, May 15, 1979.

[73] F.W. Cox, Physical Properties of Gasoline/Alcohol Automotive Fuels, Presented at the Alcohol Fuel Technology Conference, May 28–31, 1979.

[74] SAE 912413 "An Overview of the Technical Implications of Methanol and Ethanol as Highway Motor Vehicle Fuels," Frank Black, U.S. Environmental Protection Agency, Research Triangle Park, N.C.

[75] SAE 861178, "The Properties and Performance of Modern Automotive Fuels," P. Dorn, A.M. Mourao, and S. Herbstman, Texaco Research Center, Beacon, N.Y.

with the use of closed loop systems through the late 1990s, the emission control system and controls remained fairly simple with a limited range of authority and were primarily designed to adjust for component variability (*i.e.,* fuel pressure, injectors, *etc.*) and not for changes in the fuel composition. During this period, ethanol was only available in very limited areas of the US so the manufacturers' designs of the emission controls and the durability of emission control hardware generally did not account for the increased oxygen content of ethanol. As a result, this generation of vehicles certified to Tier 0 and early Tier 1 emission standards operated leaner on ethanol, causing immediate emission impacts (lower HC and CO emissions, higher NO_X emissions) and may have also deteriorated at different rates when exposed to ethanol. These designs continued to evolve during the early period of the Tier 1 emission standards as manufacturers and component suppliers gained experience with vehicles in-use. However, the largest improvements to emission controls and hardware durability came after 2000 with the introduction of several new emission standards and durability requirements forcing manufacturers to better account for the implications of in-use fuels on the evaporative and exhaust emission control systems.

While most motor vehicles are operating today on E10, motor vehicles operated on E15 will likely run even leaner than those operated on E10 depending on the motor vehicle technology and operating conditions. Enleaned combustion leads to an increase in the temperature of the exhaust gases. This increase in exhaust gas temperatures has the potential to raise the temperatures of various exhaust system components (*e.g.,* exhaust valves, exhaust manifolds, catalysts, and oxygen sensors) beyond their design limits. However, based on past experience, the most sensitive component is likely the catalyst, particularly in older motor vehicles with early catalyst technology. Catalyst durability is highly dependent on temperature, time, and fuel gas composition. Catalyst temperatures must be controlled and catalyst deterioration minimized during all motor vehicle operation modes for the catalyst to maintain high conversion efficiency over the motor vehicle's life. This is particularly important during high load operation of a motor vehicle where high exhaust gas temperatures are encountered and the risk for catalyst deterioration is highest. Catalysts that exceed temperature thresholds will deteriorate at rates higher than expected, compromising the motor vehicle's ability to meet the required emission standards over its full useful life. Extended catalyst exposure to higher exhaust temperatures can accelerate catalyst thermal deactivation mechanisms (*e.g.,* sintering of active precious metal sites, sintering of oxygen storage materials, and migration of active materials into inert support materials). While this damage can occur at a highly accelerated rate with a sudden change in temperature (*e.g.,* with a misfire allowing raw fuel to reach the catalyst), it is more likely to occur over time from elevated exhaust temperatures as may be experienced with frequent or even occasional exposure to E15. This deterioration may adversely affect a motor vehicle's ability to control emissions, particularly after significant mileage accumulation.

Some motor vehicles may be able to manage catalyst temperatures by compensating for the oxygen in the fuel under all operating conditions, including high loads. This is achieved by using a closed-loop fuel system that measures the A/F ratio and makes the appropriate corrections to maintain the A/F ratio in the very tight ban of operation around stoichiometry necessary for optimum catalyst performance and reductions in HC, CO, and NO_X emissions. The part of the closed-loop fuel system that is responsible for the correction to the A/F ratio is referred to as "fuel trim." The fuel trim adds or removes fuel to the engine to maintain the required A/F ratio. If the measured A/F ratio has insufficient oxygen, or is "rich" compared to what the engine needs, the fuel trim will instruct the fuel injectors to inject less fuel, making the A/F ratio "leaner." The opposite is true if the measured A/F ratio has too much oxygen and needs to inject more fuel for a "richer" A/F ratio. The fuel trim is generally comprised of two major parts, short term fuel trim and long term or adaptive learned fuel trim. Learned fuel trim, also known as adaptive fuel trim, can also be applied to open loop operation such as high load or wide open throttle to alleviate the catalyst temperature increases caused by operating on E15 fuel. However, while this strategy was more common in later model years closer to MY2000, it was not consistently employed by all manufacturers. Some manufacturer models may have less range of authority than others and some may require longer periods of time to adapt. Hence, control algorithms and calibrations used by some manufacturers may be more effective than others.

The fuel trim has a limited range of adjustment in which it can continue to update the A/F ratio and maintain the fuel system at or near stoichiometry. For MY2000 and older light-duty motor vehicles, the fuel trim range is generally more limited than the range for newer light-duty motor vehicles, and MY2000 and older motor vehicles may use their full range of fuel trim adjustment to account for normal component deterioration. Injectors, sensors and changes to fuel pressure may shift with time and aging to use all of the fuel trim's range of adjustment. The additional oxygenate in E15 may actually shift the A/F ratio more than the earlier introduction of E10 if the engine's A/F ratio feedback cannot compensate because it has reached its adjustment limit. In short, MY2000 and older motor vehicles are at risk of having insufficient thermal margins to accommodate ethanol blends up to E15 due to the limits of their fuel trim range.

Test data to confirm or refute concerns over the use of E15 in older vehicles is very limited in scope and content. The available data do not prove or disprove the concerns, although there are several studies that support the potential for long term durability issues consistent with engineering theory. Three studies—the CRC Screening Study, DOE Pilot Study, and the Orbital Study—discussed in section IV.A. highlight in particular the concern with MY2000 and older motor vehicles. The CRC Screening Study (E–87–1) was a test program developed to look at the effects of mid-level ethanol blends on U.S. vehicles.[76] This screening study was the first phase of a two-phase study evaluating the effects of mid-level ethanol blends on emission control systems. The purpose of this first phase of the study was to identify vehicles which used learned fuel trims to correct open loop air-fuel rations. Under the test program a fleet of 25 test vehicles was identified and acquired with six of those vehicles being MY2000 and older. The study collected vehicle speed, oxygen sensor air-fuel-ratio, and catalyst temperature data for four fuels (E0, E10, E15, and E20). The results of the three ethanol blended fuels compared to E0 showed that four of the six MY2000 and older vehicles tested failed to apply long-term fuel trim to open loop operation in order to compensate for increasing ethanol levels. And that these

[76] *Mid-level Ethanol Blends Catalyst Durability Study Screening* (CRC Report: E–87–1), June 2009 ("CRC Screening Study"). *http://www.crcao.com/reports/recentstudies2009/E–87–1/E–87–1%20Final%20Report%2007_06_2009.pdf*

same four vehicles exhibited increased catalyst temperatures when operated on E20 as compared to E0. While the subsequent DOE Catalyst Study concluded that this learned fuel trim was not important for MY2007 and newer motor vehicles because they are durable (and therefore can handle E15) as discussed in section IV.A, there was no such follow on program for MY2000 and older motor vehicles so the durability of these vehicles on E15 is unknown.

Another study suggests that many MY2000 and older motor vehicles may also have emission exceedances if operated on E15. In 2003, the Orbital Engine Company issued a report on the findings of vehicle testing it completed to assess the impact of E20 on the Australian passenger vehicle fleet. While the Australian vehicles in this study were not representative of U.S. vehicles of the same model years, they are similar to MY2000 and older U.S. motor vehicles with respect to technology and emission standards. The testing program covered vehicle performance and operability testing, vehicle durability testing, and component material compatibility testing, on nine different vehicle makes or models, five vehicles from MY2001 and four vehicles from MY1985 to MY1993. Testing results showed increases in exhaust gas temperature in five of the nine vehicles tested with three showing increases in catalyst temperature. Enleanment was found to occur in six of the nine vehicles tested, with three having closed loop control—the old vehicles without closed loop control all displayed enleanment. In general, the increase in exhaust gas temperature was found to follow those vehicles with enleanment. Furthermore, one vehicle in the study experienced catalyst degradation sufficient to make the tested vehicle no longer meet its applicable Australian emission standards.

EPA recently received a report by Ricardo [77] commissioned by the Renewable Fuels Association specifically discussing the potential impacts of E15 on MY1994–2000 light-duty motor vehicles. However, as discussed in the decision document, it sheds little new light on the potential emission impacts of E15 on MY2000 and older motor vehicles. While arguing that many MY1994–2000 motor vehicles may be designed to be compatible with E15, it did so only for "properly engineered" vehicles. Furthermore, it acknowledged potential emission increases in-use, but in the context of the waiver decision highlighted that they were likely within manufacturer compliance margins. Finally, it drew many of its conclusions only relative to E10, not to E0.

Hence, based on the limited data available and our engineering judgment, we conclude that MY2000 and older motor vehicles have the potential to experience conditions when operated on E15 which may ultimately lead to an increase in emissions.

2. Material Compatibility

Data and information exist in the literature regarding ethanol's impacts on motor vehicle material compatibility. Engine, fuel system, and emission control materials (metals, plastics, and elastomers) must maintain their integrity for motor vehicles to meet their exhaust and evaporative emissions standards. Material incompatibility can result from the chemical reaction or physical interaction between a fuel and material with which it comes into contact. This can lead to emissions compliance problems not only immediately upon using the new fuel or fuel additive, but especially over time. In most cases one would expect any materials incompatibility to show up in the emissions tests, but there may be impacts that do not show up due to the way the testing is performed or because the tests simply do not capture the effect. As a result, along with emissions testing, materials compatibility is a key factor in assessing the emissions durability of a fuel or fuel additive.

Based on our engineering assessment, it appears that manufacturers took varying steps at different points in time to transition the materials in their motor vehicle designs to be E10 compatible. Many in the mid-to-late 1980s took steps for E10 compatibility at least for the more immediate effects of ethanol (*e.g.,* the dissolving of certain elastomers). Large parts suppliers began testing materials on gasoline-ethanol blends in the mid-to-late 1980s and early 1990s, but practices varied with manufacturer. At the same time, certain areas have now had E10 for a number of years and therefore motor vehicles in these areas have experienced a much higher frequency of ethanol exposure. This has led many to argue that ethanol is compatible for all motor vehicles in the in-use fleet and therefore E15 should be too. However, since the effects would be long term, it is difficult to assess whether these motor vehicles experienced any higher rates of deterioration or component failure on E10. Furthermore, material compatibility with ethanol is time, condition (*e.g.,* temperature, pressure), and concentration dependent, such that problems may occur with E15 that did not show up with E10.

Moving from E10 to E15 reflects a 50% increase in the volume of ethanol present in gasoline. Therefore, since the impacts of ethanol on materials are a function of concentration, E15 has the potential to have more significant impacts than E10 if used in motor vehicles not equipped for it. For MY2000 and older motor vehicles, E15 use may result in degradation of metallic and non-metallic components in the fuel and evaporative emissions control systems that can lead to highly elevated hydrocarbon emissions from both vapor and liquid leaks. Potential problems such as fuel pump corrosion or fuel hose swelling would likely be worse with E15 than historically with E10, especially if motor vehicles will be operating exclusively on it. Since ethanol historically comprised a much smaller portion of the fuel supply (*see* section VI.A.), in-use experience with E10 was often discontinuous or temporary, while material effects are time and exposure dependent. Thus, problems may surface with E15 that have not surfaced historically in-use. Additionally, leak detection diagnostics did not appear until MY1996 and enhanced evaporative test procedures were not fully implemented until the late 1990s.

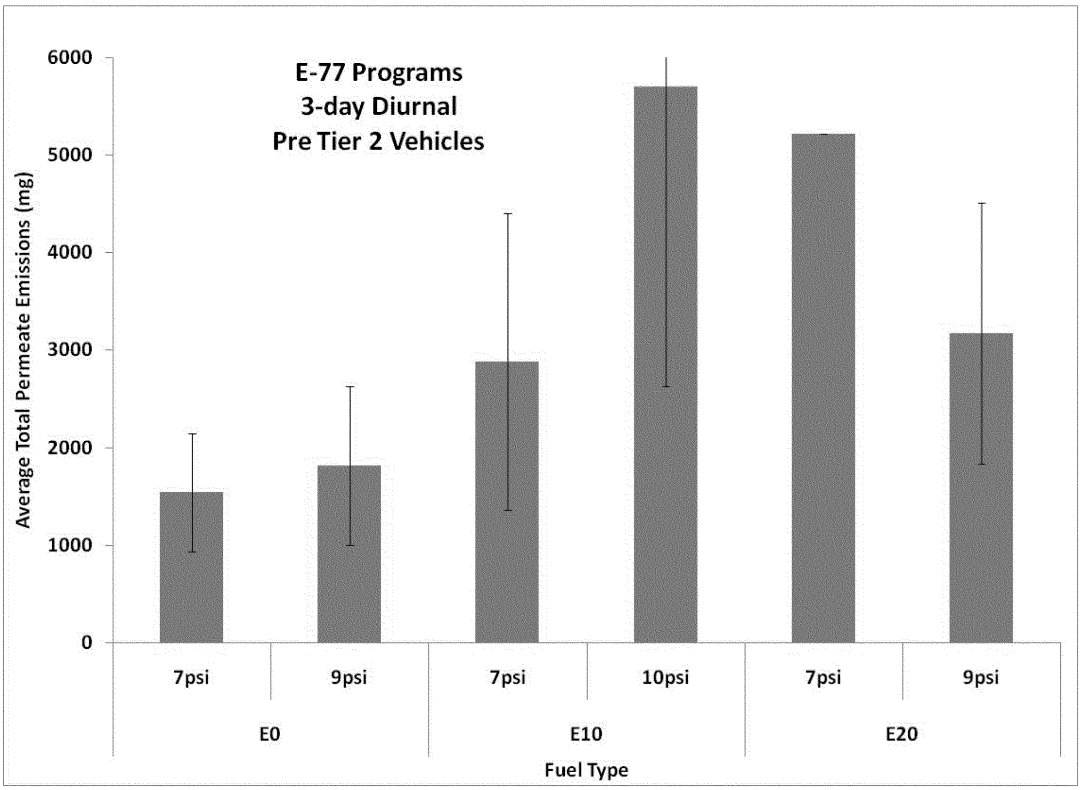
In addition to potential vapor or liquid leaks, ethanol is also known to facilitate permeation through the materials in the fuel system. Studies have shown this to be a significant source of increased emissions with gasoline-ethanol blends, especially on older motor vehicles. Following additional testing requirements as part of the Tier 2 motor vehicle emission standards beginning in 2004, materials in newer motor vehicles have been able to mitigate the permeation effects of ethanol in the fuel, as discussed in the waiver decision document. However, as shown in the Figure VI.C.2–1 below, permeation emissions from older model year vehicles may be very high with ethanol blends.[78]

[77] Ricardo Inc., *Technical Assessment of the Feasibility of introducing E15 Blended Fuel in U.S. Vehicle Fleet, 1994 to 2000 Model Years,* 10 September, 2010. EPA Docket # EPA–HQ–OAR–2010–0448.

[78] Diurnal testing refers to a process for measuring evaporative emissions where a vehicle is placed in a sealed enclosure and the temperature varied over multiple cycles to simulate ambient day and night conditions in summertime. *Enhanced Evaporative Emission Vehicles* (CRC Report: E–77–2), March 2010, and *Evaporative Emissions from In-Use Vehicles: Test Fleet Expansion* (CRC Report: E–77–2b), June 2010.

Figure VI.C.2-1

3-Day Diurnal Permeation Emissions by Ethanol Content and Pressure



As part of its waiver application, Growth Energy submitted a series of studies completed by the State of Minnesota and the Renewable Fuels Association (RFA) that investigated materials compatibility of motor vehicle engines and engine components using three test fuels: E0, E10, and E20 ("Minnesota Compatibility Study").[79] The Minnesota Compatibility Study looked at 19 metals ("Metals Study"),[80] eight elastomers (rubber materials) ("Elastomers Study"),[81] eight plastics ("Plastics Study"),[82] and 24 common fuel sending unit and fuel pump combinations ("Fuel Pumps Study" and "Fuel Pump Endurance Study"),[83, 84] currently used in automotive, marine, small engine, and fuel system dispensing equipment for physical or chemical effects due to ethanol.[85]

Results from the Minnesota study were mixed depending on if the comparison was being made between E20 and E10 or E20 and E0. Some materials were compatible with the ethanol blends while some displayed larger property changes with the ethanol blends. Because of the immense variety of materials available and the overlap in use of the different materials over time, the study could not test all materials in the fleet, nor did it directly assign the materials tested to a vehicle generation or model year. Instead, the study generalized that because ethanol was available in some parts of the U.S., these materials were likely E10 compatible. However, these materials were used prior to the widespread use of ethanol and therefore conceivably prior to many manufacturer's requirement for prolonged exposure to ethanol and specifically not for gasoline-ethanol blends above 10%. It is difficult to quantify the overall impact of changes in any material due to ethanol at E15 or E20 levels and what those changes would mean to the older motor vehicle fleet, only that some portion of the fleet may experience changes that could result in accelerated component failures beyond what would be expected on E0 or E10. In addition, it is important to note that the Minnesota Compatibility Study assessed component parts using laboratory bench tests rather than durability studies of whole motor vehicle fuel systems simulating "real world" motor vehicle use.

[79] "The Feasibility of 20 Percent Ethanol Blends by Volume as a Motor Fuel;" State of Minnesota and Renewable Fuels Association.

[80] "The Effects of E20 on Metals Used in Automotive Fuel System Components;" Bruce Jones, Gary Mead, Paul Steevens, and Mike Timanus; Minnesota Center for Automotive Research at Minnesota State University, Mankato; February 22, 2008.

[81] "The Effects of E20 on Elastomers Used in Automotive Fuel System Components;" Bruce Jones, Gary Mead, Paul Steevens, and Chris Connors; Minnesota Center for Automotive Research at Minnesota State University, Mankato; February 22, 2008.

[82] "The Effects of E20 on Plastic Automotive System Components;" Bruce Jones, Gary Mead, and Paul Steevens; Minnesota Center for Automotive Research at Minnesota State University, Mankato; February 21, 2008.

[83] "The Effects of E20 on Automotive Fuel Pumps and Sending Units;" Nathan Hanson, Thomas Devens, Colin Rohde, Adam Larson, Gary Mead, Paul Steevens, and Bruce Jones; Minnesota State University, Mankato; February 21, 2008.

[84] "An Examination of Fuel Pumps and Sending Units During a 4000 Hour Endurance Test in E20;" Gary Mead, Bruce Jones, Paul Steevens, Nathan Hanson, and Joe Harrenstein, Minnesota Center for Automotive Research at Minnesota State University, Mankota; March 25, 2009.

[85] Effects assessed in the studies include: Pitting, surface texture change, discoloration, or loss of mass for metals; appearance, volume, weight, tensile strength, elongation, and hardness for elastomers; mass loss or gain, volume loss or gain, tensile elongation, impact resistance, and tensile strength for plastics; and corrosion and longevity as measured by flow and pressure tests for pumps and sending units.

In addition to providing comments on the Minnesota Compatibility Study as discussed in the waiver decision document, the Alliance commented that engines need to be hardened for resistance to ethanol. Use of gasoline-ethanol blends in unhardened engines can result in bore, ring, piston and valve seat wear. Deterioration of these components can lead to compression and power loss, misfire and catalyst damage.

Based on our review of the literature and industry comments on the E15 waiver request, we believe that MY2000 and older light-duty motor vehicles have the potential for increased material degradation with E15 use. In addition, some MY2000 and older light-duty motor vehicles may have been designed for only limited exposure to E10 while the oldest vehicles on the road pre-date ethanol blends in the marketplace all together. This potential for material degradation may make the emissions control and fuel systems more susceptible to corrosion and chemical reactions from E15 when compared to the E0 certification fuels for these motor vehicles and may ultimately increase vehicle emissions, especially for MY2000 and older motor vehicles.

3. Motor Vehicle Population and Anticipated Emissions Impact

There is a long history of test programs that have been carried out on light-duty motor vehicles and trucks that have quantified the immediate emission impacts of blending ethanol up to 10 vol% into gasoline. These test programs, dating back to the earliest days of gasoline-ethanol blends, have found that the oxygen content of ethanol enleans the A/F ratio in motor vehicles during open-loop operation, causing a decrease in HC and CO emissions, but also results in a corresponding increase in NO_X emissions. These studies have been used to develop emission models, such as the EPA Predictive Models [86] incorporated into the Agency's MOVES model,[87] that have been thoroughly peer reviewed. The result is that for a typical E10 blend of gasoline, exhaust NMHC emissions have been found to decrease by about 5%, and NO_X emissions to increase by about 6%, relative to E0.[88] While the magnitude of impact may vary by a few percent depending on the motor vehicle technology and how other fuel properties change when ethanol is blended into gasoline, the relative magnitude and direction of the impacts remains consistent for typical fuels.[89] The limited available data on E15 suggests that this trend continues, and is slightly more pronounced due to the higher ethanol content. However, these emission impacts are not the focus of this proposal as their magnitude tends to be within vehicle compliance margins (the difference between a vehicle's actual emission certification level and the standard). Rather, for this proposal, we have focused on long-term durability issues associated with E15, as discussed in more detail below. The issue of immediate emission increases for E15 is more properly addressed as part of the anti-backsliding study and rulemaking under section 211(v) of the Act.

Sufficient data do not exist to predict specific changes in emission rates for the various motor vehicle technologies due to long-term use of E15 blends. However, with respect to exhaust emissions, if a catalyst were to be damaged to the point of having no significant remaining functionality, we could expect NO_X emissions similar in magnitude to those in untreated engine-out exhaust (*i.e.,* before treatment by the catalyst). If, in this situation, the fuel control system continued to operate in closed-loop mode, NO_X emission levels in the range of 2–4 g/mi would be expected, or approximately ten times the typical emissions rate for a properly operating 1990s-era motor vehicle and about 60 times that of new cars today.[90] Similarly, loss of catalyst function could also cause significant HC emission increases, where levels on the order of 2 g/mi could be expected.[91] This would be equivalent to combined HC emissions of 40 new cars today. While this kind of complete failure would likely be limited in nature, misfueled motor vehicles may experience a reduction in catalyst efficiency earlier than intended, resulting in emissions levels increased above current levels and up to the uncontrolled engine-out levels presented above.

Another area of concern related to exhaust emissions is fuel pump malfunction occurring due to material incompatibility of higher ethanol content with parts such as plastic pump rotors, shaft seals or elastomeric tubing, and increased corrosion of metallic or electrical components. As described in Section VI.B, ethanol increases the electrical conductivity of fuel, increasing the likelihood that galvanic corrosion of metal parts would occur. Before outright failure, malfunctioning fuel pumps often provide inconsistent fuel pressure for some period of time, resulting in long crank (starting) times, misfires, and other erratic engine behavior. Should such conditions occur, they may cause increases in exhaust emissions and possible deterioration of exhaust catalysts.

In addition to the potential for exhaust emissions increases, evaporative emissions are also expected to increase, not only immediately due to increased permeation (as discussed above), but also due to long-term E15 use that may cause from increased corrosion of metallic fuel system components and accelerated deterioration of elastomeric hoses and seals. Corrosion may result in vapor or liquid leaks, depending on where in the fuel system the corrosion is located. Many types of elastomers used in o-rings and fuel lines swell or crack when exposed to ethanol, resulting in increased permeation of vapor or liquid leaks. Elastomeric seals on older motor vehicles may already be brittle and weakened from age. Exposure to E15 may produce accelerated failures of these elastomeric components.

Though it is difficult to quantify the impacts of these types of evaporative component failures, a recent evaporative emissions study produced some relevant data. During the program, a motor vehicle with a fuel system leak due to an o-ring failure produced between 23–26 times more gasoline vapor during a pair of diurnal tests than

[86] A detailed description of the development of the EPA Predictive Models is available in a Technical Support Document: "Analysis of California's Request for Waiver of the Reformulated Gasoline Oxygen Content Requirement for California Covered Areas", EPA420–R–01–016, June 2001.

[87] The Agency's MOVES model has undergone extensive peer review and testing, and incorporates the EPA Predictive Models.

[88] These effects are based the EPA Predictive Models and are generally consistent with conclusions of CRC E–74b report (*e.g.,* Figure ES–2). Fuels properties evaluated were based on market averages and were as follows: E0 had aromatics content of 29.5 vol%, a T50 of 215 °F, a T90 of 325 °F, and an RVP of 8.9 psi and E10 had aromatics content of 24.9 vol%, a T50 of 202 °F, T90 of 325 °F, and an RVP of 8.9 psi. Other parameters not mentioned here were assumed to be held constant between the blends.

[89] Results based on data mostly from vehicle models that predated the Tier 2 emission standards, so several recent test programs have been focused on Tier 2 vehicles that will soon make up the majority of the in-use fleet.

[90] *See* "Effects of Gasoline Composition on Vehicle Engine-Out and Tailpipe Hydrocarbon Emissions—The Auto/Oil Air Quality Improvement Research Program", SAE Paper No. 920329. *See also* "Engine-out and Tail-Pipe Emission Reduction Technologies of V–6 LEVs", SAE Paper No. 980674. A vehicle not operating in closed-loop mode may emit more or less NO_X depending on combustion behavior. During the 1990s, Federal emission standards for NO_X dropped from 1 g/mi to 0.4 g/mi.

[91] *See* "Effects of Gasoline Composition on Vehicle Engine-Out and Tailpipe Hydrocarbon Emissions—The Auto/Oil Air Quality Improvement Research Program", SAE Paper No. 920329. *See also* "Engine-out and Tail-Pipe Emission Reduction Technologies of V–6 LEVs", SAE Paper No. 980674.

a properly-functioning new motor vehicle meeting current standards.[92] The study also placed very small simulated leaks (essentially pin holes) in gas caps of three motor vehicles, representative of what could occur as a result of tiny corrosion sites in the vapor space of the fuel tank. Diurnal tests were performed to compare the emissions with and without the leaks. The MY1996 motor vehicle produced 54 times more evaporative emissions with the simulated leak, while the MY2001 and 2004 motor vehicles produced two and three times more vapors, respectively. The study authors point out that the two newer motor vehicles had tank vent systems designed to meet onboard refueling vapor recovery (ORVR) requirements, suggesting this may mitigate the effect of vapor space leaks.[93]

Thus, we may conclude that even small vapor space leaks occurring in older motor vehicles (before ORVR was required) have the potential to result in large increases in HC emissions.

For more discussion on potential evaporative issues, refer to the Waiver Decision document Section IV.A.3 that was also released today.

Table V1.C.3–1 below shows the projected population of motor vehicles—passenger cars and light-duty trucks in the fleet—by model year for 2011. According to this information, of the total estimated 225 million cars and trucks that operate on gasoline in the fleet today,[94] nearly 73 million or one-third are MY2000 and older light-duty motor vehicles, and it is these motor vehicles for which the effects of E15 are uncertain but indicate the potential for anywhere from small to significant emission increases from the deterioration of the emissions control system over time. As discussed above, if motor vehicles experience engine or emission component failure, the potential exists for very elevated exhaust and/or evaporative system emissions rates. If only a fraction of the fleet were to experience problems with E15, that would still be a large number of motor vehicles with a potentially significant impact on in-use emissions.

TABLE VI.C.3–1—PROJECTED POPULATION OF CARS AND LIGHT TRUCKS BY MODEL YEAR IN 2011

Model year	Cars	Light trucks	Cars and trucks combined	Cumulative total
2000 and earlier	41,548,800	32,162,084	73,710,884	73,710,884
2001–2006	46,567,413	38,594,752	85,162,165	158,873,049
2007–2011	39,068,213	26,755,598	65,823,812	224,696,860
Total	127,184,425	97,512,435	224,696,860	

Source: EPA's vehicle certification data and Mobile Vehicle Emissions Simulator (MOVES) model.

D. Heavy-Duty Gasoline Engines and Vehicles

Given its limited market, heavy-duty gasoline engines and vehicles have not been the focus of test programs and efforts to assess the potential impacts of E15 on such engines. From a historical perspective, the introduction of heavy-duty gasoline engine and vehicle technology has lagged behind the implementation of similar technology for light-duty motor vehicles. Similarly, emission standards for this sector have lagged behind those of light-duty motor vehicles, such that current heavy-duty gasoline engine standards remain comparable from a technology standpoint to older light-duty motor vehicle standards. Consequently, we believe the discussion in Section VI.C. for MY2000 and older motor vehicles should also be applicable to the majority of the in-use fleet of heavy-duty gasoline engines and vehicles. Therefore, we are proposing to prohibit the use of E15 in heavy-duty gasoline engines and vehicles. We seek comment on this assessment.

E. Motorcycles

Motorcycles come in many different sizes, styles and applications. The biggest distinction between motorcycle types are that some are designed for operation on-road and others are designed for operation off-road. The motorcycles designed for operation on-road are referred to as highway motorcycles. Highway motorcycles can range from small scooters equipped with a 50 cubic centimeter (cc) single cylinder two-stroke engine to a large touring motorcycle equipped with a multi-cylinder four-stroke engine with an engine displacement exceeding 2,000 cc. Motorcycles designed for off-road operation are referred to as off-highway motorcycles and can differ significantly from highway motorcycles in design and appearance.

Motorcycles have been around for well over 100 years. The fuel system used to manage the A/F ratio for motorcycles has been the carburetor. In fact, the carburetor has been the fuel control system of choice for highway and off-highway motorcycles until the last decade. Starting in the late 1990s, some of the more expensive high performance highway motorcycles began to use electronic fuel injection (EFI) to manage the A/F ratio. While EFI is becoming more common today in many highway motorcycles, there are still many models that use carburetors. Off-highway motorcycles have only begun to use EFI in a very few expensive competition models. The vast majority of off-highway motorcycles continue to use carburetors.

All internal combustion engines need a system to cool the engine from the excessive heat generated as part of the combustion process. Without a cooling system, the engine would quickly overheat and fail. Motorcycles use two types of engine cooling systems: liquid-cooled and air-cooled. Liquid-cooled systems are very similar to the systems used by automobiles. A radiator stores a liquid coolant that is distributed throughout the engine which cools the engine. The heated coolant is returned to the radiator where it is cooled by air from the moving motorcycle or from an external fan. An air-cooled system is similar to that used for most nonroad engines and is less sophisticated than a

[92] Diurnal testing refers to a process for measuring evaporative emissions where a vehicle is placed in a sealed enclosure and the temperature varied over multiple cycles to simulate ambient day and night conditions in summertime. *See* Coordinating Research Council Report No. E–77–2 for detailed results (available at *http://www.crcao.org*).

[93] Onboard refueling vapor recovery systems were phased into production in light-duty motor vehicles over MY1998–2000, and provide a relatively short, large-diameter pathway for vapors to reach the carbon canister where they are stored for combustion during engine operation. *See* Coordinating Research Council Report No. E–77–2 for detailed results (available at *http://www.crcao.org*).

[94] There are approximately 250 million cars and trucks in the fleet today when diesels are included.

liquid-cooled system. An air-cooled system uses a series of external "fins" located on the cylinders and cylinder heads that help direct heat away from the cylinder and cylinder head. Since the engine in a motorcycle is exposed to the atmosphere and not contained in an engine compartment like an automobile, the engine is exposed to passing air as the machine is operated on the road or trail. The passing air is channeled through the fins and helps cool the cylinder and cylinder head, which helps cool the combustion chamber, reducing the overall engine temperature. Air-cooling is not nearly as effective at controlling engine temperature as liquid cooling. One of the strategies to help with engine cooling for engines that rely on air-cooling is to operate the engine at an A/F ratio that is rich of stoichiometry. The additional fuel helps reduce combustion temperature, keeping overall engine temperature lower. For this reason, any increase in the A/F ratio beyond that designed for at the time of manufacturing, such as the enleanment resulting from ethanol, raises potential concerns.

In 1978, EPA issued HC and CO emission standards for highway motorcycles. There were no standards for NO_X emissions. To meet these standards, the vast majority of motorcycle models used the approach of adjusting the A/F ratio rather than using any unique emission control technologies, such as catalytic converters, EFI, and air injection. For performance and durability purposes, most motorcycles operated with an A/F ratio that was considerably rich of stoichiometry. The strategy used to control HC and CO emissions was to lean the A/F ratio from these rich values traditionally used for maximum performance. As with light-duty motor vehicles, this strategy resulted in lower HC and CO emissions, but caused an increase in NO_X emissions. Since there were no NO_X emission standards, the increased NO_X emissions were allowed. This strategy also resulted in complaints about vehicle performance and driveability. As a result, a common practice was for motorcycle owners to change the A/F ratio on their own to a richer setting that improved the performance concerns, but also possibly resulted in an exceedance of the emissions standards. These emission standards were unchanged until 2006 when more stringent standards for HC and new standards for NO_X were introduced for MY2008.

Off-highway motorcycles were unregulated until 2006. Beginning with MY2006, off-highway motorcycles were required to meet emission standards for HC, CO, and NOx emissions. In general, the overall majority of motorcycles designed from 1978 through 2006 either used an A/F ratio leaner than desired for maximum performance and durability to comply with highway motorcycle emission standards or ran rich, in the case of off-highway motorcycles, to help cool the engine and protect it from overheating and failure. The practice of motorcycle owners adjusting the A/F ratio to a richer setting to improve performance and driveability was even more prevalent in the off-highway motorcycle sector, especially for competition motorcycles where performance is an important attribute.

As E10 fuel has become more prevalent in the marketplace, many owners of off-highway and older highway motorcycles have chosen to either operate their motorcycles on E0 fuel whenever it is available or have modified their A/F ratio to a richer setting. In fact, the internet is full of blogs of motorcycle owners discussing concerns with operation on E10 fuel and ways to avoid these concerns, including how to change the A/F ratio setting. It is a violation of the CAA to modify a certified motorcycle from its certified configuration. Changing the A/F ratio from the certified setting would be considered tampering, yet it is clear it is practiced in-use.

For highway motorcycles designed to already operate leaner to comply with emission standards, the use of E15 fuel would result in a further leaning of the A/F ratio. These motorcycles were designed with an optimized A/F ratio setting taking into consideration the delicate balance of emissions, performance, and engine protection. Since most of these motorcycles use carburetors, the A/F ratio is not easily adjusted to adapt to the increased amount of oxygen in the A/F mixture. The additional enleanment of the A/F ratio could cause an increase in combustion temperature and ultimately engine temperature, potentially resulting in an exceedance of the emission standards and engine failure. For off-highway motorcycles that have typically been designed to operate rich of stoichiometry for engine protection, the enleanment of the A/F ratio could cause an increase in engine temperature beyond what the engine was designed to accommodate and ultimately result in engine failure. As a result of the increased enleanment resulting from E15 fuel, more motorcycle owners may be tempted to adjust the A/F setting of their motorcycles to protect vehicles from potential damage resulting in possible exceedances of the emissions standards.

In either case, the use of E15 fuel could cause engine damage and emission increases for highway motorcycles built prior to 2008 and for all off-highway motorcycles, regardless of age. For highway motorcycles built after MY2008 there is the possibility that some models may be able to successfully accommodate the use E15 fuel. For MY2008 and beyond, there are a number of models that use EFI and catalytic converters. The systems are similar to automotive closed-loop catalyst systems. However, one of the advantages to modern Tier 2 light-duty emission control systems is that they use very sophisticated fuel trim learning systems that allow a very precise "learning and adapting" of changes to the A/F ratio mixture. While many of today's motorcycle models use closed-loop systems, they do not have the advanced fuel trim control of today's motor vehicles, meaning they would most likely not be able to accommodate the enleanment of the A/F ratio in the same manner as today's motor vehicles. Their closed-loop technology is more similar to that of MY2000 and older motor vehicles than to current motor vehicles.

In light of the above, while there is no actual E15 test data on motorcycles, EPA believes that any operation of highway or off-highway motorcycles on fuel containing E15 could result in engine damage and emission increases for highway and off-highway motorcycles. It also could have the unintentional result of encouraging motorcycle owners to violate the CAA by tampering with the vehicles A/F ratio setting to improve performance, driveability, and protect the engine from damage, while at the same time significantly increasing hydrocarbon and CO emissions. Therefore, we are proposing to prohibit the use of E15 in all motorcycles (highway and off-highway) but seek comment on our assessment.

F. Nonroad Engines, Vehicles, and Equipment (Nonroad Products)

1. Introduction

The nonroad product market is extremely diverse which makes it difficult to determine what the impacts of E15 use might be. However, similar to older motor vehicles, it appears that nonroad products may experience emissions increases related to enleanment and material compatibility issues if operated on E15. This is based in large part on the history of the design of nonroad products operating on E10 in relation to the age of those products in the field, and the implications of

extrapolating this in-use operating experience with E10 to E15.

The majority of nonroad products are still carbureted, or have very simplistic electronic fuel injection which cannot adjust the engine A/F ratio, and do not have any onboard diagnostics to monitor engine performance before components may fail. The experience of consumers with E10 in nonroad products in the 1980s pushed most manufacturers to take some steps to address enleanment and E10 material compatibility issues at that time, either with changes in engine design or warnings in consumer owner manuals (either to avoid ethanol blended fuels or blends higher than 10%). However, the design practices and recommendations varied across the industry due to the breadth of the nonroad market (as highlighted in Table VI.F.1–1) and the wide range of manufacturers, applications, and markets. The design practices also continued to evolve over time in part due to emission regulations.[95] While a review of current nonroad engine and equipment manufacturer Web sites indicates a general acceptance of E10 use with the new products being produced today, manufacturers continue to caution against any higher level ethanol use, and marine manufacturers still caution against E10 use.[96] In addition, nonroad product manufacturers are clearly still learning how to design for compatibility with E10 as evidenced by a recent large recall of snowblowers due to corroded carburetors.[97]

TABLE VI.F.1–1—2010 ESTIMATED POPULATION OF NONROAD ENGINES, EQUIPMENT AND VEHICLES

Nonroad category	Typical equipment/vehicles	Estimated 2010 in-use population (millions)
Small SI Engine	Handheld: Trimmers, chainsaws, blowers, hedge trimmers Nonhandheld: Lawnmowers, generators, riding tractors.	131.
Marine Outboard	Outboard engines to power fishing boats, pontoon boats	10.
Marine Sterndrive/Inboard	Speed boats, Ocean going fishing boats	2.
Marine Personal Watercraft	Jet skis, jet boats, *etc.*	1.3.
All Terrain Vehicles	Four wheelers	11.
Nonroad Motorcycles	Nonroad motorcycles	2.6.
Snowmobiles	Snowmobiles	2.4.
Large SI	Fork Lifts	0.24.
On-Highway Motorcycles	On-Highway Motorcycles	8 (2008 estimated population).

In addition, as shown in Table VI.F.1–2, consumers are still using a considerable amount of older nonroad products (*e.g.,* marine engines) that are not necessarily designed for E10 use. In recognition of this situation, States such as Minnesota, Missouri, Oregon, and Washington that have mandated the use of ethanol blends have also provided exceptions to the mandate for sale of ethanol free gasoline (E0) for a variety of nonroad products. In addition, Oregon has taken the additional step of publishing a list of retail stations distributing E0 to assist their nonroad consumers in locating it.[98]

TABLE VI.F.1–2—2010 ESTIMATED ACTIVE NONROAD PRODUCT POPULATION

Sales years	Nonroad SI, excluding marine SI (thousands)	Marine SI (thousands)
2007–2010	98,255	3,155
2003–2006	39,466	2,953
1999- 2002	7,245	2,484
1995–1998	1,253	1,828
1991–1994	475	1,215
1987–1990	208	656
1983–1986	72	348
1979–1982	28	177
1975–1978	18	100
1971–1974	11	50
1967–1970	6	23
1963–1966	3	10
Total	147,040	12,999

Source: UnEPA Nonroad8a model.

[95] The first exhaust emission regulations for nonroad products began with Small SI Engines in 1997 and the last onroad categories of Marine Inboard/Sterndrive and Snowmobiles will meet their first exhaust emission standards in 2010. The design changes to comply with the standards tended to enlean the A/F ratio of new engines compared to prior engines and limit the ability to manually adjust the A/F ratio, so while newer engines may use materials better suited for ethanol, they may also be more susceptible to enleanment concerns.

[96] *See* EPA–HQ–OAR–2010–0448, Submittal to Docket on Yamaha Web site information.

[97] *See* EPA–HQ–OAR–2010–0448, CPSC, Health Canada and Toro snowblower recall.

[98] *See* EPA–HQ–OAR–2010–0448, Oregon State Government Non-Ethanol Fuel Supplier Listing.

2. Enleanment

Given the relatively undeveloped technological design of the nonroad product fleet for purposes of emissions control, one of the main concerns with the use of E15 in nonroad products, as for older motor vehicles, is the increased temperatures caused by enleanment of the A/F ratio. With higher levels of ethanol, the stoichiometric (ideal) A/F ratio becomes lower (*i.e.,* more fuel is needed for the same amount of air) due to the increased oxygen in the fuel; hence, the nonroad products run leaner since they do not adjust to the fuel oxygen content. Engines designed to operate on non-ethanol fuels (0 wt% oxygen) are currently operating on E10, which typically contains about 3.5–3.7 wt% oxygen, and would operate on approximately 5.5 wt% oxygen when operating on E15. As evidenced by various studies,[99] enleanment has an immediate impact on emissions, causing HC and CO emissions to decrease and NO_X emissions to increase. However, since the HC and NO_X impacts are directionally opposite, these immediate impacts are of less concern than the impacts of long-term operation and durability. Leaner operation increases cylinder and exhaust temperatures that can lead to overheating of the engine. In some cases this can lead to expansion of the engine block and pistons and result in a seized engine. Increased combustion temperature can also result in expansion and contraction of the engine block and head metals which leads to loosening of the head bolts. With looser bolts, the gap between the engine block and the head will open and the head gasket can get damaged, which in turn damages other engine components (*e.g.,* intake and exhaust valves, manifolds, *etc.*) which can result in increased emissions and potential engine failure.

The likelihood that nonroad products may experience such issues with E15 is difficult to quantify. However, limited testing by DOE [100] showed some engine failures with E15, and this is not entirely unexpected since nonroad products are particularly prone to enleanment for several reasons. First, nonroad products remain primarily carbureted and/or have open loop fuel control.[101] This means they do not have the ability to self-adjust the A/F ratio in-use for the presence of ethanol in the fuel. The amount of enleanment an engine experiences in-use depends on several factors, including manufacturing variability, engine wear, and, importantly for E15, the A/F ratio setting of the engine in comparison to the setting needed for the fuel the engine is operating on. Engine manufacturers set the A/F ratio settings at the time of production based on a number of factors including the emission standards, expected deterioration of emissions over time and the emission certification fuels.[102] In-use engines are Federally certified on E0, while engines certified to California standards are certified on an MTBE blend (the equivalent oxygen content of about E6 or about 2.0 wt% oxygen).[103] Thus, when nonroad products switch to using E10 in the field, they operate leaner than they were set to operate and would operate leaner still on E15. Older nonroad products may have more headroom to tolerate enleanment from ethanol than newer engines. This is because manufacturers have tended to set the A/F ratio for their newer engines closer to stoichiometry (less rich) to meet newer, more stringent emission standards in recent years.[104] Second, the majority of nonroad products are air-cooled (rely on fins designed into the engine block to dissipate heat and some have a fan to aid in cooling) and fuel-cooled (rely on rich operation -excess fuel—to cool certain engine components like exhaust valves and manifolds). Thus, they are much less forgiving of temperature increases that might result from enleanment. Third, nonroad products frequently operate at wide open throttle for much of their duty cycle where exhaust temperatures are highest.

Additionally, as enleanment occurs, the potential for an engine to reach its lean limit is increased. A lean limit is found when the typical emissions trend for enleanment (decreased HC and CO emissions and increased NO_X emissions) reverses and results in increased HC and CO and decreased NO_X. The reversal of emissions at the lean limit is a signal the engine is starting to experience incomplete combustion and is beginning to experience misfires, hence the increases in HC. This often results in engine failure since the engine cannot operate for an extended period of time under this condition. Results from a DOE pilot study on small SI nonroad products confirmed the potential enleanment concerns.[105] Several engines failed prior to reaching their full useful life, and the emission results for one of these (a consumer market trimmer) indicated that it indeed may have exceeded its lean limit when operating on E15.

Finally, as highlighted above in VI.C., catalysts are an emission reduction technology that is sensitive to increases in exhaust temperature that would result from the use of E15. Although not yet commonly found on nonroad products, they began phasing-in on small SI handheld engines in 2002. High exhaust temperatures are already a concern with these catalysts due to the close location of the catalyst to the combustion chamber (catalysts are located within the muffler which is commonly attached to the engine block). The hotter combustion temperatures from engine enleanment result in hotter exhaust temperatures experienced by the catalyst and can increase the likelihood of catalyst washcoat sintering. If sintered, the catalyst becomes nearly useless. The likelihood that an engine/catalyst setup would reach this state is dependent on the engine/catalyst design and the production variability. Both of these vary from engine manufacturer to engine manufacturer and engine to engine.

These potential enleanment problems would also impact the emission performance of engines operated on E15 over their full useful life. Unfortunately, emissions data from nonroad products operated over their full useful life on E15 is very limited and currently is known only to exist for the small spark-ignition sector of nonroad engines. DOE performed a pilot and durability study on four small SI engine models operated

[99] "Effects of Intermediate Ethanol B lends on Legacy Vehicles and Small Non-Road Engines, Report 1", NREL/TP–540–43543 and ORNL/TM–2008/117, October 2008.

[100] "Effects of Intermediate Ethanol B lends on Legacy Vehicles and Small Non-Road Engines, Report 1", NREL/TP–540–43543 and ORNL/TM–2008/117, October 2008.

[101] Of the nearly 1200 gasoline-fueled nonroad engine families certified in 2010, only 36 are estimated to have closed loop electronic fuel injection, and most of those are large spark-ignited nonroad engines.

[102] Older nonroad products—those prior to emission standards—tended to have A/F ratio adjustment screws so knowledgeable consumers or maintenance facilities could adjust the A/F ratio of the engine if it operating poorly. Manufacturers tended to remove or limit the capability for such manual adjustments to meet emission standards.

[103] Standards for some nonroad categories which require evaporative emission certification on E10 and allow it as an option for exhaust are just beginning to phase in.

[104] Some engines have been under emission regulation for 13 years while others are just falling under emission regulation. In order to meet EPA emission standards, engines have either been enleaned and/or taken on engine designs of a more efficient engine such as a 4 stroke engine.

[105] "Effects of Intermediate Ethanol B lends on Legacy Vehicles and Small Non-Road Engines, Report 1", NREL/TP–540–43543 and ORNL/TM–2008/117, October 2008.

on E10 and E15.[106] The HC emissions from a commercial string trimmer engine were considerably higher after operation over the full useful life on E15 in comparison to E10 (191% vs. 101% increases in HC). Hydrocarbon emissions were similarly increased on a commercial generator with E15 vs. E10 when tested over their full useful life (47% increase for HC on E15 vs. 4.7% increase for E10) and for a consumer power washer (150% increase on E15 vs. a 44% increase for E10[107] The consumer blower engines tested did not make it to aging at full useful life on E15. The blower engines did have catalysts, however, the study was not able to analyze its effectiveness over time. If the catalyst on the blower was to fail and the engine continued to operate, then the engine could have emitted almost the same emissions as pre-regulation engines (*e.g.,* 100–120 g/kW-hr without a catalyst vs. 50 g/kW-hr with a catalyst). Thus, while it was only a small test sample, it is clearly suggestive that exhaust emissions may increase considerably with E15 over the full useful life of the engines. Furthermore, while the study was only conducted on the small SI segment of the nonroad market, the similarities between it and most other segments of the nonroad market would raise similar concerns.

3. Material Compatibility and Corrosion

Materials used in engine and fuel system components (*e.g.* metals, plastics, and rubbers) must be compatible with the full range of expected fuel compositions. Any deterioration of materials could result in loss of function of critical engine components, which can result in emissions increases from fuel leaks and equipment failure. Nonroad products do not have onboard diagnostics to detect these conditions and report it to the user prior to engine failure. Not much is known about the use of E15 in nonroad products in real world use. However, concern exists because, as discussed above in section VI.B., ethanol has different material compatibility characteristics than gasoline, and even products operating adequately on E10 today may have issues with E15. In addition, the vast range of nonroad product designs and technologies over the years indicates that material incompatibility may exist in portions of the in-use fleet when using E15.

Motor vehicle manufacturers, as discussed in section VI.G, were driven by both market forces and EPA emission standards to redesign motor vehicles and upgrade materials for continual use of E10. This is not the case for nonroad products. We are not aware of any standard design practices self imposed by industry in relation to the presence of ethanol in gasoline either in the early 1980s with gasohol in the Midwest or in the 2000s as gasoline-ethanol blends expanded nationwide. As a result, it appears that manufacturers used a variety of approaches at different points in time in response to market conditions. One reason for this is that the nonroad market serves a wide range of consumers—the low cost consumer quality and the higher cost professional quality—and the target market may govern how decisions are made. Another reason is the vast diversity of nonroad products as discussed above. The wide range of engines, applications, manufacturers, and markets leads to a wide range of equipment design practices. Finally, some manufacturers of nonroad vehicles and equipment may purchase another manufacturer's engine and modify it and/or its fuel system for a different application (*e.g.* purchasing a small SI engine and replacing the fuel tank with a different design so it fits in the equipment, or marinizing an automotive engine for use as a marine engine and recertifying). Since there have been no evaporative requirements for small SI engines until the Phase 3 standards (beginning in 2009), in prior years the hoses and tanks could be changed without concern. Consequently, even engine fuel systems designed for the presence of ethanol by the original engine manufacturer may be compromised by the vehicle/equipment manufacturer. Thus, it is very difficult to quantify the volume of nonroad products in today's fleet designed to operate on E10 let alone E15. As shown in Figure VI.A–1, since E10 now represents more than 80% of the gasoline market, it is clearly being used in nonroad products today. However, as shown in Figures VI.A–3 and VI.A–4 the expansion of E10 nationwide is still a relatively recent event and the effects we are focused on are effects from longer term use of the fuel.

Based on manufacturer Web sites and owner's manual recommendations, most new nonroad products produced today are designed to be compatible with E10. The main exceptions are marine applications (as well as aircraft, which are not nonroad for purposes of section 211(c), but in some cases use the same gasoline as nonroad products). The transition appears to have occurred at different points in time across the market. However, this is not to say that these engines have been designed to be compatible with E15. The effects of ethanol are time and concentration dependent such that the effects of E15 may be more severe than E10 on materials. Consequently, manufacturers, while approving the use of E10 today, now also warn against the use of any higher gasoline-ethanol blends.

Unlike motor vehicles, most nonroad products are used periodically and not for daily tasks. Many of these products are designed to be inexpensive consumer products that last a relatively short time or are used irregularly and for short periods of time. However a considerable fraction may remain in the in-use fleet for a long time (10–40+ years). Table VI.F.1–2 shows an estimated age distribution of nonroad products in 2010. Marine engines are separated in the table to illustrate the fact that these products in particular remain in the fleet for many years. Consequently, even if nonroad products today are designed by the manufacturer for the presence of 10% ethanol in the gasoline, a large number of pieces of equipment still exist in the field from model years when ethanol was not present in gasoline, or was just beginning to be introduced into the fuel stream. Based on subsequent experience, some of this equipment may operate fine on E10, while others may have complications due to the enleanment or material incompatibility effects of using ethanol.

There have been several attempts to study the material compatibility of E15 use in nonroad engines, vehicles and equipment. However, the broad range of equipment and designs over time make it extremely difficult to do any definitive study on the nonroad sector that would address the entire fleet. A literature and information search prepared by the University of Minnesota Center for Diesel Research outlines a number of the concerns with ethanol that could be experienced with E15.

—Corrosion of steel is accelerated by the presence of alcohols in the fuel, both because the ethanol itself is considered to be more corrosive but also because it is a solvent that removes oils and coatings from the surface that might protect against corrosion. In addition, ethanol attracts and mixes with water which is also corrosive and tends to create a slightly acidic solution, especially over time.

[106] "Effects of Intermediate Ethanol B lends on Legacy Vehicles and Small Non-Road Engines, Report 1", NREL/TP–540–43543 and ORNL/TM–2008/117, October 2008.

[107] The NO_X emission results on commercial engines change less over time on E15 compared to E10, however they start at a higher value at new engine condition on E15. (ref: "Effects of Intermediate Ethanol B lends on Legacy Vehicles and Small Non-Road Engines, Report 1", NREL/TP–540–43543 and ORNL/TM–2008/117, October 2008.)

—Elastomers exposed to higher gasoline-ethanol blends over time can increase in weight gain, swell, soften and increase in hardness when dried and as a result lose tensile strength, causing fuel pumps and fuel lines to fail. For fuel hoses, swelling and softening creates a risk of failure of the joints. The swelling and softening of O-rings, seals and gaskets causes a risk of damage or incorrect fit of the seal during assembly of joints leading to fuel leakage.
—Seals and gaskets on equipment that have not been previously exposed to higher alcohol fuels could deteriorate and break down creating leakage.
—Fiberglass-reinforced plastic fuel tanks, such as those on marine engines and motorcycles, may also experience problems depending on the type of resin and how much the ethanol will contribute to the corrosion of it.
—Materials such as lead/tin-coated steel used in fuel tanks and aluminum fuel system components require corrosion inhibitors due to the presence of the higher alcohol in E15.

In addition, four studies have been reported which tested the effect of a number of ethanol containing fuels (E10, E20) on materials compatibility of polymers, metal, and elastomers in motor vehicles and nonroad engines. While none of these studies reported on E15, a number of reports gave conditions seen on E10 and E20 and so results for E15 can be interpolated. The results of one technical assessment, published in 2002,[108] of E10 and E20 on two 2-stroke engines indicated materials compatibility concerns for E20 for both engine types, including effects on some polymeric materials that were deemed unacceptable and E20 tarnishing and corroding brass and aluminum parts. Similarly, three other studies conducted by the University of Minnesota published in 2008 on metal, plastic, and elastomer materials, respectively,[109, 110, 111] used in highway vehicles and nonroad products found a variety of impacts with E20 relative to E10 or E0, including clear incompatibility with some materials. The existence of such materials on equipment in the in-use fleet could lead to increased emissions, fuel leaks, and potentially engine failure from longer term use of E15. The degree to which such incompatible materials exist in the in-use fleet is unknown, but it is clear that they do exist based on in-use experience with E10.[112, 113]

We are not aware of any testing that has been done that might help quantify the potential impact on emissions from the types of engine problems that would result from material compatibility problems. However on July 14, 2010 the United States Consumer Protection Safety Commission (CPSC) and Health Canada (HC) announced a recall of Toro snowblowers stating that "Exposure to ethanol in gasoline can cause the carburetor needle to become corroded. A corroded needle can stick in the open position and allow fuel to leak from the carburetor."[114] Clearly fuel leaks would result in a considerable increase in evaporative emissions, and material issues with carburetors, fuel pumps, and other engine components could clearly lead to significant changes in exhaust emissions, if not engine survivability.

4. Phase Separation and Solvency/Detergency

Two additional concerns with E10 use in nonroad products are phase separation and solvency/detergency (*see* section VI.B.). However, if nonroad products have already been operating on E10, the degree to which these would be a concern with E15 is unknown. Phase separation occurs if a gasoline-ethanol blend is saturated with water. Phase separation is more likely in nonroad products due to the fact that these engines are typically used only seasonally or occasionally throughout the year and in the case of marine applications, the equipment is generally in a humid, water environment. In addition, specifically for small SI engines, some of the fuel systems are open to the atmosphere through a direct vent in the gas cap which exposes the fuel to air and humidity. If phase separation occurs, it has been reported by repair shops to be acidic and result in corroded carburetors and potential fuel line leaks. However, while phase separation has been and continues to be a significant concern with E10, as evidenced by ongoing guidance on manufacturer literature[115] and nonroad engine Web sites,[116] the additional ethanol in E15 would increase the water tolerance of the blend and thereby potentially reduce the frequency of phase separation occurring.

Similarly, in areas that have transitioned to E10, problems have historically also shown up in repair shops due to the solvency/detergency characteristics of ethanol. Ethanol has been known to dislodge sludge and varnish in the fuel system, causing it to clog fuel filters and carburetors. However, if in-use engines have already been operated on E10, the cleansing effect of the ethanol may have already occurred, and transitioning to E15 may not result in any additional problems.

G. Model Year 2007 and Newer Light-Duty Motor Vehicles

MY2007 and newer light-duty motor vehicles are covered by EPA's Tier 2 program which established dramatically more stringent NO_X standards. While the program allowed the standards to phase in from MY2004 through MY2009, manufacturer certification data show that gasoline-fueled motor vehicles actually reached full implementation with MY2007. MYs 2004–2006 included a mix of vehicles—some Tier 2 and some non-Tier 2. Tier 2 motor vehicles are more technologically advanced and robust than cars built years ago, are fully capable of running on E10, and must have their evaporative emission systems aged on E10 for durability purposes. Sophisticated computer systems and sensors constantly monitor the engine and the exhaust to be sure that everything (*i.e.,* the A/F ratio mixture) is kept at its optimum level. All auto manufacturers now warrant their new motor vehicles to operate on E10 or less. As found in the E15 waiver decision also published today, we believe on the basis of testing performed and our own engineering assessment, that these MY2007 and newer Tier 2 light-duty motor vehicles are durable and will maintain their emission performance when operated on E15.

To evaluate the impacts of E15 on Tier 2 motor vehicles, DOE performed a

[108] "A Technical Assessment of E10 and E20 Petrol Ethanol Blends Applied to Non-Automotive Engines. Failure Mode and Effects Analysis of Engine Function and Component Design for Mercury Marine 15hp Outboard and Stihl FS45 Line-Trimmer Engines," conducted by Orbital Engine Company, Report to Environment Australia, November 2002.

[109] "The Effects of E20 on Metals Used in Automotive Fuel System Components," by Bruce Jones, Gary Mead, Paul Steevens and Mike Timanus, Minnesota Center for Automotive Research at Minnesota State University, Mankato, February 22, 2008.

[110] "The Effects of E20 on Elastomers Used in Automotive Fuel System Components," by Bruce Jones, Gary Mead, Paul Steevens, and Mike Timanus, Minnesota Center for Automotive Research at Minnesota State University, Mankato, February 22, 2008.

[111] "The Effects of E20 on Plastic Automotive Fuel System Components," by Bruce Jones, Gary Mead, and Paul Steevens, Minnesota Center for Automotive Research at Minnesota State University, Mankato, February 21, 2008.

[112] *http://www.fuel-testers.com/marine_e10_bad_gas_reports.html.*

[113] *http://www.sail-world.com/USA/index.cfm?SEID=0&Nid=38442&SRCID=0&ntid=0&tickeruid=0&tickerCID=0.*

[114] *See* EPA–HQ–OAR–2010–0448, CPSC, Health Canada and Toro snowblower recall.

[115] *See* EPA–HQ–OAR–2010–0448, Collection of manufacturer literature from 1980 to present.

[116] *See* EPA–HQ–OAR–2010–0448, Submittal to Docket on Yamaha Web site information.

catalyst durability test program [117] on 19 Tier 2 motor vehicles from high sales volume models produced by the various light-duty vehicle manufacturers throughout 2009 and 2010. The specific purpose of the test program was to evaluate the long term effects of E0, E10, E15, and E20 on catalyst system durability. However, a number of the motor vehicles were also torn down and evaluated for any other impacts E15 may have had, including material compatibility in the fuel and evaporative emission control systems. As discussed in the waiver decision document, program results indicate that the changes manufacturers made (calibration, hardware, *etc.*) to their motor vehicles to comply with the Tier 2 standards have enabled the motor vehicles to operate satisfactorily on E15, including the ability of their catalysts to withstand the additional enleanment caused by E15.

The DOE test program was critical in supporting the waiver decision. However, it also serves to confirm our engineering assessment of the ability of light-duty motor vehicles to handle E15. The emission standards that EPA has implemented over time affecting motor vehicles have become more and more stringent (*i.e.,* Tier 0 to Tier 1 to LEV1 and NLEV to Tier 2 and LEV2). In addition, full useful life requirements have increased and new test cycles have been added. To comply with the stringent Tier 2 standards, manufacturers must minimize deterioration of their vehicle emission control systems over a vehicle's full useful life of 120,000 miles. By MY2004, new test procedures took effect to better represent actual consumer driving habits and conditions. These additional test cycles, coupled with the in-use testing required under the Compliance Assurance Program (CAP2000), pushed manufacturers to develop more robust emissions control systems (such as systems using wide range oxygen sensors) capable of withstanding the higher temperatures experienced during these more severe cycles without simply relying on enriching of the A/F ratio, causing emissions to rise. With each new program, manufacturers were required to improve the efficiency and durability of emission control hardware and the methods and control systems governing hardware performance causing newer motor vehicles to be able to accommodate gasoline-ethanol blends more so than older motor vehicles.

Perhaps the most critical changes made over time were the changes to the engine calibrations and catalyst systems to accommodate changes in the A/F ratio such as those that occur when switching to operation on gasoline-ethanol blends. Evolution in emission standards prompted corresponding evolution in motor vehicle emission control systems. In particular, catalyst deterioration must be minimized and catalyst temperatures controlled during all vehicle operation modes for the catalyst to work properly (*i.e.,* for it to maintain the necessary high efficiency demanded by the Tier 2 standards). Tier 2 motor vehicles, especially the MY2007 and newer motor vehicles, have improved hardware as well as more sophisticated emission control systems and strategies to help maintain catalyst effectiveness, and an extended motor vehicle operating range over which emissions performance must be maintained. MY2007 and newer motor vehicles have the ability to precisely adjust for changes in the A/F ratio and ultimately maintain peak catalyst efficiency under almost any condition, such as exposure to oxygenated fuels like those containing ethanol. To do so, some manufacturers incorporated learned or adaptive fuel trim into their motor vehicle designs to modulate the A/F ratio and alleviate catalyst temperature increases even under open loop conditions. Others, through careful hardware selection and certain calibration approaches, have motor vehicle designs with higher thermal margins to accommodate the effects of enleanment with gasoline-ethanol blends.

Prior to completion of the DOE catalyst durability test program some concern had been expressed that when operated on E15, vehicles, even Tier 2 motor vehicles that did not apply learned fuel trim, may experience catalyst degradation and higher emissions over time due to the higher exhaust temperatures it may cause. Several screening studies had measured exhaust and catalyst temperature and/or evaluated the ability of vehicles to apply learned fuel trim to adjust for the enleanment due to ethanol during open loop operation.[118, 119] They had found that those vehicles that did not apply learned fuel trim tended to experience higher catalyst and exhaust temperatures when operated on E15. However, as evidenced by the DOE catalyst durability test program, at least for Tier 2 motor vehicles this does not appear to be the case. Even those vehicles that do not apply learned fuel trim appear to have sufficient thermal margins. Therefore, not only do all manufacturers warrant their Tier 2 motor vehicles for operation on E10, but as discussed in the waiver decision document, we believe that they will also operate properly on gasoline-ethanol blends up to E15.

With respect to evaporative emissions control, evaporative systems have had leak detection diagnostic requirements since at least MY2000 as a result of the Agency's Onboard Diagnostic (OBD) program. In addition, CAP2000 which took effect with MY2001 motor vehicles placed more emphasis on the "in-use" performance of motor vehicle emission controls with motor vehicles operating nationwide on the different available fuels. This emphasis on real world motor vehicle testing prompted manufacturers to consider different available fuels, including gasoline-ethanol blends, when developing and testing their emission systems. However, even with the CAP2000 requirements, some materials issues continued to arise during in-use emissions testing. Consequently, as part of the new Tier 2 standards, EPA added the requirement that the evaporative control system and all related components (*i.e.* fuel tanks, fuel lines, *etc.*) demonstrate durability over their full useful life while operating on E10. Due to this new requirement, materials that would compromise evaporative emission compliance over the full useful life with exposure at E10 levels were eliminated as options for fuel system components. This requirement, coupled with much more stringent evaporative emission standards (over a 50% reduction for passenger cars and light trucks), was phased-in with the Tier 2 exhaust standards. Prior to Tier 2, materials are believed to have also been selected for ethanol compatibility but perhaps not for continuous exposure over the full useful life. Based on conversations with original equipment manufacturer parts suppliers, it is our understanding that in designing materials for continuous E10 exposure, they tested materials, components, and systems using ethanol levels in excess of 20% to ensure compatibility with E10. Consequently, Tier 2 motor vehicle designs should also be designed to be compatible with E15, and the results of the DOE catalyst durability test program served to confirm this belief.

[117] *Catalyst Durability Study,* Department of Energy/Coordinating Research Council Report: E–87–2, September 2010.

[118] *Mid-level Ethanol Blends Catalyst Durability Study Screening,* Coordinating Research Council Report:
E–87–1, June 2009.

[119] *Effects of Intermediate Ethanol Blends on Legacy Vehicles and Small Non-road Engines, Report 1—Updated,* National Renewable Energy Laboratory, February 2009.

H. Model Year 2001–2006 Motor Vehicles

For MY2001–2006 motor vehicles, both our engineering assessment and the available data make it less clear whether motor vehicles produced during those model years could have emission increases from long-term fueling with E15 like MY2000 and older motor vehicles or whether they would continue to function properly like MY2007 and newer motor vehicles. On the one hand, we believe that many of the same elements for ethanol compatibility of MY2007 and newer motor vehicles also apply to these motor vehicles (*e.g.,* designing to enhanced evaporative emission standards, SFTP, CAP2000). On the other hand, they were not all required to demonstrate evaporative emission system durability on E10 or to upgrade their catalyst and emission control systems to the extent needed to comply with the Tier 2 standards. The NLEV standards that began phasing in with MY2001 required improvements in closed loop A/F ratio control and catalyst efficiency, but the Tier 2 standards represented a considerable step change beyond NLEV. Furthermore, as discussed below, while there are some ongoing test programs evaluating the effects of E15, we do not yet have sufficient data that would serve to confirm or deny any engineering analysis of the situation, and in particular to address the potential concerns raised over those motor vehicles that do not apply learned fuel trim during open loop operation.

Two studies that might help inform the situation are currently still in process. The Rochester Institute of Technology is conducting a study of 10 motor vehicles spanning MY1998–2004 on E20 and is operating roughly 300 motor vehicles in-use on E20.[120] While the results of this study to date suggest vehicles may operate acceptably on E20—and by interpolation E15—mileage accumulation is limited, so its ability to assess emission impacts over the FUL of the vehicles is also limited. In addition, since there are no control vehicles operating on E0, comparisons of emission effects are restricted. The study is ongoing until November 2010. In addition, DOE is in the process of conducting catalyst durability testing on six motor vehicles certified to NLEV standards and two motor vehicles certified to Tier 1 standards which will also be completed by November. Since the motor vehicles are older, they are starting the test program with a significant number of miles already driven by consumers on E0. However, at least 50,000 miles are being accumulated on each motor vehicle, and identical motor vehicles of the same model are being tested on E0, E10, E15, and E20.

I. Emissions Impact Summary and Conclusions

As discussed above, the potential exists for E15 use to cause long-term or permanent increases in exhaust emissions from MY2000 and older light-duty motor vehicles, heavy-duty gasoline engines and vehicles, motorcycles, and nonroad products, as a result of accelerated deterioration of engine and emission control components. This deterioration can be a result of changes in engine operation, such as higher exhaust temperature, or damage to materials not compatible with E15. Similarly, evaporative emission increases may occur immediately due to increased permeation or over time due to repeated or on-going exposure of the fuel and evaporative emission control systems to E15. In some cases the potential emission impacts could be quite dramatic (*i.e.,* more than an order of magnitude) given the large differences between controlled and uncontrolled emissions on today's light-duty motor vehicles, heavy-duty gasoline engines and vehicles, motorcycles, and nonroad products. Consequently, the in-use emissions increases and air quality impact could be substantial for any of these products that experience very significant deterioration.

While it is not possible to quantify the frequency at which all of these products might experience problems with the use of E15, the degree of emissions increases associated with them, or the effectiveness of the proposed misfueling mitigation measures, we believe that the emission related problems would occur with enough frequency that the resulting emission benefits from the avoided misfueling would clearly outweigh the relatively low cost imposed by the proposed regulations. The emission benefits are the emissions increases from longer term use of E15 that would not occur because of this misfueling mitigation program. This is particularly the case considering the significant consumer savings for avoided repairs and replacement that, as discussed in section III.F., would by themselves be expected to exceed the costs of the misfueling mitigation measures.

For these reasons, the Agency proposes to prohibit the use of gasoline blended with greater than 10 vol% ethanol in (1) MY2000 and older motor vehicles, (2) heavy-duty gasoline engines and vehicles, (3) motorcycles, and (4) nonroad products. Today's prohibitions and other requirements are intended to reduce emissions due to the use of E15 in the group of vehicles or engines reasonably expected to have these adverse effects. The term misfueling describes use of E15 in the prohibited engines, vehicles and equipment listed above. We are inviting comment on whether this prohibition should also apply for MY2001–MY2006 motor vehicles.

VII. What is our legal authority for proposing these misfueling mitigation measures?

As explained above, we are proposing misfueling mitigation measures pursuant to our authority under CAA section 211(c)(1). This section gives EPA authority to "control or prohibit the manufacture, introduction into commerce, offering for sale, or sale" of any fuel or fuel additive (A) whose emission products, in the judgment of the Administrator, cause or contribute to air pollution "which may be reasonably anticipated to endanger public health or welfare" or (B) whose emission products "will impair to a significant degree the performance of any emission control device or system which is in general use, or which the Administrator finds has been developed to a point where in a reasonable time it would be in general use" were the fuel control or prohibition adopted. Under section 211(c)(1), EPA may adopt a fuel control if at least one of the two criteria above are met. We are proposing the misfueling mitigation measures based on both of these criteria. Under section 211(c)(1)(B), we believe that E15 would significantly impair the emission control systems used in MY2000 and older light-duty motor vehicles, heavy-duty gasoline engines and vehicles, highway and off-highway motorcycles, and all nonroad products. This leads us to conclude, under section 211(c)(1)(A), that the likely result would be increased HC, CO and NO_x emissions when these particular engines, vehicles and nonroad products use E15. The following sections summarize our analysis of each criterion.

A. Health and Welfare Concerns of Air Pollution Caused by E15

We believe that the emissions products of E15 contribute to air pollution that can reasonably be anticipated to endanger public health and welfare. As described in Section VI.B., the unique physical and chemical

[120] *The effect of E20 ethanol fuel on vehicle emissions,* B Hilton and B Duddy, Center for Integrated Manufacturing Studies, Rochester Institute of Technology, June 26, 2009.

properties of ethanol may negatively impact certain engines, vehicles and equipment when those products use gasoline-ethanol blends containing increased amounts of ethanol, particularly if those engines, vehicles and equipment are not designed for accommodating that increase. The result is likely an increase in HC, CO and NOx emissions from these engines, vehicles and equipment (*see* Sections VI.C.–F.). This potential increase in emissions of these particular pollutants contributes to air pollution levels that, for example, can violate the NAAQS for ozone or PM.

Section 211(c)(2)(A) requires that, prior to adopting fuel controls based on a finding that the fuel's emission products contribute to air pollution that can reasonably be anticipated to endanger public health or welfare, EPA consider "all relevant medical and scientific evidence available, including consideration of other technologically or economically feasible means of achieving emission standards under [section 202 of the Act]." EPA's analysis of the evidence relating to the emissions impact of emissions from E15 is described in Section VI above, while the evidence concerning the NAAQS is discussed in the NAAQS rulemakings themselves.

EPA has also satisfied the statutory requirement to consider "other technologically or economically feasible means of achieving emission standards under section [202 of the Act]." This provision has been interpreted as requiring consideration of establishing emissions standards under section 202 prior to establishing controls or prohibitions on fuels or fuel additives under section 211(c)(1)(A). *See Ethyl Corp.* v. *EPA,* 541 F.2d 1, 31–32 (DC Cir. 1976). In *Ethyl,* the Court stated that section 211(c)(2)(A) calls for good faith consideration of the evidence and options, not for mandatory deference to regulation under section 202 compared to fuel controls. *Id.* at 32, n.66. For MY2000 and older motor vehicles, proposing emissions standards under section 202 is not an option since emissions standards promulgated under section 202 only apply to *new* motor vehicles. This is also true for the other categories (heavy-duty gasoline engines and vehicles, highway and off-highway motorcycles, and all nonroad products) to the extent these products are already in the marketplace. Thus, for all of these products, the proposed measures under section 211(c)(1) are appropriate for addressing misfueling. Additionally, EPA has previously promulgated the most technologically and economically feasible HC, CO and NO_X emissions standards for all of these engines, vehicles and equipment, so new emissions standards under section 202 for any of these products would not achieve any additional protection beyond those obtained through the misfueling mitigation measures being proposed today under section 211(c)(1).

It is therefore appropriate for EPA to exercise its authority under section 211(c)(1)(A) and propose these misfueling mitigation measures that will likely reduce or eliminate the emissions products from E15 that contribute to the air pollution that endangers our public health or welfare.

B. Impact of E15 Emission Products on Emission Control Systems

EPA believes that E15 can significantly impair the emissions control technology in MY2000 and older light-duty motor vehicles, heavy-duty gasoline engines and vehicles, highway and off-highway motorcycles, and all nonroad products. As discussed in Section VI above, ethanol enleans the A/F ratio; this may lead to emissions products that can cause increased exhaust gas temperatures and, over time, incremental deterioration of emission control hardware and performance. Enleanment can also lead to catalyst failure. Additionally, ethanol can cause material compatibility issues which may lead to other component failure. Ultimately, all of these impacts would likely significantly impair the emissions control systems or devices and lead to exhaust and/or evaporative emission increases.

Section 211(c)(2)(B) requires that, prior to adopting a fuel control based on a significant impairment to emission control systems, EPA consider available scientific and economic data, including a cost benefit analysis comparing emission control devices or systems which are or will be in general use that require the proposed fuel control with such devices or systems which are or will be in general use that do not require the proposed fuel control. This provision is not applicable to the proposed misfueling mitigation measures since a particular emission control device or system is not required for use with the measures being proposed today. Instead, the misfueling mitigation measures are being proposed to protect *existing* controls on existing engines, vehicles and equipment already in the marketplace from the detrimental impacts they may incur when using E15.

Thus, EPA may exercise its authority under section 211(c)(1)(B) and propose these misfueling mitigation measures since use of E15 would significantly impair the emission control devices or systems in MY2000 and older light-duty motor vehicles, heavy-duty gasoline engines and vehicles, highway and off-highway motorcycles, and all nonroad products.

C. Effect of Misfueling Mitigation Measures on the Use of Other Fuels or Fuel Additives

Section 211(c)(2)(C) requires that, prior to prohibiting a fuel or fuel additive, EPA establish that such prohibition will not cause the use of another fuel or fuel additive "which will produce emissions which endanger the public health or welfare to the same or greater degree" as the prohibited fuel or fuel additive. Even assuming that this proposal amounts to a prohibition, as compared to a control, EPA does not believe that the proposed misfueling mitigation measures will result in the use of any other fuel or fuel additive that will produce emissions that will endanger public health or welfare to the same or greater degree as the emissions produced by E15. In fact, the measures being proposed today should lessen the overall public health or welfare impacts from the emissions from these products. To the extent that EPA is proposing a prohibition of using E15 in certain engines, vehicles and equipment, such a prohibition should serve to prevent or reduce misfueling in those products and avoid the increased detrimental effects this provision seeks to protect against. These products would instead use other gasoline or gasoline-ethanol blends currently available in the marketplace and be able to meet their current emissions standards. Thus, EPA may propose these misfueling mitigation measures under 211(c)(1) without causing other public health or welfare effects from the use of another fuel or fuel additive.

VIII. Public Participation

We request comment on all aspects of this proposal. This section describes how you can participate in this process.

A. How do I submit comments?

We are opening a formal comment period by publishing this document. We will accept comments during the period indicated under **DATES** in the first part of this proposal. If you have an interest in the proposed program described in this document, we encourage you to comment on any aspect of this rulemaking. We also request comment on specific topics identified throughout this proposal.

Your comments will be most useful if you include appropriate and detailed supporting rationale, data, and analysis. Commenters are especially encouraged

to provide specific suggestions for any changes to any aspect of the regulations that they believe need to be modified or improved. You should send all comments, except those containing proprietary information, to our Air Docket (*see* **ADDRESSES** in the first part of this proposal) before the end of the comment period.

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit Confidential Business Information (CBI) or information that is otherwise protected by statute, please follow the instructions in Section XI.B.

B. How should I submit CBI to the agency?

Do not submit information that you consider to be CBI electronically through the electronic public docket, *http://www.regulations.gov,* or by e-mail. Send or deliver information identified as CBI only to the following address: U.S. Environmental Protection Agency, Assessment and Standards Division, 2000 Traverwood Drive, Ann Arbor, MI 48105, Attention Docket ID EPA–HQ–OAR–2010–0448. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comments that include any information claimed as CBI, a copy of the comments that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

C. Will there be a public hearing?

We will hold a public hearing in Chicago, IL on November 16, 2010 at the location shown below. The hearing will start at 10 a.m. local time and continue until everyone has had a chance to speak.

Millennium Knickerbocker Hotel Chicago, 163 East Walton Place, @ North Michigan Avenue, Chicago, IL 60600, Phone# 312–751–8100.

If you would like to present testimony at the public hearing, we ask that you notify the contact person listed under **FOR FURTHER INFORMATION CONTACT** in the first part of this proposal at least 8 days before the hearing. You should estimate the time you will need for your presentation and identify any needed audio/visual equipment. We suggest that you bring copies of your statement or other material for the EPA panel and the audience. It would also be helpful if you send us a copy of your statement or other materials before the hearing.

We will make a tentative schedule for the order of testimony based on the notifications we receive. This schedule will be available on the morning of the hearing. In addition, we will reserve a block of time for anyone else in the audience who wants to give testimony.

We will conduct the hearing informally, and technical rules of evidence will not apply. We will arrange for a written transcript of the hearing and keep the official record of the hearing open for 30 days to allow you to submit supplementary information. You may make arrangements for copies of the transcript directly with the court reporter.

D. Comment Period

The comment period for this rule will end on January 3, 2011.

E. What should I consider as I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide any technical information and/or data you used that support your views.
- If you estimate potential burden or costs, explain how you arrived at your estimate.
- Provide specific examples to illustrate your concerns.
- Offer alternatives.
- Make sure to submit your comments by the comment period deadline identified.
- To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

XI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action." This action may raise novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2408.01.

This proposed rule imposes some new information collection burdens regarding product transfer documentation. Product transfer documents, or PTDs, are commonly used in the fuels distribution system and are their use is a customary business practice. This proposed rule is expected to add a one-time burden to program and implement new product codes and statements, as well as a continuing, small burden associated with affixing (using) products codes and statements. This proposed regulation contains provisions requiring standard product labels, which will not impose any information collection burden on regulated parties. We have also estimated the burden associated with parties who elect to use proposed "Survey Option 1."

For the proposed information collection, we estimate that there will be 9,608 annual respondents; 2,009,226 annual responses; and 71,809 annual hours. We estimate that annual cost of this information collection to respondents will be $5,098,427. The average burden is 0.04 hours per response. Burden is defined at 5 CFR 1320.3(b).

We estimate that the cost of adding the proposed survey of compliance

(which requires sampling and testing) with the proposed labeling requirements to the existing RFG survey at $50,000 per year. The cost to implement all of the proposed survey provisions for conventional gasoline is estimated at $2 million per year. Thus, the total cost of the proposed survey requirements is estimated to be $2.05 million per year

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–OAR–2010–0448. Submit any comments related to the ICR to EPA and OMB. *See* **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after November 4, 2010 a comment to OMB is best assured of having its full effect if OMB receives it by December 6, 2010. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this proposed rule are petroleum refiners and importers, ethanol producers, ethanol blenders, gasoline terminals, gasoline stations with convenience stores, and other gasoline stations. While there are small entities in each of these market sectors as discussed in Section III.F., the cost impact on any particular entity is expected to be a tiny fraction of annual revenues.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. The total annual cost is expected to be $6 million. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action primarily affects the private sector, specifically petroleum refiners and importers, ethanol producers, ethanol blenders, gasoline terminals, gasoline stations with convenience stores, and other gasoline stations.

E. Executive Order 13132 (Federalism)

EPA believes that this action does not have federalism implications. This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Any preemption of State or local controls under section 211(c)(4)(A), based on issuance of this rule under section 211(c)(1), would only apply to State or local controls adopted for purposes of motor vehicle emissions control.

EPA consulted with State and local officials early in the process of developing the proposed action to permit them to have meaningful and timely input into its development. EPA met with members of the National Association of Clean Air Agencies (NACAA) to discuss the nature of today's proposed rule. Additionally, we provided State and local governments an opportunity to provide comment on the implementation of misfueling mitigation measures for a partial E15 waiver in both the RFS2 NPRM (*see* 74 FR 25016) and the E15 waiver request notice (*see* 74 FR 18228). We received comments from only one State on this issue in the RFS2 NPRM, and it supported efforts for properly labeling fuel pumps containing gasoline-ethanol blends. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

F. Executive Order 13175

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule will be implemented at the Federal level and impose compliance costs only on petroleum refiners and importers, gasoline stations with convenience stores, and other gasoline stations. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This proposed rule would require a label to be placed on E15 fuel dispensers, for those stations that elect to sell E15. The cost of the labels would average $6.45 per year per gasoline station. This is a tiny fraction of the station's annual profit, and is not expected to significantly affect energy distribution.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This action would affect all gasoline stations that choose to sell E15 and therefore will not affect any particular area disproportionately.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Diesel, Gasoline, Imports, Incorporation by reference, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: October 13, 2010.

Lisa P. Jackson,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 80 is proposed to be amended as follows:

PART 80–REGULATION OF FUEL AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7542, 7545, and 7601(a).

2. Section 80.45 is amended by adding a new paragraph (c)(1)(iii)(C) to read as follows:

§ 80.45 Complex emissions model.

* * * * *

(c) * * *

(1) * * *

(iii) * * *

(C) During Phase II, fuels with an ethanol concentration greater than 10 volume percent and not more than 15 volume percent shall be evaluated with the OXY fuel parameter set equal to 4.0 percent by weight when calculating VOCE using the equations described in paragraphs (c)(1)(i) and (c)(1)(ii) of this section.

* * * * *

3. A new subpart N is added to read as follows:

Subpart N—Additional Requirements for Gasoline-Ethanol Blends

Sec.
80.1500 Definitions.
80.1501 What are the labeling requirements that apply to retailers and wholesale purchaser-consumers of gasoline-ethanol blends that contain greater than 10 volume percent ethanol and not more than 15 volume percent ethanol?
80.1502 What are the survey requirements for gasoline-ethanol blends?
80.1503 What are the product transfer document requirements for gasoline-ethanol blends, base gasolines, and conventional blendstocks for oxygenate blending subject to this subpart?
80.1504 What acts are prohibited under this subpart?
80.1505 Who is liable for violations of this subpart?
80.1506 What penalties apply under this subpart?
80.1507 What are the defenses for acts prohibited under this subpart?
80.1508 What evidence may be used to determine compliance with the requirements of this subpart and liability for violations of this subpart?

Subpart N—Additional Provisions for Gasoline-Ethanol Blends

§ 80.1500 Definitions.

All of the definitions in § 80.2 apply to this subpart. As used in this subpart:

(a) *Blendstock for oxygenate blending* means gasoline blendstock which could become gasoline solely upon the addition of an oxygenate.

(b) *Conventional blendstock for oxygenate blending* means gasoline blendstock which could become conventional gasoline solely upon the addition of an oxygenate.

(c) *Carrier* has the same meaning as defined in § 80.2(t).

(d) *Conventional gasoline* has the same meaning as defined in § 80.2(ff)

(e) *E0* means a gasoline that contains no ethanol.

(f) *E10* means a gasoline-ethanol blend that contains between 9 and 10 volume percent ethanol.

(g) *E15* means a gasoline-ethanol blend that contains greater than 10 volume percent ethanol and not more than 15 volume percent ethanol.

(h) *EX* means a gasoline-ethanol blend that contains less than 9 volume percent ethanol where X equals the maximum volume percent ethanol in the gasoline-ethanol blend.

(i) *EXX* means a gasoline-ethanol blend above E15 where XX equals the maximum volume percent ethanol in the gasoline-ethanol blend.

(j) *Ethanol blender* has the same meaning as defined in § 80.2(v).

(k) *Ethanol importer* means a person who brings ethanol into the United States (including from the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands) for use in motor vehicles and nonroad engines.

(l) *Ethanol producer* means any person who owns, leases, operates, controls, or supervises a facility that produces ethanol for use in motor vehicles and nonroad engines.

(m) *Flex-fuel vehicle* has the same meaning as flexible-fuel vehicle as defined in § 86.1803–01.

(n) *Fuel dispenser* means the apparatus used to dispense fuel into the fuel tank that is used to power a motor vehicle or a nonroad engine, and that is attached to a motor vehicle or nonroad engine.

(o) *Gasoline* has the same meaning as defined in § 80.2(c).

(p) *Gasoline importer* means an importer as defined in § 80.2(r) that imports gasoline or gasoline blending stocks that could become gasoline solely upon the addition of oxygenates.

(q) *Gasoline refiner* means a refiner as defined as in § 80.2(i) that produces gasoline or gasoline blending stocks that could become gasoline solely upon the addition of oxygenates.

(r) *Oxygenate blender* has the same meaning as defined in § 80.2(mm).

(s) *Oxygenate blending facility* has the same meaning as defined in § 80.2(ll).

(t) *Regulatory control periods* has the same meaning as defined in § 80.27(a)(1). Regulatory control periods is defined in § 80.27(a)(1) to mean June 1 to September 15 for retail outlets and wholesale purchaser-consumers and May 1 to September 15 for all other facilities.

(u) *Retail outlet* has the same meaning as defined § 80.2(j).

(v) *Retailer* has the same meaning as defined in § 80.2(k).

(w) *Survey series* means the four quarterly surveys that comprise a survey program.

(x) *Sampling strata* means the three types of areas sampled during a survey which include the following:

(1) Densely populated areas;

(2) Transportation corridors; and

(3) Rural areas.

(y) *Wholesale purchaser-consumer* has the same meaning as defined in § 80.2(o).

§ 80.1501 What are the labeling requirements that apply to retailers and wholesale purchaser-consumers of gasoline-ethanol blends that contain greater than 10 volume percent ethanol and not more than 15 volume percent ethanol?

(a) Any retailer or wholesale purchaser-consumer who sells, dispenses, or offers for sale or dispensing, gasoline-ethanol blends that contain greater than 10 volume percent ethanol and not more than 15 volume percent ethanol shall affix the following conspicuous and legible label to the fuel dispenser:

CAUTION!
This fuel contains 15% ethanol maximum
Use only in:
2007 and newer gasoline cars
2007 and newer light-duty trucks
Flex-fuel vehicles
This fuel might damage other vehicles and engines. Federal law ***prohibits*** its use in all other vehicles and engines

(b) Labels shall meet the following requirements for appearance and placement:

(1) *Dimensions.* The label shall measure 3 and 5/8 inches wide by 3 and 1/8 inches high.

(2) *Placement.* The label shall be placed on the upper two-thirds of each fuel dispenser in a location that is clearly visible to the consumer.

(3) *Text.* The text shall be centered and the appropriate font and background shall be used as described in paragraphs (b)(3)(i) through (iii) and (b)(4)(i) through (iv).

(i) The word "CAUTION!" shall be in 24-point, dark red, bold, Arial font.

(ii) The ethanol content "This fuel contains 15% ethanol maximum" shall be in 14 point, white, Arial font.

(iii) All other text on the label shall appear in 14-point, black, Arial font, except that the word "prohibits" shall appear in 14-point, black, bold, italic, Arial font.

(4) *Color.* (i) The background for the area which includes the word "CAUTION!", and the ethanol content "This fuel contains 15% ethanol maximum" shall be 1-inch wide and neon-orange in color, except that a rectangular white background large enough to encompass the word "CAUTION!" shall be superimposed on this neon-orange background.

(ii) The background for all other text on the label shall be white.

(iii) The label shall have a 1/16-inch neon-orange three-sided border to the left, right, and bottom of the area which includes the text described in paragraph (b)(3)(iii) of this section. This border shall be attached to the neon-orange background area described in paragraph (b)(4)(i) of this section.

(iv) The label shall have a 1/16-inch white border, located to the outside of the neon-orange border described in paragraph (b)(4)(iii) of this section and neon-orange background area described in paragraph (b)(4)(i) of this section.

§ 80.1502 What are the survey requirements related to gasoline-ethanol blends?

No responsible party identified in paragraphs (a) and (b) of this section shall introduce E15 into commerce until the survey program requirements in either paragraph (a) or paragraph (b) in this section are satisfied.

(a) *Survey option 1.* In order to satisfy the survey program requirements, any gasoline refiner, gasoline importer, ethanol blender, ethanol producer, or ethanol importer shall properly conduct a program of compliance surveys in accordance with a survey program plan which has been approved by EPA in all areas which may be supplied with their gasoline, blendstock for oxygenate blending, ethanol, or gasoline-ethanol blend if these may be used to manufacture E15 or as E15. Such approval shall be based upon the survey program plan meeting the following criteria:

(1) The survey program shall consist of at least four quarterly surveys which shall occur during the following time periods:

(i) One survey during the period January 1 through March 31;

(ii) One survey during the period April 1 through June 30;

(iii) One survey during the period July 1 through September 30; and

(iv) One survey during the period October 1 through December 31.

(2) The survey program plan shall meet the general requirements of paragraph (b)(4) of this section.

(b) *Survey option 2.*

(1) To comply with the requirements under this paragraph (b), ethanol blenders, ethanol producers, ethanol importers, gasoline refiners, and gasoline importers must participate in the funding of a consortium which arranges to have an independent survey association conduct a statistically valid program of compliance surveys pursuant to a survey program plan which has been approved by EPA, in accordance with the requirements of paragraphs (b)(2) through (b)(4) and (b)(6) of this section.

(2) *General requirements.* The consortium survey program under this paragraph (b) must be:

(i) Planned and conducted by a survey association that is independent of the ethanol blenders, ethanol producers, ethanol importers, gasoline refiners, and/or gasoline importers that arrange to have the survey conducted. In order to be considered independent:

(A) Representatives of the survey association shall not be an employee of any ethanol blender, ethanol producer, ethanol importer, gasoline refiner, or gasoline importer;

(B) The survey association shall be free from any obligation to or interest in any ethanol blender, ethanol producer, ethanol importer, gasoline refiner, or gasoline importer; and

(C) The ethanol blenders, ethanol producers, ethanol importers, gasoline refiners, and/or gasoline importers that arrange to have the survey conducted shall be free from any obligation to or interest in the survey association.

(ii) Conducted at retail outlets that sell gasoline; and

(iii) Represent all gasoline dispensed nationwide.

(3) *Independent Survey Association Requirements.* The consortium described in paragraph (b)(1) of this section shall require the independent survey association conducting the surveys to:

(i) Submit to EPA for approval each calendar year a proposed survey program plan in accordance with the requirements of paragraph (b)(4) of this section.

(ii) Obtain samples of gasoline offered for sale at gasoline retail outlets in accordance with the survey program plan approved under this paragraph (b), or immediately notify EPA of any refusal of retail outlets to allow samples to be taken.

(iii) Test, or arrange to be tested, the samples required under paragraph (b)(3)(ii) of this section for oxygenate content as follows:

(A) Samples collected at retail outlets shall be shipped the same day the samples are collected via overnight service to the laboratory and analyzed for oxygenate content within 24 hours after receipt of the sample in the laboratory.

(B) Any laboratory to be used by the independent survey association for oxygenate testing shall be approved by EPA and its test method for determining oxygenate content shall be a method permitted under § 80.46(g).

(iv) In the case of any test that yields a result that does not match the label affixed to the product (*e.g.,* a sample greater than 15 volume percent ethanol dispensed from a fuel dispenser labeled as "E15" or a sample containing greater than 10 volume percent ethanol and not more than 15 volume percent ethanol dispensed from a fuel dispenser not labeled as "E15"), the independent survey association shall, within 24 hours after the laboratory receives the sample, send notification of the test result as follows:

(A) In the case of a sample collected at a retail outlet at which the brand name of a gasoline refiner or gasoline importer is displayed, to the gasoline refiner or gasoline importer, and EPA. This initial notification to a gasoline refiner or gasoline importer shall include specific information concerning the name and address of the retail outlet, contact information, the brand, and the ethanol content of the sample.

(B) In the case of a sample collected at other retail outlets, to the retailer and EPA.

(C) The independent survey association shall provide notice to the identified contact person or persons for each party in writing (which includes e-mail or facsimile) and, if requested by the identified contact person, by telephone.

(v) Confirm that each fuel dispenser sampled is labeled as required in § 80.1501 by confirming that:

(A) The label meets the appearance and content requirements of § 80.1501.

(B) The label is located on the fuel dispenser according to the requirements in § 80.1501.

(vi) In the case of a fuel dispenser that is improperly labeled, the survey association shall provide notice as provided in paragraphs (b)(2)(iv)(A) through (C) of this section.

(vii) Provide to EPA quarterly and annual summary survey reports which include the information specified in paragraph (b)(5) of this section.

(viii) Maintain all records relating to the surveys conducted under this paragraph (b) for a period of at least five (5) years.

(ix) Permit any representative of EPA to monitor at any time the conducting of the surveys, including sample collection, transportation, storage, and analysis.

(4) *Survey Plan Design Requirements.* The proposed survey program plan required under paragraph (b)(3)(i) of this section shall, at a minimum, include the following:

(i) *Number of Surveys.* The survey program plan shall include four quarterly surveys each calendar year. The four quarterly surveys collectively are called the survey series as defined in § 80.1500.

(ii) *Sampling Areas.* The survey program plan shall include sampling in all sampling strata, as defined in § 80.1500, during each survey. These sampling strata shall be further divided into discrete sampling areas or clusters. Each survey shall include sampling in at least 40 sampling areas in each stratum which are randomly selected.

(iii) *No advance notice of surveys.* The survey plan shall include procedures to keep the identification of the sampling areas that are included in any survey plan confidential from any regulated party prior to the beginning of a survey in an area. However, this information should not be kept confidential from EPA.

(iv) *Retail outlet selection.*

(A) The retail outlets to be sampled in a sampling area shall be selected from among all retail outlets in the sampling area that sell gasoline, with the probability of selection proportionate to the volume of gasoline sold at the retail outlets; the sample should also include retail outlets with different brand names as well as those retail outlets that are unbranded.

(B) In the case of any retail outlet from which a sample of gasoline was collected during a survey and determined to have an ethanol content that does not match the fuel dispenser label (*e.g.* a sample greater than 15 volume percent ethanol dispensed from a fuel dispenser labeled as "E15" or a sample with greater than 10 volume percent ethanol and not more than 15 volume percent ethanol dispensed from a fuel dispenser not labeled as "E15"), that retail outlet shall be included in the subsequent survey.

(C) One sample of each product dispensed as gasoline shall be collected at each retail outlet, and separate samples shall be taken that represent the gasoline contained in each gasoline storage tank unless collection of separate samples is not practicable.

(v) *Number of samples.*

(A) The minimum number of samples to be included in the survey plan for each calendar year shall be calculated as follows:

$$n = \left\{ \left[\left(Z_\alpha + Z_\beta \right) \right]^2 \Big/ \left(4 * \left[arc\sin\left(\sqrt{\phi_1}\right) - arc\sin\left(\sqrt{\phi_0}\right) \right]^2 \right) \right\} * St_n * F_a * F_b * Su_n$$

Where:

n = minimum number of samples in a year-long survey series. However, in no case shall n be smaller than 7,500.

Z_α = upper percentile point from the normal distribution to achieve a one-tailed 95% confidence level (5% α-level). Thus, Z_α equals 1.645.

Z_β = upper percentile point to achieve 95% power. Thus, Z_β equals 1.645.

φ_1 = the maximum proportion of non-compliant stations for a region to be deemed compliant. In this test, the parameter needs to be 5% or greater, *i.e.,* 5% or more of the stations, within a stratum such that the region is considered non-compliant. For this survey, φ_1 will be 5%.

φ_0 = the underlying proportion of non-compliant stations in a sample. For the first survey plan, φ_0 will be 2.3%. For subsequent survey plans φ_0, will be the average of the proportion of stations found to be non-compliant over the previous four surveys.

St_n = number of sampling strata. For purposes of this survey program, St_n equals 3.

F_a = adjustment factor for the number of extra samples required to compensate for collected samples that cannot be included in the survey, based on the number of additional samples required during the previous four surveys. However, in no case shall the value of F_a be smaller than 1.1.

F_b = adjustment factor for the number of samples required to resample each retail outlet with test results exceeding the labeled amount (*e.g.* a sample greater than 15 volume percent ethanol dispensed from a fuel dispenser labeled

as "E15" or a sample with greater than 10 volume percent ethanol and not more than 15 volume percent ethanol dispensed from a fuel dispenser not labeled as "E15"), based on the rate of resampling required during the previous four surveys. However, in no case shall the value of F_b be smaller than 1.1.

Su_n = number of surveys per year. For purposes of this survey program, Su_n equals 4.

(B) The number of samples determined pursuant to paragraph (b)(4)(v)(A) of this section, after being incremented as necessary to allocate whole numbers of samples to each cluster, shall be distributed approximately equally for the quarterly surveys conducted during the calendar year.

(5) *Summary survey reports.* The quarterly and annual summary survey reports required under paragraph (b)(3)(vii) of this section shall include the following information:

(i) An identification of the parties that are participating in the survey.

(ii) The identification of each sampling area included in a survey and the dates that the samples were collected in that area.

(iii) For each retail outlet sampled:

(A) The identification of the retail outlet;

(B) The gasoline refiner or gasoline importer brand name displayed, if any;

(C) The fuel dispenser labeling (*e.g.,* "E15");

(D) The sample test result for oxygenate content; and

(E) The test method used to determine oxygenate content under § 80.46(g).

(iv) Ethanol level summary statistics by brand and unbranded for each sampling area, strata, and survey series. These summary statistics shall:

(A) Include the number of samples, the average, median and range of ethanol content, expressed in volume percent.

(B) [Reserved]

(v) The quarterly reports required under this paragraph (b)(5) are due 60 days following the end of the quarter. The annual reports required under this paragraph (b)(5) are due 60 days following the end of the calendar year.

(vi) The reports required under this paragraph (b)(5) shall be submitted to EPA in an electronic spreadsheet.

(6) *Procedures for obtaining approval of survey plan.* The first year in which a survey program is conducted may consist of only a portion of a calendar year ending on December 31 (*i.e.* in the initial year, a survey program may begin on a date after January 1, but would still end on December 31). Subsequent survey programs shall be conducted on a calendar year basis. The procedure for obtaining EPA approval of a survey program plan under this paragraph (b), and for revocation of such approval, is as follows:

(i) For the first year in which a survey will be conducted, a survey program plan that complies with the requirements of this paragraph (b) must be submitted to EPA no later than 60 days prior to the date on which the survey program is to begin.

(ii) For subsequent years in which a survey will be conducted, a survey program plan that complies with the requirements of this paragraph (b) must be submitted to EPA no later than November 1 of the year preceding the calendar year in which the survey will be conducted.

(iii) The survey program plan must be signed by a responsible officer of the consortium which arranges to have an independent surveyor conduct the survey program.

(iv) The survey program plan must be sent to the following address: Director, Compliance and Innovative Strategies Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Mail Code 6506J, Washington, DC 20460.

(v) EPA will send a letter to the party submitting the survey program plan that indicates whether EPA approves or disapproves the survey plan.

(vi) EPA may revoke its approval of a survey plan if EPA determines that the requirements in this section have not been complied with, or that the provisions of the survey plan approved by EPA pursuant to paragraph (b)(6)(v) of this section have not been diligently implemented.

(vii) The approving official for a survey plan under this section is the Director of the Compliance and Innovative Strategies Division, Office of Transportation and Air Quality.

(viii) Any notifications or reports required to be submitted to EPA under this paragraph (b) must be directed to the official designated in paragraph (b)(6)(iv) of this section.

(7) *Independent surveyor contract.*

(i) For the first year in which a survey program will be conducted, no later than 30 days preceding the start of the survey, the contract with the independent surveyor shall be in effect, and an amount of money necessary to carry out the entire survey plan shall be paid to the independent surveyor or placed into an escrow account with instructions to the escrow agent to pay the money to the independent surveyor during the course of the conduct of the survey plan.

(ii) For subsequent years in which a survey program will be conducted, no later than December 1 of the year preceding the year in which the survey will be conducted, the contract with the independent surveyor shall be in effect, and an amount of money necessary to carry out the entire survey plan shall be paid to the independent surveyor or placed into an escrow account with instructions to the escrow agent to pay the money to the independent surveyor during the course of the conduct of the survey plan.

(iii) For the first year in which a survey program will be conducted, no later than 15 days preceding the start of the survey EPA must receive a copy of the contract with the independent surveyor and proof that the money necessary to carry out the survey plan has either been paid to the independent surveyor or placed into an escrow account; if the money has been placed into an escrow account, a copy of the escrow agreement must to be sent to the official designated in paragraph (b)(6)(iv) of this section.

(iv) For subsequent years in which a survey program will be conducted, no later than December 15 of the year preceding the year in which the survey will be conducted, EPA must receive a copy of the contract with the independent surveyor and proof that the money necessary to carry out the survey plan has either been paid to the independent surveyor or placed into an escrow account; if placed into an escrow account, a copy of the escrow agreement must be sent to the official designated in paragraph (b)(6)(iv) of this section.

(8) *Failure to fulfill requirements.* A failure to fulfill or cause to be fulfilled any of the requirements of this paragraph (b) is a prohibited act under Clean Air Act section 211(c) and § 80.1504.

§ 80.1503 What are the product transfer document requirements for gasoline-ethanol blends, base gasolines, and conventional blendstocks for oxygenate blending subject to this subpart?

(a) *Product transfer documentation for conventional blendstock for oxygenate blending, or base gasoline transferred upstream of an ethanol blending facility.*

(1) In addition to any other product transfer document requirements under 40 CFR part 80, on each occasion when any person transfers custody or title to any conventional blendstock for oxygenate blending which could become conventional gasoline solely upon the addition of ethanol, or base gasoline upstream of an oxygenate blending facility, as defined in § 80.2(ll),

the transferor shall provide to the transferee product transfer documents which include the following information:

(i) The name and address of the transferor;

(ii) The name and address of the transferee;

(iii) The volume of conventional blendstock for oxygenate blending or gasoline being transferred;

(iv) The location of the conventional blendstock for oxygenate blending or gasoline at the time of the transfer;

(v) The date of the transfer;

(vi) For gasoline during the regulatory control periods defined in § 80.27(a)(1):

(A) The maximum Reid Vapor Pressure (RVP), as determined by a method permitted under § 80.46(c), stated in the following format: "The RVP of this base gasoline does not exceed [fill in appropriate value]"; and

(B) For base gasoline designed for the special provisions for gasoline-ethanol blends in § 80.27(d)(2), information about the suitable ethanol content stated in the following format: "Designed for the special RVP provisions for ethanol blends that contain between 9 and 10 volume % ethanol."

(C) For base gasoline not described in paragraph (a)(vi)(B) of this section, information regarding the suitable ethanol content, stated in the following format: "Suitable for blending with ethanol at a concentration of no more than 15 volume percent ethanol."

(2) The requirements in paragraph (a)(1) do not apply to reformulated gasoline blendstock for oxygenate blending, as defined in § 80.2(kk), which are subject to the product transfer document requirements of § 80.69 and § 80.77.

(b) *Product transfer documentation for gasoline transferred downstream of an oxygenate blending facility.*

(1) In addition to any other product transfer document requirements under 40 CFR part 80, on each occasion when any person transfers custody or title to any gasoline-ethanol blend downstream of an oxygenate blending facility, as defined in § 80.2(ll), except for transfers to the ultimate consumer, the transferor shall provide to the transferee product transfer documents which include the following information:

(i) The name and address of the transferor;

(ii) The name and address of the transferee;

(iii) The volume of gasoline being transferred;

(iv) The location of the gasoline at the time of the transfer;

(v) The date of the transfer; and

(vi) One of the statements detailed in paragraph (b)(1)(vi)(A) though (E) which accurately describes the gasoline-ethanol blend. The information regarding the ethanol content of the fuel is required year-round. The information regarding the RVP of the fuel is only required for gasoline during the regulatory control periods defined in § 80.27(a)(1).

(A) For gasoline containing no ethanol (E0), the following statement: "E0: Contains no ethanol. The RVP does not exceed [fill in appropriate value] psi."

(B) For gasoline containing less than 9 volume percent ethanol, the following statement: "EX—Contains up to X% ethanol. The RVP does not exceed [fill in appropriate value] psi." The term X refers to the maximum volume percent ethanol present in the gasoline.

(C) For gasoline containing between 9 and 10 volume percent ethanol (E10), the following statement: "E10: Contains between 9 and 10 volume percent ethanol. The RVP does not exceed [fill in appropriate value] psi."

(D) For gasoline containing greater than 10 volume percent and not more than 15 volume percent ethanol (E15), the following statement: "E15: Contains up to 15 volume percent ethanol. The RVP does not exceed [fill in appropriate value] psi;" or

(E) For all other gasoline that contains ethanol, the following statement: "EXX—Contains no more than XX% ethanol," where XX equals the volume % ethanol.

(2) Except for transfers to truck carriers, retailers, or wholesale purchaser-consumers, product codes may be used to convey the information required under paragraph (b)(1) of this section if such codes are clearly understood by each transferee.

(c) The records required by this section must be kept by the transferor and transferee for five (5) years from the date they were created or received by each party in the distribution system.

(d) On request by EPA, the records required by this section must be made available to the Administrator or the Administrator's authorized representative. For records that are electronically generated or maintained, the equipment or software necessary to read the records shall be made available, or, if requested by EPA, electronic records shall be converted to paper documents.

§ 80.1504 What acts are prohibited under this subpart?

No person shall—

(a)(1) Sell, introduce, or cause or allow the sale or introduction of gasoline containing greater than 10 volume % ethanol (*i.e.,* greater than E10) into any model year 2000 or older light duty gasoline motor vehicle, any heavy-duty gasoline motor vehicle or engine, any highway or off-highway motorcycle, or any gasoline-powered nonroad engines, vehicles or equipment;

(2) Notwithstanding § 80.1504(a)(1), no person shall be prohibited from selling, introducing, or causing or allowing the sale or introduction of gasoline containing greater than 10 volume % ethanol into any flex-fuel vehicle.

(b) Sell, offer for sale, dispense, or otherwise make available at a retail or wholesale purchaser-consumer facility a gasoline-ethanol blend that is not correctly labeled as to its ethanol content in accordance with § 80.1501;

(c) Fail to fulfill, or cause a failure of the fulfillment of, any survey required under § 80.1502;

(d) Fail to generate, use, transfer and maintain product transfer documents that accurately reflect the type of product, ethanol content, maximum Reid Vapor pressure (RVP), and other information required under § 80.1503;

(e) Improperly blend, or cause the improper blending of, ethanol into conventional blendstock for oxygenate blending, base gasoline or gasoline already containing ethanol, in a manner inconsistent with the information on the product transfer document under § 80.1503(a)(1)(vi) or § 80.1503(b)(1)(vi);

(f) For gasoline during the regulatory control periods defined in § 80.27(a)(1), combine any base gasoline or conventional blendstock for oxygenate blending intended for blending with E10 that took advantage of the 1 psi waiver applicable for 9–10 volume percent gasoline-ethanol blends with any gasoline or conventional blendstock for oxygenate blending intended for blending with E15, unless the resultant combination is designated, in its entirety, as an E10 blendstock for oxygenate blending.

(g) For gasoline during the regulatory control periods defined in § 80.27(a)(1), combine any gasoline-ethanol blend containing E10 that took advantage of the 1 psi waiver applicable to 9–10 volume percent gasoline-ethanol blends, with any gasoline containing E0 or any gasoline blend containing E15.

(h) Fail to meet any other requirement of this subpart.

(i) Cause another person to commit an act in violation of paragraphs (a) through (h) of this section.

§ 80.1505 Who is liable for violations of this subpart?

(a) *Persons liable.* Any person who violates § 80.1504(a) through (i) is liable for the violation. In addition, when the gasoline contained in any storage tank at

any facility owned, leased, operated, controlled or supervised by any gasoline refiner, gasoline importer, oxygenate blender, carrier, distributor, reseller, retailer, or wholesale purchaser-consumer is found in violation of the prohibitions described in § 80.1504(a), and (c) through (i), the following persons shall be deemed in violation:

(1) Each gasoline refiner, gasoline importer, oxygenate blender, carrier, distributor, reseller, retailer, or wholesale purchaser-consumer who owns, leases, operates, controls or supervises the facility where the violation is found.

(2) Each gasoline refiner or gasoline importer whose corporate, trade, or brand name, or whose marketing subsidiary's corporate, trade, or brand name, appears at the facility where the violation is found.

(3) Each gasoline refiner, gasoline importer, oxygenate blender, distributor, and reseller who manufactured, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of any gasoline which is in the storage tank containing gasoline found to be in violation.

(4) Each carrier who dispensed, supplied, stored, or transported any gasoline which is in the storage tank containing gasoline found to be in violation, provided that EPA demonstrates, by reasonably specific showings using direct or circumstantial evidence, that the carrier caused the violation.

(b) For label violations under § 80.1504(b), only the wholesale purchaser-consumer or retailer and the branded gasoline refiner or branded gasoline importer, if any, shall be liable.

(c) Each partner to a joint venture, or each owner of a facility owned by two or more owners, is jointly and severally liable for any violation of this subpart that occurs at the joint venture facility or a facility that is owned by the joint owners, or a facility that is committed by the joint venture operation or any of the joint owners of the facility.

(d) Any parent corporation is liable for any violations of this subpart that are committed by any of its solely-owned subsidiaries.

§ 80.1506 What penalties apply under this subpart?

(a) Any person under § 80.1505 who is liable for a violation under § 80.1504 is subject to an administrative or civil penalty, as specified in sections 205 and 211(d) of the Clean Air Act, for every day of each such violation and the amount of economic benefit or savings resulting from the violation.

(b)(1) Any violation of any requirement that pertains to the ethanol content of gasoline shall constitute a separate day of violation for each and every day such gasoline giving rise to such violations remains any place in the gasoline distribution system, beginning on the day that the gasoline that violates such requirement is produced or imported and distributed and/or offered for sale, and ending on the last day that any such gasoline is offered for sale or is dispensed to any ultimate consumer for use in any motor vehicle, unless the violation is corrected by altering the properties and characteristics of the gasoline giving rise to the violations and any mixture of gasolines that contains any of the gasoline giving rise to the violations such that the gasoline or mixture of gasolines has the properties and characteristics that would have existed if the gasoline giving rise to the violations had been produced or imported in compliance with all requirements that pertain to the ethanol content of gasoline.

(2) For the purposes of this paragraph (b), the length of time the gasoline in question remained in the gasoline distribution system shall be deemed to be twenty-five days; unless the respective party or EPA demonstrates by reasonably specific showings, using direct or circumstantial evidence, that the gasoline giving rise to the violations remained any place in the gasoline distribution system for fewer than or more than twenty-five days.

(c) Any violation of any affirmative requirement or prohibition not included in paragraph (b) of this section shall constitute a separate day of violation for each and every day such affirmative requirement is not properly accomplished, and/or for each and every day the prohibited activity continues. For those violations that may be ongoing each and every day the prohibited activity continues shall constitute a separate day of violation.

§ 80.1507 What are the defenses for acts prohibited under this subpart?

(a) *Defenses for prohibited activities.*

(1) In any case in which a gasoline refiner, gasoline importer, oxygenate blender, carrier, distributor, reseller, retailer, or wholesale purchaser-consumer would be in violation under § 80.1504(a), and (c) through (i) it shall be deemed not in violation if it can demonstrate:

(i) That the violation was not committed or caused by the regulated party or its employee or agent;

(ii) That product transfer documents account for all of the gasoline in the storage tank found in violation and indicate that the gasoline met relevant requirements; and

(iii)(A) That it has conducted a quality assurance program, including a sampling and testing program, as described in paragraph (b) of this section;

(B) A carrier may rely on the sampling and testing program carried out by another party, including the party that owns the gasoline in question, provided that the sampling and testing program is carried out properly.

(2)(i) Where a violation is found at a facility which is operating under the corporate, trade or brand name of a refiner, that refiner must show, in addition to the defense elements required by paragraph (a)(1) of this section, that the violation was caused by:

(A) An act in violation of law (other than the Act or this part), or an act of sabotage or vandalism;

(B) The action of any reseller, distributor, oxygenate blender, carrier, or a retailer or wholesale purchaser-consumer supplied by any of these persons, in violation of a contractual undertaking imposed by the gasoline refiner designed to prevent such action, and despite periodic sampling and testing by the gasoline refiner to ensure compliance with such contractual obligation; or

(C) The action of any carrier or other distributor not subject to a contract with the gasoline refiner but engaged by the gasoline refiner for transportation of gasoline, despite specification or inspection of procedures and equipment by the gasoline refiner which are reasonably calculated to prevent such action.

(ii) In this paragraph (a), to show that the violation "was caused" by any of the specified actions the party must demonstrate by reasonably specific showings using direct or circumstantial evidence, that the violation was caused or must have been caused by another.

(3) For label violations under § 80.1504(b), the branded gasoline refiner or branded gasoline importer shall not be deemed liable if the requirements of paragraph (b)(4) of this section are met.

(b) *Quality assurance program.* In order to demonstrate an acceptable quality assurance program for gasoline at all points in the gasoline distribution network, other than at retail outlets and wholesale purchaser-consumer facilities, a party must present evidence of the following in addition to other regular appropriate quality assurance procedures and practices.

(1) A periodic sampling and testing program to determine if the gasoline

contains applicable maximum and/or minimum volume percent of ethanol.

(2) That on each occasion when gasoline is found in noncompliance with one of the requirements referred to in paragraph (b)(1) of this section:

(i) The party immediately ceases selling, offering for sale, dispensing, supplying, offering for supply, storing, transporting, or causing the transportation of the violating product; and

(ii) The party promptly remedies the violation (such as by removing the violating product or adding more complying product until the applicable requirements are achieved).

(3) An oversight program conducted by a carrier under paragraph (b)(1) of this section need not include periodic sampling and testing of gasoline in a tank truck operated by a common carrier, but in lieu of such tank truck sampling and testing the common carrier shall demonstrate evidence of an oversight program for monitoring compliance with the requirements of § 80.1504 relating to the transport or storage of gasoline by tank truck, such as appropriate guidance to drivers on compliance with applicable requirements and the periodic review of records normally received in the ordinary course of business concerning gasoline quality and delivery.

(4) The periodic sampling and testing program specified in paragraph (b)(1) of this section shall be deemed to have been in effect during the relevant time period for any party, including branded gasoline refiners and branded gasoline importers, if:

(i) An EPA approved survey program under § 80.1502 was in effect and was executed fully and properly;

(ii) Any retailer at which a violation was discovered allowed survey inspectors to take samples and inspect labels; and

(iii) For truck loading terminals and truck distributors that perform oxygenate blending, additional quality assurance procedures and practices were in place, such as regular checks to reconcile volumes of ethanol in inventory and regular checks of equipment for proper ethanol blend rates.

§ 80.1508 What evidence may be used to determine compliance with the requirements of this subpart and liability for violations of this subpart?

(a) Compliance with the requirements of this subpart pertaining to the ethanol content of gasoline shall be determined based on the ethanol level of the gasoline, measured using the methodologies specified in § 80.46(g). Any evidence or information, including the exclusive use of such evidence or information, may be used to establish the ethanol content of gasoline if the evidence or information is relevant to whether the ethanol content of gasoline would have been in compliance with the requirements of this subpart if the appropriate sampling and testing methodology had been correctly performed. Such evidence may be obtained from any source or location and may include, but is not limited to, test results using methods other than those specified in § 80.46(g), business records, and commercial documents.

(b) Determinations of compliance with the requirements of this subpart other than those pertaining to the ethanol content of gasoline, and determinations of liability for any violation of this subpart, may be based on information obtained from any source or location. Such information may include, but is not limited to, business records and commercial documents.

[FR Doc. 2010–27446 Filed 11–3–10; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Thursday,
November 4, 2010

Part III

Environmental Protection Agency

Partial Grant and Partial Denial of Clean Air Act Waiver Application Submitted by Growth Energy To Increase the Allowable Ethanol Content of Gasoline to 15 Percent; Decision of the Administrator; Notice

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2009–0211; FRL–9215–5]

Partial Grant and Partial Denial of Clean Air Act Waiver Application Submitted by Growth Energy To Increase the Allowable Ethanol Content of Gasoline to 15 Percent; Decision of the Administrator

AGENCY: Environmental Protection Agency.

ACTION: Notice of partial waiver decision.

SUMMARY: The Environmental Protection Agency (EPA) is partially granting Growth Energy's waiver request application submitted under section 211(f)(4) of the Clean Air Act. This partial waiver allows fuel and fuel additive manufacturers to introduce into commerce gasoline that contains greater than 10 volume percent ethanol and no more than 15 volume percent ethanol (E15) for use in certain motor vehicles if certain conditions are fulfilled. We are partially approving the waiver for and allowing the introduction into commerce of E15 for use only in model year 2007 and newer light-duty motor vehicles, which includes passenger cars, light-duty trucks and medium-duty passenger vehicles. We are denying the waiver for introduction of E15 for use in model year 2000 and older light-duty motor vehicles, as well as all heavy-duty gasoline engines and vehicles, highway and off-highway motorcycles, and nonroad engines, vehicles, and equipment. The Agency is deferring a decision on the applicability of a waiver to model year 2001 through 2006 light-duty motor vehicles until additional test data, currently under development, is available.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2009–0211. All documents and public comments in the docket are listed on the *http://www.regulations.gov* Web site. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The telephone number for the Reading Room is (202) 566–1744. The Air and Radiation Docket and Information Center's Web site is *http://www.epa.gov/oar/docket.html*. The electronic mail (e-mail) address for the Air and Radiation Docket is: *a-and-r-Docket@epa.gov*, the telephone number is (202) 566–1742 and the fax number is (202) 566–9744.

FOR FURTHER INFORMATION CONTACT: Robert Anderson, Office of Transportation and Air Quality, Mailcode: 6405J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (202) 343–9718; *fax number:* (202) 343–2800; *e-mail address: Anderson.Robert@epa.gov.*

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I. Executive Summary

In March 2009, Growth Energy and 54 ethanol manufacturers petitioned the Environmental Protection Agency ("EPA" or "The Agency") to allow the introduction into commerce of up to 15 volume percent (vol%) ethanol in gasoline. In April 2009, EPA sought public comment on the Growth Energy petition and subsequently received about 78,000 comments. Prior to today's action, ethanol was limited to 10 vol% in motor vehicle gasoline (E10).

In today's action, EPA is partially granting Growth Energy's waiver request based on our careful analysis of the available information, including test data and public comments. This partial grant waives the prohibition on fuel and fuel additive manufacturers on the introduction into commerce of gasoline containing greater than 10 vol% ethanol and no more than 15 vol% ethanol (E15) for use in certain motor vehicles. More specifically, today's action has two components. First, we are approving the waiver for and allowing the introduction into commerce of E15 for use in Model Year (MY) 2007 and newer light-duty motor vehicles, which includes passenger cars, light-duty trucks, and medium-duty passenger vehicles.[1] Second, we are denying the waiver for introduction into commerce of E15 for use in MY2000 and older light-duty motor vehicles, as well as heavy-duty gasoline highway engines and vehicles (*e.g.,* delivery trucks). Highway and off-highway motorcycles, and nonroad engines, vehicles, and equipment (nonroad products; *e.g.,* boats, snowmobiles, and lawnmowers) typically use the same gasoline as highway motor vehicles; this decision is also a denial of a waiver for introducing motor vehicle gasoline into commerce containing more than 10 vol% ethanol for use in all of those products. The Agency is deferring a decision on the applicability of a waiver with respect to MY2001–2006 light-duty motor vehicles to await additional test data. The Department of Energy (DOE) has stated that it will complete testing on these vehicles in November, after which EPA will take appropriate action.

To help ensure that E15 is only used in MY2007 and newer light-duty motor vehicles, EPA has developed a proposed rule (described below) with the express purpose of mitigating the potential for misfueling of E15 into vehicles and engines not approved for its use. EPA believes the proposed safeguards against misfueling would provide the most practical way to mitigate the potential for misfueling with E15. Moreover, the proposed rule, when adopted, would satisfy the misfueling mitigation conditions of today's partial waiver described below and would promote the successful introduction of E15 into commerce. However, if parties covered by this waiver (fuel and fuel additive manufacturers, which include renewable fuel producers and importers, petroleum refiners and importers, and ethanol blenders) desire to introduce E15 into commerce prior to a final rule being issued, they may do so provided they submit and EPA approves a plan that demonstrates that the misfueling mitigation conditions will be satisfied. In addition to the misfueling mitigation conditions, E15 must also meet certain fuel quality specifications before it may be introduced into commerce.

To receive a waiver, as prescribed by the Clean Air Act, a fuel or fuel additive manufacturer must demonstrate that a new fuel or fuel additive will not cause or contribute to the failure of an engine or vehicle to achieve compliance with the emission standards to which it has been certified over its useful life. Reflecting that EPA's emission standards have continued to evolve and become more stringent over time, the in-use fleet is composed of vehicles and engines spanning not only different technologies, but also different emissions standards. Since ethanol affects different aspects of emissions, a wide range of data and information covering a wide range of highway and nonroad vehicles, engines, and equipment would be necessary for approval of an E15 waiver that would allow E15 to be introduced into commerce for use in all motor vehicles and all other engines and vehicles using motor vehicle gasoline ("full waiver"). Growth Energy did not provide the necessary information to support a full waiver in several key areas, especially long-term durability emissions data necessary to ensure that all motor vehicles, heavy-duty gasoline highway engines and vehicles, highway and off-highway motorcycles and nonroad products would continue to comply with their emission standards over their full useful life. In 2008, DOE began emissions durability testing on 19 Tier 2 motor vehicle models that would provide this data for MY2007 and newer light-duty motor vehicles ("DOE Catalyst Study").[2] Consequently, the Agency delayed a decision until the DOE test program was completed for these motor vehicles in September 2010.

EPA reached its decision on the waiver request based on the results of the DOE Catalyst Study and other information and test data submitted by Growth Energy and in public comments. EPA also applied engineering judgment, based on the data in reaching its decision. Specifically, consistent with past waiver decisions, the Agency evaluated Growth Energy's waiver request and made its decision based on four factors: (1) Exhaust emissions impacts—long-term (known as durability) and immediate; (2) evaporative system impacts—both immediate and long-term; (3) the impact of materials compatibility on emissions; and, (4) the impact of drivability and operability on emissions. The Agency's conclusions are summarized below and additional information on each subject is provided later in this decision document.

MY2007 and Newer Light-Duty Motor Vehicles

For MY2007 and newer light-duty motor vehicles, the DOE Catalyst Study and other information before EPA adequately demonstrates that the impact of E15 on overall emissions, including both immediate[3] and durability related

[1] For purposes of today's decision, "MY2007 and newer light-duty motor vehicles" include MY2007 and newer light-duty motor vehicles (LDV), light-duty trucks (LDT), and medium-duty passenger vehicles (MDPV).

[2] DOE embarked on the study, in consultation with EPA, auto manufacturers, fuel providers and others, after enactment of the Energy Independence and Security Act of 2007, which significantly expanded the Federal Renewable Fuel Standard Program for increasing the use of renewable fuels in transportation fuel in order to reduce imported petroleum and emissions of greenhouse gases.

[3] In past waiver decisions, we have referred to "immediate" emissions as "instantaneous"

Continued

emissions, will not cause or contribute to violations of the emissions standards for these motor vehicles. Likewise, the data and information adequately show that E15 will not lead to violations of the evaporative emissions standards, so long as the fuel does not exceed a Reid Vapor Pressure (RVP) of 9.0 psi in the summertime control season.[4] The information on materials compatibility and drivability also supports this conclusion.

Durability/Long-Term Exhaust Emissions

The DOE Catalyst Study involved 19 high sales volume car and light-duty truck models (MY2005–2009 motor vehicles produced by the top U.S. sales-based automobile manufacturers) that are all designed for and subject to the Tier 2 motor vehicle emission standards. The purpose of the program was to evaluate the long term effects of E0 (gasoline that contains no ethanol and is the certification test fuel for emissions testing), E10, E15, and E20 (a gasoline-ethanol blend containing 20 vol% ethanol) on the durability of the exhaust emissions control system, especially the catalytic converter (catalyst), for Tier 2 motor vehicles. Analysis of the motor vehicles' emissions results at full useful life (120,000 miles) and emissions deterioration rates showed no significant difference between the E0 and E15 fueled groups. Three motor vehicles aged on EO fuel had failing emissions levels and one additional motor vehicle failed one of several replicate tests. One E15-aged motor vehicle had failing emissions.[5] However, none of the emissions failures appeared to be related to the fuel used. There were no emissions component or material failures during aging that were related to fueling. In addition, a review of the emission deterioration rates over the course of the test program revealed no statistically significant difference in emissions deterioration with E15 in comparison to E0. Using standard statistical tools, the test results support the conclusion that E15 does not cause or contribute to the failure of MY2007 and newer light-duty motor vehicles in achieving their emissions standards over their useful lives. These results confirm EPA's engineering assessment that the changes manufacturers made to their motor vehicles (calibration, hardware, *etc.*) to comply with the Agency's stringent Tier 2 emission standards (which began to phase in with MY2004) have resulted in the capability of Tier 2 motor vehicles to accommodate the additional enleanment caused by E15 and be compatible with ethanol concentrations up to E15.[6]. EPA's certification data show that all gasoline-fueled cars and light-duty trucks were fully phased in to the Tier 2 standards by MY2007 even though the program did not require the phase-in to be complete until MY2009. Consequently, EPA believes it appropriate to apply these test results to all MY2007 and newer light-duty motor vehicles.

Immediate Exhaust Emissions

Scientific information supports a conclusion that motor vehicles experience an immediate emissions impact independent of motor vehicle age (and therefore emission control technology) when operating on gasoline-ethanol blends. Nitrogen oxide (NO_X) emissions generally increase while volatile organic compound (VOC) and carbon monoxide (CO) emissions decrease. The available data supports a conclusion that the immediate emissions impacts of E15 on Tier 2 motor vehicles are likely to have the same pattern as the immediate emissions impacts of E10 on older motor vehicles (*i.e.,* NO_X emissions increase while VOC and CO emissions decrease). Although the magnitude of the immediate impact is expected to be slightly greater with E15, Tier 2 motor vehicles generally have a significant compliance margin at the time of certification and later on in-use (when they are in customer service) that should allow them to meet their emission standards even if they experience the predicted immediate NO_X increases from E15 when compared to E0. The results of the DOE Catalyst Study reflect both the immediate emissions effects as well as any durability effects as described above, and the Tier 2 motor vehicles continued to comply with their emissions standards at their full useful life. As noted above, none of the emissions failures appeared to be related to the fuel used. Based on this immediate exhaust emissions information, coupled with the durability test data and conclusions, E15 is not expected to cause Tier 2 motor vehicles to exceed their exhaust standards over their useful lives when operated on E15.

Evaporative Emissions

Both diurnal and running loss evaporative emissions increase as fuel volatility increases. Diurnal evaporative emissions occur when motor vehicles are not operating and experience the change in temperature during the day, such as while parked. Running loss evaporative emissions occur while motor vehicles are being operated. Reid Vapor Pressure (RVP) is the common measure of the volatility of gasoline. E15 that meets an RVP limit of 9.0 pounds per square inch (psi) during the summer (which is equal to the RVP of E0) should not produce higher diurnal or running loss evaporative emissions than E0. We expect MY2007 and newer vehicles to meet evaporative emissions standard on 9.0 psi E15. There are concerns with E15 having an RVP greater than 9.0 psi. When ethanol is blended at 15 vol%, a 10.0 psi RVP fuel compared to 9.0 psi RVP fuel will have substantially higher evaporative emissions levels that must be captured by the emissions control system (a carbon filled canister and related system elements). This increase in evaporative emissions is beyond what manufacturers have been required to control, based on the motor vehicle certification testing for the emissions standards. Test results highlight the concern that fuel with an RVP greater than 9.0 psi during the summer will lead to motor vehicles exceeding their evaporative emission standards in-use. Additionally, as explained in the misfueling mitigation measures proposed rule, EPA interprets the 1.0 psi waiver in CAA section 211(h) as being limited to gasoline-ethanol blends that contain 10 vol% ethanol. Therefore, given the significant potential for increased evaporative emissions at higher gasoline volatility levels, and the lack of data to resolve how this would impact compliance with the emissions standards, today's waiver is limited to E15 with a summertime RVP no higher than 9.0 psi.

Other potential issues for evaporative emissions of motor vehicles operated on E15 are increased permeation and long-term (durability) impacts.[7] Available test data indicate that for Tier 2 motor vehicles any increase in evaporative emissions as a result of permeation is limited and within the evaporative

emissions. "Immediate" and "instantaneous" are synonymous in this context.

[4] EPA regulates the vapor pressure of gasoline sold at retail stations during the summer ozone season (June 1 to September 15) to reduce evaporative emissions from gasoline that contribute to ground-level ozone and diminish the effects of ozone-related health problems. Gasoline needs a higher vapor pressure in the wintertime for cold start purposes.

[5] It should be noted that the Dodge Caliber vehicle aged on E15 failed Tier 2 Bin 5 FUL standards on E0. However, this vehicle met Tier 2 Bin 5 FUL standards when tested on E15. The Agency could not determine the cause.

[6] *See* 65 FR 6698 (February 10, 2000).

[7] Permeation refers to the migration of fuel molecules through the walls of elastomers used for fuel system components.

compliance margins for these motor vehicles. This is consistent with the demonstration of evaporative emissions system durability after aging on E10 that was required beginning with the Tier 2 motor vehicle standards, for the purpose of limiting permeation. With respect to durability of the evaporative emissions control systems, data from several aspects of the DOE Catalyst Study point to the expected durability of the evaporative emissions control system of Tier 2 motor vehicles on E15. First, there appears to be no evidence of an increase in evaporative emissions system onboard diagnostic system codes being triggered by E15 compared to E0. Second, teardown results of the 12 motor vehicles tested (six models with E0 and six models with E15) found no abnormalities for E15 motor vehicles compared to E0 motor vehicles.[8] Finally, evaporative testing on four of the Tier 2 motor vehicles over the course of the test program found no increased deterioration in evaporative emissions with E15 in comparison to E0.[9] Therefore, after taking into account all of these sources of evaporative emissions data, the evidence supports a conclusion that as long as E15 meets a summertime control season gasoline volatility level of no higher than 9.0 psi, E15 is not expected to cause or contribute to exceedances of the evaporative emission standards over the full useful life of Tier 2 motor vehicles.

Materials Compatibility

Materials compatibility is a key factor in considering a fuel or fuel additive waiver insofar as poor materials compatibility can lead to serious exhaust and evaporative emission compliance problems not only immediately upon use of the new fuel or fuel additive, but especially over the full useful life of vehicles and engines. As part of its E15 waiver application, Growth Energy submitted a series of studies completed by the State of Minnesota and the Renewable Fuels Association (RFA) that investigated materials compatibility of motor vehicle engines and engine components using three test fuels: E0, E10, and E20. The materials studied included what were considered to be many of the common metals, elastomers, and plastics used in motor vehicle fuel systems. Growth Energy concluded that E15 would not be problematic for current automotive or fuel dispensing equipment. While directionally illustrative, the materials compatibility information submitted by Growth Energy does not encompass all materials used in motor vehicle fuel systems, and the test procedures used are not representative of the dynamic real-world conditions under which the materials must perform. The information is therefore insufficient by itself to adequately assess the potential material compatibility of E15. However, the information generated through the DOE Catalyst Study demonstrates that MY2007 and newer light-duty motor vehicles will not experience materials compatibility issues that lead to exhaust or evaporative emission exceedances. The DOE Catalyst Study supports the Agency's engineering assessment that newer motor vehicles such as those subject to EPA's Tier 2 standards, were designed to encounter more regular ethanol exposure compared to earlier model year motor vehicles. Other regulatory requirements also placed an emphasis on real world motor vehicle testing, which in turn prompted manufacturers to consider different available fuels when developing and testing their emissions systems. Additionally, beginning with Tier 2, the evaporative durability demonstration procedures required the use of E10. As a result, based on the information before us, we do not expect E15 to raise emissions related materials compatibility issues for Tier 2 motor vehicles.

Drivability and Operability

There is no evidence from any of the test programs cited by Growth Energy or in the data from the DOE Catalyst Study of driveability issues for Tier 2 motor vehicles fueled with E15 that would indicate that use of E15 would lead to increased emissions or that might cause motor vehicle owners to want to tamper with the emission control system of their motor vehicle. The Agency reviewed the data and reports from the different test programs, and found no specific report of driveability or operability issues across the many different motor vehicles and duty cycles, including lab testing and in-use operation.

MY2000 and Older Light-Duty Motor Vehicles

For MY2000 and older motor vehicles, the data and information before EPA fail to adequately demonstrate that the impact of E15 on exhaust emissions—both immediate and durability-related—will not cause or contribute to violations of the emissions standards for these motor vehicles. MY2000 and older motor vehicles do not have the sophisticated emissions control systems of today's Tier 2 motor vehicles, and there is an engineering basis to believe they may experience conditions affecting catalyst durability that lead to emission increases if operated on E15. This emissions impact, over time, combined with the expected immediate increase in NO_X emissions from the use of E15, provides a clear basis for concern that E15 could cause these motor vehicles to exceed their emissions standards over their useful lives. Furthermore, some MY2000 and older motor vehicles were likely designed for no more than limited exposure to ethanol, since gasoline-ethanol blends were not used in most areas of the country at the time they were designed. Their fuel systems, evaporative emissions control systems, and internal engine components may not have been designed and tested for long-term durability, materials compatibility, or drivability with fuels containing ethanol. The limited exhaust emissions durability test data, evaporative emissions durability test data, and real-world materials compatibility test data either provided by Growth Energy in their petition or available in the public domain do not address or resolve these concerns. Therefore, the information before the Agency is not adequate to make the demonstration needed to grant a waiver for the introduction into commerce of E15 for use in MY2000 and older light-duty motor vehicles.

MY2001–2006 Light-Duty Motor Vehicles

EPA is deferring a decision on MY2001–2006 light-duty motor vehicles. DOE is in the process of conducting additional catalyst durability testing that will provide data regarding MY2001–2006 motor vehicles. The DOE testing is scheduled to be completed by the end of November 2010. EPA will make the DOE test results available to the public and consider the results and other available data and information in making a determination on the introduction into commerce of E15 for use in those model year motor vehicles. EPA expects to make a determination for these motor vehicles shortly after the results of DOE testing are available.

Nonroad Engines, Vehicles, and Equipment (Nonroad Products)

The nonroad product market is extremely diverse. Nonroad products

[8] Southwest Research Institute Project 08–58845 Status Report, "Powertrain Component Inspection from Mid-Level Blends Vehicle Aging Study," September 6, 2010. *See* EPA–HQ–OAR–2009–0211–14016.

[9] Environmental Testing Corporation NREL Subcontract JGC–9–99141–01 Presentation, "Vehicle Aging and Comparative Emissions testing Using E0 and E15 Fuels: Evaporative Emissions Results," August 31, 2010. *See* EPA–HQ–OAR–2009–0211–14015.

with gasoline engines include lawn mowers, chainsaws, forklifts, boats, personal watercraft, and all-terrain vehicles. Growth Energy did not provide information needed to broadly assess the potential impact of E15 on compliance of nonroad products with applicable emissions standards. Nonroad products typically have more basic engine designs, fuel systems, and controls than light-duty motor vehicles. The Agency has reasons for concern with the use of E15 in nonroad products, particularly with respect to long-term exhaust and evaporative emissions durability and materials compatibility. The limited information provided by Growth Energy and commenters, or otherwise available in the public domain, did not alleviate these concerns. As such, the Agency cannot grant a waiver for introduction into commerce of E15 motor vehicle gasoline that is also for use in nonroad products.

Heavy-Duty Gasoline Engines and Vehicles

Given their relatively small volume compared to light-duty motor vehicles, heavy-duty gasoline engines and vehicles have not been the focus of test programs and efforts to assess the potential impacts of E15 on them. Growth Energy did not provide any data specifically addressing how heavy-duty gasoline engines' and vehicles' emissions and emissions control systems would be affected by the use of E15 over the full useful lives of these vehicles and engines. Additionally, from a historical perspective, the introduction of heavy-duty gasoline engine and vehicle technology has lagged behind the implementation of similar technology for light-duty motor vehicles. Similarly, emission standards for this sector have lagged behind those of light-duty motor vehicles, such that current heavy-duty gasoline engine standards remain comparable, from a technology standpoint to older light-duty motor vehicle standards. Consequently, we believe the concerns expressed above regarding MY2000 and older motor vehicles are also applicable to the majority of the in-use fleet of heavy-duty gasoline engines and vehicles. As such, the Agency cannot grant a waiver for the introduction into commerce of E15 for use in heavy-duty gasoline engines and motor vehicles.

Highway and Off-Highway Motorcycles

Like heavy-duty gasoline engines and vehicles, highway and off-highway motorcycles have not been the focus of E15 test programs. Growth Energy did not provide any data addressing how motorcycle emissions and emissions control systems would specifically be affected by the use of E15 over their full useful lives. While newer motorcycles incorporate some of the advanced fuel system and emission control technologies that are found in passenger cars and light-duty trucks, such as electronic fuel injection and catalysts, many do not have the specific control technology of today's motor vehicles (advanced fuel trim control) that would allow them to adjust to the higher oxygen content of E15. More importantly, older motorcycles do not have any of these technologies and are therefore more on par with nonroad products in some cases and MY2000 and older motor vehicles in others. As such, the Agency cannot grant a waiver for the introduction into commerce of E15 for use in highway and off-highway motorcycles.

Conditions on Today's Partial Waiver

There are two types of conditions being placed on the partial waiver being granted today: Those for mitigating the potential for misfueling of E15 in all vehicles, engines and equipment for which E15 is not approved, and those addressing fuel and ethanol quality. All of the conditions are discussed further below and are listed in Section XII.

EPA believes that the misfueling mitigation measures in the proposed rule accompanying today's waiver decision would provide the most practical way to ensure that E15 is only used in vehicles for which it is approved. However, if any fuel or fuel additive manufacturer desires to introduce into commerce E15, gasoline intended for use as E15, or ethanol intended for blending with gasoline to create E15, prior to the misfueling mitigation measures rule becoming final and effective, they may do so provided they implement all of the conditions of the partial waiver, including an EPA-approved plan that demonstrates that the fuel or fuel additive manufacturer will implement the misfueling mitigation conditions discussed below.

Misfueling Mitigation Notice of Proposed Rulemaking (NPRM)

As mentioned above, EPA is proposing a regulatory program that would help mitigate the potential for misfueling with E15 and promote the successful introduction of E15 into commerce. The proposal includes several provisions that parallel the misfueling mitigation conditions on the E15 waiver. First, the proposed rule would prohibit the use of gasoline-ethanol blended fuels containing greater than 10 vol% and up to 15 vol% ethanol in vehicles and engines not covered by the partial waiver for E15. Second, the proposed rule would require all fuel dispensers to have a label if a retail station chooses to sell E15, and it seeks comment on separate labeling requirements for blender pumps and fuel pumps that dispense E85. Finally, the proposed rule would require product transfer documents (PTDs) specifying ethanol content and RVP to accompany the transfer of gasoline blended with ethanol as well as a national survey of retail stations to ensure compliance with the these requirements. In addition to proposing actions to mitigate misfueling, the proposed rule would modify the Reformulated Gasoline ("RFG") program by updating the Complex Model to allow fuel manufacturers to certify batches of gasoline containing up to 15 vol% ethanol. Once adopted, these regulations would facilitate the introduction of E15 into commerce under this partial waiver, as certain requirements in the regulations would satisfy certain conditions in the waiver. If EPA adopts such a rule, EPA would consider any appropriate modifications to the conditions of this waiver.

II. Introduction

A. Statutory Background

Section 211(f)(1) of the Clean Air Act ("CAA" or "the Act") makes it unlawful for any manufacturer of any fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use by any person in motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. The Environmental Protection Agency ("EPA" or "the Agency") last issued an interpretive rule on the phrase "substantially similar" at 73 FR 22281 (April 25, 2008). Generally speaking, this interpretive rule describes the types of unleaded gasoline that are likely to be considered "substantially similar" to the unleaded gasoline utilized in EPA's certification program by placing limits on a gasoline's chemical composition as well as its physical properties, including the amount of alcohols and ethers (oxygenates) that may be added to gasoline. Fuels that are found to be "substantially similar" to EPA's certification fuels may be registered and introduced into commerce. The current "substantially similar" interpretive rule for unleaded gasoline allows oxygen content up to 2.7% by weight for certain

ethers and alcohols.[10] E10 (a gasoline-ethanol blend containing 10 vol% ethanol) contains approximately 3.5% oxygen by weight and received a waiver of this prohibition by operation of law under section 211(f)(4).[11] E15 (gasoline-ethanol blended fuels containing greater than 10 vol% ethanol and up to 15 vol% ethanol) has greater than 2.7 wt% oxygen content, and Growth Energy has applied for a waiver under section 211(f)(4) of the Act.

Section 211(f)(4) of the Act provides that upon application of any fuel or fuel additive manufacturer, the Administrator may waive the prohibitions of section 211(f)(1) if the Administrator determines that the applicant has established that such fuel or fuel additive, or a specified concentration thereof, will not cause or contribute to a failure of any emission control device or system (over the useful life of the motor vehicle, motor vehicle engine, nonroad engine or nonroad vehicle in which such device or system is used) to achieve compliance by the vehicle or engine with the emission standards to which it has been certified pursuant to sections 206 and 213(a). In other words, the Administrator may grant a waiver for a prohibited fuel or fuel additive if the applicant can demonstrate that the new fuel or fuel additive will not cause or contribute to engines, vehicles or equipment to fail to meet their emissions standards over their useful lives. The statute requires that the Administrator shall take final action to grant or deny the application, after public notice and comment, within 270 days of receipt of the application.

The current section 211(f)(4) reflects the following changes made by the Energy Independence and Security Act of 2007: (1) Requires consideration of the impact on nonroad engines and nonroad vehicles in a waiver decision; (2) extends the period allowed for consideration of the waiver request application from 180 days to 270 days; and, (3) deletes a provision that resulted in a waiver request becoming effective by operation of law if the Administrator made no decision on the application within 180 days of receipt of the application.[12]

B. Growth Energy Application and Review Process

On March 6, 2009, Growth Energy and 54 ethanol manufacturers (hereafter "Growth Energy") submitted an application to the U.S. Environmental Protection Agency (EPA) for a waiver of the substantially similar prohibition. This application seeks a waiver for gasoline containing up to 15 vol% ethanol. On April 21, 2009, EPA published notice of the receipt of the application, and EPA requested public comment on all aspects of the waiver application for assisting the Administrator in determining whether the statutory basis for granting the waiver request for E15 has been met.[13] EPA originally provided a 30-day period for the public to respond. The deadline for public comment was May 21, 2009.

After multiple requests for additional time to comment, EPA agreed that additional time for comments was appropriate and that an extension of the comment period would aid in providing these stakeholders and others an adequate amount of time to respond to the complex legal and technical issues that result from possibly allowing E15 to be sold commercially. Accordingly, on May 20, 2009, EPA published a **Federal Register** notice extending the public comment period for the E15 waiver application until July 20, 2009.[14] For EPA's response to more recent requests for an additional comment period, *see* section IX.

The Agency received approximately 78,000 comments on the waiver application. The overwhelming majority of these comments were brief comments from individuals indicating either general support for or opposition to the E15 waiver application. The Agency also received a large number of comments from a variety of organizations which substantively addressed the questions which EPA posed in the **Federal Register** notice announcing receipt of the application. These comments are summarized and addressed below.

In addition to the information submitted by Growth Energy and commenters, the Department of Energy (DOE) has been performing, and continues to perform, testing on a variety of motor vehicles focused on the effect E15 might have on motor vehicles after long-term use of E15 ("DOE Catalyst Study"). This testing is a significant source of information on the effects of E15 on the durability of motor vehicles' emissions control systems, a key technical issue to be addressed in EPA's waiver review. This kind of testing requires thousands of miles of mileage accumulation (or its equivalent using a test cell), and the collection of such data requires a significant amount of time to complete.

Coordinating with EPA and stakeholders, DOE expedited the durability testing, first focusing on newer motor vehicles. Realizing that it would take a significant amount of time (months) to finish collecting and evaluating the durability data, EPA notified Growth Energy in a letter on November 30, 2009, that it was not issuing a decision on the waiver at that time but instead planned to issue a decision at a later date based on the need to assess the critical data being generated by the DOE catalyst durability test program.

The DOE Catalyst Study is comprehensive. A total of 82 vehicles are expected to undergo full useful life testing. Motor vehicles are accumulating mileage under an accelerated protocol, which generally results in each motor vehicle being tested over 6–9 months. DOE has completed the first phase of this testing which focused on light-duty motor vehicles certified to Federal Tier 2 emissions standards. The analysis and evaluation of not only this durability data, but all of the data relevant to the Growth Energy application, as well as EPA's partial waiver decision, is discussed and explained below. DOE should complete testing on vehicles certified to National Low Emission Vehicle (NLEV) and Tier 1 Federal emission standards by the end of November.

Various parties have also suggested allowances for the use of E12 (gasoline-ethanol blended fuel that contains 12 vol% ethanol) for all gasoline-powered vehicles and engines. The issue of E12 is also discussed separately below in Section VIII.

C. Today's Notice of Proposed Rulemaking (NPRM) on Misfueling Mitigation Measures

As noted above, today's partial waiver decision places several conditions on fuel and fuel additive manufacturers to mitigate the use of E15 in nonroad products, highway and off-highway motorcycles, heavy-duty gasoline engines and vehicles, and motor vehicles older than MY2007.

In a separate notice, we are today proposing regulatory provisions that parallel many of the conditions placed on the E15 partial waiver. Specifically, we are proposing a prohibition on the use of gasoline containing greater than

[10] *See* 56 FR 5352 (February 11, 1991).

[11] As explained at 44 FR 20777 (April 6, 1979), EPA did not grant or deny a waiver request for a fuel containing 90% unleaded gasoline and 10% ethyl alcohol within 180 days of receiving that request. By operation of a provision that was at that time included in section 211(f)(4), E10 was no longer subject to the prohibitions in CAA section 211(f)(1) of the Act. That provision has subsequently been removed.

[12] As noted previously, the Energy Independence and Security Act of 2007 also substantially increased the mandated renewable fuel requirements of the Renewable Fuels Standard Program.

[13] *See* 74 FR 18228 (April 21, 2009).

[14] *See* 74 FR 23704 (May 20, 2009).

10 vol% ethanol in MY2000 and older non-flex fueled light-duty motor vehicles, heavy-duty gasoline engines and vehicles, highway and off-highway motorcycles, and all nonroad products, based on findings under both sections 211(c)(1)(A) and (B) of the CAA. The prohibition is necessary based on the potential for increased emissions resulting from the use of E15. In order to facilitate the entry of E15 into commerce for use in MY2007 and newer motor vehicles, while protecting vehicles and engines not approved for use of E15, this rulemaking proposes fuel pump labeling provisions to mitigate the misfueling of motor vehicles and other engines, vehicles and equipment prohibited from using a motor vehicle gasoline containing ethanol in levels higher than E10. We are also proposing additional requirements for fuels that contain greater than 10 vol% ethanol and no more than 15 vol% ethanol, including the proper documentation of ethanol content on product transfer documents and requirements for a national survey to ensure the proper placement of E15 labels and the proper placement of gasoline-ethanol blends in the appropriate gasoline storage tanks; these provisions should help support the effectiveness of a labeling program.

III. Method of Review

Under section 211(f)(4) of the Act, 24 applications for waivers of the section 211(f)(1) prohibitions have been received over the past 30 years. Of these, 23 applications have sought a waiver for additives for unleaded gasoline. One application sought a waiver of the section 211(f)(1)(B) prohibitions for an additive to diesel fuel. Of these 24 applications, 11 applications were granted (some with conditions attached), 10 were denied, and three were withdrawn by the applicant prior to the Agency's decision.[15]

Section 211(f)(4) clearly places upon the waiver applicant the burden of establishing that its fuel or fuel additive will not cause or contribute to the failure of vehicles or engines to meet their assigned emission standards over their useful lives. Absent a sufficient showing, the Administrator cannot make the required determination and cannot grant the waiver. If interpreted literally, however, this burden of proof would be virtually impossible for an applicant to meet as it requires the proof of a negative proposition: That no vehicle or engine will fail to meet emission standards to which it has been certified. Such a literal interpretation could be construed as requiring the testing of every vehicle or engine that will use the waived fuel. Recognizing that Congress contemplated a workable waiver provision, EPA has previously indicated that reliable statistical sampling and fleet testing protocols could safely be used to demonstrate that a fuel or fuel additive under consideration would not cause or contribute to motor vehicles in the applicable national fleet failing to meet their applicable emissions standards.[16]

While this demonstration typically takes the form of reliable statistical sampling and fleet testing protocols, an applicant may also make a demonstration based upon a reasonable theory regarding emissions effects and support these judgments with confirmatory testing as an alternative to providing the amount of data necessary to conduct robust statistical analyses.[17] If a reasonable theory exists, based on good engineering judgment, which predicts the emission effects of a fuel or fuel additive, an applicant may only need to conduct a sufficient amount of testing to demonstrate the validity of such a theory. This theory and confirmatory testing then form the basis from which the Administrator may exercise his or her judgment on whether the fuel or fuel additive will cause or contribute to a failure of the vehicles and engines to achieve compliance with their emission standards.[18] Thus, the burden of proof calls for sufficient data to conduct statistical analyses or to confirm a reasonable theory based on sound engineering judgment.

In determining whether a waiver applicant has established that the proposed fuel or fuel additive will not cause or contribute to vehicles and engines failing to meet their emission standards, EPA reviews all of the material in the public docket. At a minimum, the docket includes data submitted with the application and the public comments and data received during the public review and comment period on the application. EPA may also examine applicable data from any other sources which may shed light on the relevant analyses; such other data is also placed in the docket. EPA then considers and analyzes all of the data to ascertain the emission effects of the fuel or fuel additive on the applicable engines and vehicles.

In conducting a waiver application review, EPA's emissions impact analysis concentrates on the following four major areas:[19] (1) Exhaust emissions, both immediate and long-term (durability); (2) evaporative emissions, both immediate and long-term; (3) materials compatibility; and (4) driveability and operability. EPA evaluates the emissions impacts in these four categories individually and collectively and makes its final determination based on whether the new fuel or fuel additive will cause or contribute to the failure of vehicles and engines to meet their emissions standards. Each category is further discussed below.

Exhaust and evaporative emission data are analyzed according to the effects that a fuel or fuel additive is predicted to have on emissions over time. If the fuel is predicted to have only an immediate effect on emissions (*i.e.,* the emission effects of the fuel or fuel additive are immediate and remain constant throughout the life of the vehicle or engine when operating on the waiver fuel), then "back-to-back" emissions testing will suffice. However, if the fuel or fuel additive affects the operation of the engine or related emission control hardware in a physical manner (*e.g.,* operating temperatures, component interaction, chemical changes, increased permeation, and materials degradation) that might lead to emissions deterioration over time, test data is needed to demonstrate that the long-term durability of the emissions control system is not compromised by the fuel or fuel additive such that it would cause or contribute to the engines or vehicles failing to meet their emissions standards.

Materials compatibility issues can lead to substantial exhaust and evaporative emissions increases. In most cases, materials incompatibility issues show up in emissions testing; however, there may be impacts that do not show up due to the way the testing is performed or because the tests simply do not capture the effect, especially if materials compatibility effects are determined to result with use of the new fuel or fuel additive over time. EPA has required applicants to demonstrate that new fuel or fuel additives will not have materials compatibility issues.[20]

A change in the driveability of a motor vehicle that results in significant deviation from normal operation (*i.e.,* stalling, hesitation, *etc.*) could result in increased emissions. These increases

[15] "Waiver Requests under Section 211(f) of the Clean Air Act (Revised August 22, 1995)," found at *http://www.epa.gov/otaq/regs/fuels/additive/waiver.pdf.*

[16] *See* 43 FR 41425 (September 18, 1978).

[17] *See* 44 FR 12244 (February 23, 1979).

[18] *See* Waiver Decision on Application of E.I. DuPont de Nemours and Company (DuPont), 46 FR 6124 (February 28, 1983).

[19] *See* 44 FR 12244 (February 23, 1979).

[20] *See* 44 FR 1447 (January 5, 1979).

may not be demonstrated in the emission certification test cycles but instead are present during in-use operation. In addition to consumer dissatisfaction, a motor vehicle stall and subsequent restart can result in a significant emissions increase because hydrocarbon (HC) and CO emission rates are typically highest during cold starts. Further, concerns exist if the consumer or operator tampers with the motor vehicle in an attempt to correct the driveability issue since consumers may attempt to modify a motor vehicle from its original certified configuration.

IV. Waiver Submissions and Analysis of Light-Duty Motor Vehicle Issues

This section discusses Growth Energy's waiver submission, comments received on it, and EPA's waiver decision and analysis for light-duty motor vehicles. The discussion groups vehicles according to our decision: MY2007 and newer light-duty motor vehicles for which we are approving the waiver, MY2001–2006 for which we are deferring a decision, and MY2000 and older motor vehicles for which we are denying the waiver.

As described in Section III, Method of Review, above, the Agency evaluated Growth Energy's waiver request and made its decision based on four factors: (1) Exhaust emissions impact—both immediate and long-term (known as durability); (2) immediate exhaust emissions impact; (2) evaporative system impacts—both immediate and long-term; (3) the impact of materials compatibility on emissions; and, (4) the impact of drivability and operability on emissions.

A. MY2007 and Newer Light-Duty Motor Vehicles

While this section discusses the rationale of our decision for MY2007 and newer light-duty motor vehicles, it references information related to other model years as Growth Energy's submission was not model year specific and neither were the comments. In addition, we believe it was important to discuss MY2007 and newer motor vehicles in the context of how they are different from earlier model year light-duty motor vehicles.

1. Exhaust Emissions—Long-Term Durability

a. Growth Energy's Submission

For long-term durability testing ("durability testing"), Growth Energy suggests that durability testing is not required for E15 for two reasons. First, in its waiver application and public comments, Growth Energy argued that emissions testing to determine the impact of long-term use of E15 on the emissions control system is not required for E15 because EPA has waived durability testing for oxygenates in the past. Growth Energy contends that EPA has determined that oxygenates such as ethanol do not require durability testing because the Agency is "unaware of any long-term deteriorative effects on exhaust emissions associated with oxygenates" [21] and that "the vast majority of data indicate that the effect of oxygenates on exhaust emissions over time has not been a significant issue." [22] Growth Energy argued further that it would be "arbitrary and capricious" for the Agency to require durability testing for E15 considering EPA's long-standing position that oxygenates like ethanol will not have long-term exhaust emissions effects.

Growth Energy's second argument is that EPA may accept reasonable theoretical judgments regarding the emission effects of a fuel as an alternative to direct testing of motor vehicles, and that in this case, fuel volatility specification, limited durability emissions testing, and data regarding materials compatibility and driveability could be used to establish and confirm such a theory. Growth Energy suggests that the collection of studies supplied in the application, coupled with 30 years of experience using E10, provides a rational basis to develop a theory that E15 will not cause or contribute to emissions failures in motor vehicles. Growth Energy feels that the studies supplied in the application supply enough data to confirm their theory and this alleviates the need for long-term emissions testing.

In particular, Growth Energy suggests that since a study conducted by the Rochester Institute of Technology (RIT) [23] examined the effects of E20 (gasoline-ethanol blend containing 20 vol% ethanol) on 10 vehicles over significant mileage accumulation (75,000 miles combined), and found no issues when comparing E20 emissions performance with E0 (gasoline containing no ethanol) emissions performance, that "E20 will not have a significant deteriorative effect on applicable vehicle parts." [24] Growth Energy believes that this is enough information to satisfy long-term exhaust emissions testing requirements. In its comments, Growth Energy supplied an updated summary of the RIT Study which details RIT's expansion of the driveability program to 400 motor vehicles. Growth Energy argues that the updated summary of the RIT Study that they submitted in their comments has shown "no significant issues" with over 400 motor vehicles that have accumulated over 1.5 million total combined miles and found that "emissions may be reduced through use of E–20." [25] Growth Energy contends that this study confirms their theory that E15 will not cause or contribute to motor vehicles failing their emissions standards over their full useful lives.

b. Public Comment Summary

Several commenters responded that the RIT Study has limitations and does not alleviate concerns about the long-term emissions impacts of using E15 in motor vehicles. The Manufacturers of Emissions Controls Association (MECA) argues that emission control-related concerns regarding the use of E15 include the potential for accelerated thermal deactivation of three-way catalysts equipped on existing light-duty motor vehicles or nonroad engines, due to higher exhaust temperatures that have been observed on engines fueled with mid-level ethanol blends in comparison to E0 and E10. MECA argues further that the thermal durability of three-way catalyst formulations is a function of time, catalyst temperature, and gas composition; extended catalyst exposure to higher exhaust temperatures, especially in the presence of oxygen-rich exhaust conditions that can be created through the use of E15, can accelerate catalyst thermal deactivation mechanisms (*e.g.,* sintering of active precious metal sites, sintering of oxygen storage materials, and migration of active materials into inert support materials).[26]

Many commenters point out that Growth Energy submitted and cited only a summary of the RIT Study. The summary, as these commenters note, omits key details necessary to evaluate the conclusions that Growth Energy draws from the RIT Study. For example,

[21] *See* 53 FR 33846 (September 1, 1988).

[22] *See* 44 FR 10530 (February 21, 1979).

[23] The effect of E20 ethanol fuel on vehicle emissions, B Hilton and B Daddy, Center for Integrated Manufacturing Studies, Rochester Institute of Technology, June 26, 2009. *See* EPA–HQ–OAR–2009–0211. ("The RIT Study").

[24] "Application For A Waiver Pursuant to Section 211(f)(4) of the Clean Air Act For E–15" Submitted by Growth Energy on Behalf of 52 United States Ethanol Manufacturers; EPA Docket #EPA–HQ–OAR–2009–0211–0002.6.

[25] "Growth Energy's Comments on Notice of Clean Air Act Waiver Application To Increase the Allowable Ethanol Content of Gasoline to Fifteen Percent," EPA Docket #EPA–HQ–OAR–2009–0211–2721.1.

[26] "Statement of the Manufacturers of Emission Controls Association on the Waiver Request Received by the U.S. Environmental Protection Agency to Increase the Ethanol Content of Gasoline up to 15%," EPA Docket #EPA–HQ–OAR–2009–0211–2441.1.

commenters noted that the summary did not specify the make, model and year of the motor vehicles tested, making it impossible to determine the representativeness of RIT's motor vehicle test fleet. Additionally, they added that no actual data were included in the summary for commenters and the Agency to conduct independent analyses of RIT's test results. Furthermore, no detailed descriptions outlining the fuel properties of both test fuels (E0 and E20) were included in the summary. Even through Growth Energy provided an updated summary of the RIT Study in its comments, this updated summary still omitted important details necessary for commenters and the Agency to conduct an independent analysis.

Auto manufacturers, refiners, and several others similarly noted that higher exhaust temperatures could cause increased deterioration of catalysts over time. These commenters assert that this deterioration may adversely affect a motor vehicle's ability to meet emissions standards, particularly after significant mileage accumulation.

Commenters noted that a recently released Coordinating Research Council (CRC) Report E–87–1 ("the CRC Screening Study" or "E–87–1") is the first phase of another test program developed to look at the effects of mid-level gasoline-ethanol blends on U.S. motor vehicles.[27] The purpose of the study was to identify motor vehicles which used learned fuel trims to correct open-loop air-to-fuel (A/F) ratios since this may gauge the risk of the catalyst to thermal degradation.[28] This study is the first phase of a two-phase study evaluating the effects of mid-level gasoline-ethanol blends on emission control systems. The test program identified and acquired a fleet of 25 test motor vehicles with 12 of those motor vehicles manufactured after 2000. The study collected vehicle speed, oxygen sensor A/F ratio, and catalyst temperature data on four fuels (E0, E10, E15, and E20). Results compared the three gasoline-ethanol blends with E0. The study concluded that a large number of vehicles (12 of the 25 tested) failed to apply long-term fuel trim to correct for increasing ethanol levels when operating in open-loop control.

Commenters also pointed out that the CRC Screening Study showed increased exhaust temperatures in motor vehicles that failed to apply long-term learned fuel trim when operating open loop at wide open throttle using E15 and E20. This constituted seven of the sixteen vehicles tested, and the average increase was 30 degrees Celsius in these motor vehicles.

Several comments refer to a series of studies conducted by Orbital Engine Company for Environment Australia to evaluate impacts E20 would have if introduced in Australia ("the Orbital Study"). The Orbital Study evaluated emissions performance on total hydrocarbon, CO, NOx and aldehydes, materials compatibility issues, and driveability of E20 compared to E0 with a test fleet of five paired late model Australian motor vehicles. The Orbital Study completed emissions testing over 80,000 kilometers (about 50,000 miles). The study notes that there were substantial increases in regulated pollutants for motor vehicles that used E20 when compared with vehicles that used E0 after the accumulation of 80,000 kilometers. The study's authors further point out that one motor vehicle operating on E20 exceeded the Australian NO_X emissions standard.[29] The Orbital authors also examined catalyst efficiency changes as a possible cause of the changes in emissions as a result of aging the motor vehicles on E20. The Orbital authors conclude that the exhaust emissions increases occurred due to catalyst degradation which they attribute to the increase in exhaust temperature from E20 use during particular modes of operation. They continue by noting that the two motor vehicles that experienced dramatic emissions increases with E20 after aging were motor vehicle models that failed to adjust to the higher oxygen levels found in E20.

The Alliance of Automobile Manufacturers ("the Alliance") reasons that the Orbital Study, the CRC Screening Study, and the DOE Pilot Study[30] suggest that allowing the use of E15 in motor vehicles could cause a substantial number of motor vehicles to fail emissions standards because of increased catalyst deterioration over the motor vehicles' full useful life, especially in so-called "legacy vehicles" which constitute a bulk of the American motor vehicle fleet. The Alliance asserts that this uncertainty of the long-term effects of E15 on catalysts durability would require motor vehicle testing over the full useful life to address these concerns. The Alliance for a Safe Alternative Fuels Environment ("AllSAFE") concluded that legally "when the relevant effects can include accelerated catalyst deterioration, 'back to back' testing to determine so-called 'immediate' emissions impacts is not sufficient."[31]

Growth Energy submitted two responses to the Orbital Study. First, Growth Energy commented that the motor vehicles tested in the Orbital Study were designed for Australian emission standards and are not representative of motor vehicles found in the US. Second, since much of the research Orbital relied on was conducted in the 1980s and early 1990s, Growth Energy points out that the "U.S. fleet has been redesigned significantly since the mid-1980s to accommodate different fuel blends and meet the world's most stringent emission regulations."[32]

Specifically addressing the issue of higher catalyst temperatures, Growth Energy, ACE, and others responded in their respective comments that higher catalyst temperatures are not necessarily harmful to the catalysts.[33] They point out that the catalyst temperature increases in the DOE Pilot Study were relatively small and well within normal operating temperatures. These commenters also note that the temperatures only occurred in certain motor vehicles and only when those motor vehicles were operated in the rarely used wide open throttle mode. Growth Energy points out that for the seven motor vehicles that adjusted for

[27] *Mid-level Ethanol Blends Catalyst Durability Study Screening* (CRC Report: E–87–1), June 2009 ("CRC Screening Study"), EPA Docket # EPA–HQ–OAR–2009–0211–13970. Available at: *http://www.crcao.com/reports/recentstudies2009/E-87-1/E-87-1%20Final%20Report%2007_06_2009.pdf.*

[28] *See* section IV.A.1.c. for a detailed discussion of these terms.

[29] After reviewing the emissions results presented in the Orbital Study, we believe that these motor vehicles' certified emissions standards are comparable to the Tier 1 (1994 to 1999) motor vehicle exhaust emissions standards in the United States.

[30] In October 2008, DOE released a report titled *Effects of Intermediate Ethanol Blends on Legacy Vehicles and Small Non-road Engines, Report 1.* DOE later published an update to that report, which included all of the original study plus additional vehicles. For the purposes of this decision document, we refer to the updated study, *Effects of Intermediate Ethanol Blends on Legacy Vehicles and Small Non-road Engines, Report 1—Updated,* National Renewable Energy Laboratory, February 2009, as the "DOE Pilot Study". EPA Docket #EPA–HQ–OAR–2005–0161–2880.

[31] "Exhibit B, Supplemental Statutory Appendix To the Comments of the Alliance for a Safe Alternative Fuels Environment On the Request for Waiver of the Prohibition in Section 211(f)(1) of the Clean Air Act

Noticed for Comment at 74 FR 18,228 (April 21, 2009)", submitted by AllSAFE, EPA Docket #EPA–HQ–OAR–2009–0211–2559.2.

[32] "ATTACHMENT A: Responses to Anecdotes and Unfounded Claims Regarding E–15," submitted by Growth Energy, EPA Docket #EPA–HQ–OAR–2009–0211–2721.2.

[33] In fact, ACE argues that these increased catalyst temperatures may be responsible for the average decreases in NO_X emissions found in the DOE Study and RIT Study. *See* ACE's Comment, 8.

the extra oxygen from the increased ethanol blends, catalyst temperatures were cooler on average.

c. EPA Response Regarding the Need for Long-Term Exhaust Emissions (Durability) Testing

i. General Long-Term Exhaust Emissions (Durability) Concerns

Ethanol impacts motor vehicles in two primary ways. First, as discussed below, ethanol enleans the A/F ratio (increases the proportion of oxygen relative to hydrocarbons) which can lead to increased exhaust gas temperatures and potentially increase incremental deterioration of emission control hardware and performance over time, possibly causing catalyst failure. Second, ethanol can cause materials compatibility issues, which may lead to other component failures (this will be discussed further in sections IV.A.3 and IV.A.4 below). Ultimately, either of these impacts may lead to emission increases.

Due to the increased oxygen content of E15 relative to E10, motor vehicles operated on E15 will likely run even leaner than those operated on E10 depending on the vehicle technology and operating conditions. It is also relevant to note that all motor vehicles are emissions and durability tested for exhaust emissions certification purposes using an E0 fuel; therefore, this effect of changing from E10 to E15 will not be present during certification and compliance testing. Enleaned combustion leads to an increase in the temperature of the exhaust gases. This increase in exhaust gas temperatures has the potential to raise the temperatures of various exhaust system components (*e.g.,* exhaust valves, exhaust manifolds, catalysts, and oxygen sensors) beyond their design limits. However, based on past experience, the most sensitive component is likely the catalyst, particularly in older motor vehicles with early catalyst technology. Catalyst durability is highly dependent on temperature, time, and feed gas composition. Catalyst temperatures must be controlled and catalyst deterioration minimized during all motor vehicle operation modes for the catalyst to maintain high conversion efficiency over the motor vehicle's full useful life (FUL). This is particularly important during high-load operation of a motor vehicle where the highest exhaust gas temperatures are typically encountered and the risk for catalyst deterioration is the greatest. Catalysts that exceed temperature thresholds will deteriorate at rates higher than expected, compromising the motor vehicles' ability to meet the required emission standards over their FUL. Extended catalyst exposure to higher exhaust temperatures can accelerate catalyst thermal deactivation mechanisms (*e.g.,* sintering of active precious metal sites, sintering of oxygen storage materials, and migration of active materials into inert support materials). While this damage can occur at a highly accelerated rate with a sudden change in temperature (*e.g.,* with a misfire allowing raw fuel to reach the catalyst), it is more likely to occur over time from elevated exhaust temperatures as may be experienced with frequent or even occasional exposure to E15. This deterioration may adversely affect a motor vehicle's ability to meet emissions standards, particularly after significant mileage accumulation.

Some motor vehicles may be designed in ways that manage catalyst temperatures by compensating for the oxygen in the fuel under all operating conditions, including high loads. This is achieved by using a closed-loop fuel system that measures the A/F ratio and makes the appropriate corrections to maintain the A/F ratio in the very tight band of operation around stoichiometry necessary for optimum catalyst performance and reductions in HC, CO, and NO_X emissions. The corrections can be applied to other areas of operation to achieve the desired A/F ratio. The part of the closed-loop fuel system that is responsible for the correction to the A/F ratio is referred to as "fuel trim." The fuel trim adds or removes fuel to the engine in order to maintain the required A/F ratio. If the measured A/F ratio has insufficient oxygen or is "rich," compared to what the engine needs, the fuel trim will instruct the fuel injectors to inject less fuel, making the A/F ratio "leaner." The opposite is true if the measured A/F ratio has too much oxygen and needs to inject more fuel for a "richer" A/F ratio. The fuel trim is generally comprised of two major parts, short-term fuel trim and long-term or learned or adaptive fuel trim. Learned or adaptive fuel trim can also be applied to open-loop operation such as high-load or wide-open throttle to alleviate the catalyst temperature increases caused by operating on E15. However this practice has not been consistently employed by all manufacturers.

ii. Response to Growth Energy's First Argument

In its first argument Growth Energy asserted that long-term exhaust emissions testing ("durability testing") is not required for E15 because EPA has waived durability testing for oxygenates in previous waiver decisions. The Agency believes that Growth Energy's waiver request application is different in substantial ways from previous oxygenate waiver applications that EPA has reviewed. Previous oxygenate waivers have, at most, resulted in increased fuel oxygen levels of up to around 2.7% by weight oxygen. E15, for the first time, would add significantly more oxygen to the fuel, up to around 5.5% by weight oxygen depending on the density of the gasoline to which ethanol is added. This increase in oxygen content is double the current oxygen content limit that EPA interprets to be substantially similar to motor vehicle gasoline used in the certification of motor vehicles.[34] Additionally, with the exception of the original E10 waiver, which was not granted through an EPA decision but through the operation of law,[35] and the Tertiary-butyl Alcohol waiver, which leads to oxygen content of about 1.6 percent, EPA has placed a condition on all other gasoline-alcohol waivers requiring a corrosion inhibitor to deal with the aggressive nature of these fuels.

In addition to this very large increase in oxygen content compared to the waivers granted by EPA over 20 years ago, the emissions standards that motor vehicles must achieve have become much more stringent over time. As a result, emissions control systems have also changed significantly over time. The emissions controls systems of vehicles over the last 20 years have progressively become more dependent on the ability to control the deterioration of the emissions control system, especially the catalyst, to achieve compliance with the emissions standards over the full useful life of the motor vehicle. Of particular importance is the ability of emissions control systems over time to limit or control long-term deterioration by accounting for the oxygen level of the fuel. The oxygen content levels at issue in this waiver application raise serious concerns about long-term durability. This concern is supported by information in several studies.

For both of these reasons, EPA rejects Growth Energy's claim that long-term exhaust emissions (durability) testing is not required for the E15 waiver request and that it would be arbitrary or capricious for EPA to require durability testing for this waiver.

[34] *See* 73 FR 22277 (April 25, 2008).

[35] *See* 44 FR 20777 (April 6, 1979).

iii. Response to Growth Energy's Second Argument

Growth Energy in its second argument concluded that E15 does not require long-term exhaust emissions (durability) test data, because, as they state, EPA may accept reasonable theoretical judgments as to the emission effects of a fuel as an alternative to the direct testing of motor vehicles. However, Growth Energy has not presented a reasonable and valid engineering theory to demonstrate that E15 will not detrimentally impact the durability of emissions control systems such that engines and vehicles can still meet their emissions standards while using E15. They point to fuel volatility specification, limited durability emissions testing, data regarding materials compatibility and driveability, as well as the collection of studies supplied in the application, coupled with 30 years of experience with using E10, as providing a rational basis for a theory that E15 would not cause long-term deterioration of the emissions control systems of motor vehicles. However, this is not an engineering theory or an engineering analysis. Growth Energy has not analyzed the design of emissions control systems and their changes over time, as emissions standards have increasingly become more stringent. Nor has Growth Energy explained from an engineering perspective why in theory the oxygen levels found in E15 should not lead to durability problems for the emissions control system when used over time. Instead, Growth Energy points to the same information as both the source of its theory as well as the data used to confirm its theory. This highlights the circular nature of Growth Energy's argument, as well as the absence of an engineering analysis that identifies and explains any theory Growth Energy relies upon.

Absent such a theory, one would perform the durability testing and draw conclusions from such testing about the impact of E15 on long-term durability. In essence, Growth Energy is suggesting that the data and testing it presents provides such an evidentiary basis and is as credible as data gathered from actual long-term durability testing for drawing such conclusions. Instead of presenting a reasoned engineering theory and data to confirm it, they are presenting what amounts to an alternative evidentiary basis to long-term durability testing. However, the information that Growth Energy relies on is not adequate to provide such a basis.

For example, the RIT Study that Growth Energy cites does not support the conclusions that Growth Energy draws from this test program. Specifically, Growth Energy argues that because the RIT Study had run 10 motor vehicles over 75,000 miles without any serious issues, a reasonable theory concerning E15's effects on long-term durability may be inferred. However, 10 motor vehicles run over 75,000 miles on E20 is only an average of 7,500 miles per motor vehicle. This is substantially lower than the 100,000/120,000 full useful life of the motor vehicles in the test program. Similarly, Growth Energy argues that the expanded RIT Study ran 400 motor vehicles over 1.5 million combined miles without significant issues. However, 400 motor vehicles run over 1.5 million miles is an average of 3,750 miles per motor vehicle. Additionally, Growth Energy suggests that RIT found decreases in the emissions of regulated pollutants in RIT's 400-vehicle driveability study, but no actual emissions testing on those motor vehicles was performed. In the updated RIT summary that Growth Energy submitted during the comment period, RIT had not conducted any additional motor vehicle emissions testing since the earlier summary.

Although the initial emissions testing conducted in 2008 may suggest decreases in regulated pollutants, it does not address concerns that increased ethanol levels in gasoline may lead to increased exhaust temperatures, increased catalyst deterioration, and increased emissions over time. Since the RIT study only performed emissions testing on 10 of the vehicles (4 of which were Ford F250 trucks), and the mileage accumulated on E20 for each vehicle was far less than the 120,000 mile FUL, it is not possible to draw adequate conclusions concerning long-term emissions from the RIT Study even after the completion of the test program.

The Agency finds that none of the other studies or information cited by Growth Energy specifically addresses the concern with the effect of increased exhaust temperatures due to increased ethanol levels and how that will impact the motor vehicles' ability to meet their emissions standards over their useful life. The studies and material may provide information relative to other aspects of ethanol impacts but fall short of providing any substantive information on the long-term effects of midlevel gasoline-ethanol blends on emissions control systems. Nor do any of the studies that Growth Energy cites provide sufficient information to lead the Agency to believe that there will not be long-term durability concerns. Growth Energy did not provide any data or analysis of warranty or repair information from in-use experience with E10 vs. E0 with which to assess what the impact has been over the last 30 years from the use of E10 in the in-use fleet, nor any information showing how the results of such an analysis would change with the use of E15. Therefore, we do not agree with Growth Energy that durability testing is not required.

The Agency concludes that the studies and other information cited in Growth Energy's waiver request application, and its public comments, do not demonstrate that E15 is not likely to have adverse impacts on the long-term exhaust emissions (durability) of the emissions control system over the full useful life of motor vehicles. The DOE Pilot Study, the CRC Screening Study, the Orbital Study, comments from the automobile manufacturers, and our engineering judgment, as discussed below, all indicate that legitimate concerns exist that E15 could accelerate the deterioration of the catalysts in a sizeable portion of the national fleet, leading to increased emissions.

Therefore, EPA finds that the limited durability testing and other information relied upon by Growth Energy is not adequate by itself to determine the long-term durability impact of E15 on exhaust emissions control systems.

d. Durability Studies and EPA Analysis

A number of regulatory actions have taken place since 2000 which have placed an emphasis on real-world testing of motor vehicles, which in turn has led to changes in emission control systems. First, the Compliance Assurance Program, more commonly known as CAP2000, took effect with MY2001 motor vehicles and was designed to place more emphasis on the "in-use" performance (or the performance of motor vehicles once they are in customer service) of motor vehicle emission controls with motor vehicles operating nationwide on the different available fuels. The In-Use Verification Program (IUVP) introduced under CAP2000 requires manufacturers to perform exhaust and evaporative emissions tests on customer motor vehicles at low and high mileage intervals. This emphasis on real-world motor vehicle testing provided manufacturers with increased incentive to consider the impacts of different marketplace fuels, including E10, when developing and testing their emissions control systems.

Second, by MY2004, Supplemental Federal Test Procedure (SFTP) emissions standards were fully phased in. SFTP emissions standards expanded

vehicle emission testing to better represent actual consumer driving habits and conditions by including the US06 test (a high speed and high acceleration cycle), the SCO3 test (an air conditioning test cycle run in an environmental test chamber at 95 °F), and a 20 °F cold test run on the Federal Test Procedure (FTP) cycle. In response to these requirements manufacturers developed more robust emissions control systems (such as systems using wide range oxygen sensors) capable of withstanding the higher temperatures experienced during these more severe cycles without simply relying on enriching of the A/F ratio, causing emissions to rise.

Third, beginning with MY2004, the Agency implemented its current and most stringent emission standards—the Tier 2 standards, with full implementation for light-duty motor vehicles and trucks and medium duty passenger motor vehicles completed by MY2007. Importantly, in order to comply with Tier 2 full useful life requirements, additional changes were required to ensure the durability of the exhaust and evaporative emission control systems over "real world" conditions.

As a result of all of these standards, Tier 2 motor vehicles (*i.e.* motor vehicles subject to the Tier 2 standards) are more technologically advanced and robust than cars built years ago. These motor vehicles have improved hardware as well as more sophisticated emissions control systems and strategies to help maintain catalyst effectiveness throughout the extended motor vehicle operating range over which emissions performance must be maintained. Motor vehicles now have the ability to precisely adjust for changes in the A/F ratio of the engine and ultimately maintain peak catalyst efficiency under almost any condition, such as exposure to oxygenated fuels like those containing ethanol. Auto manufacturers now warrant their new motor vehicles to operate on gasoline-ethanol blends up to E10.

While the Tier 2 regulations allowed new motor vehicles to phase-in to the Tier 2 standards from MY2004–2009, actual manufacturer certification data indicates that gasoline-fueled motor vehicles reached full phase-in with MY2007. MY2004–2006 motor vehicles include a mix of Tier 2 and "interim non-Tier 2" motor vehicles. Only some flexible-fueled vehicles (FFVs) and diesel motor vehicles remained as interim non-Tier 2 motor vehicles in MY2008 and 2009.

To comply with the stringent Tier 2 standards, manufacturers must minimize deterioration of the emissions control system over a motor vehicle's FUL of 120,000 miles (40 CFR 86.1811–04). In particular, catalyst deterioration must be minimized and catalyst temperatures controlled during all motor vehicle operation modes for the catalyst to work properly (*i.e.,* for it to maintain the necessary high efficiency demanded by the Tier 2 standards). To do so, some manufacturers incorporated learned or adaptive fuel trim into their motor vehicle designs to help control the A/F ratio and alleviate catalyst temperature increases even under open-loop conditions. Others, through careful hardware selection and certain calibration approaches, designed their motor vehicles with higher thermal margins to accommodate the effects of enleanment with gasoline-ethanol blends. Regardless of their approach, all manufacturers have warranted their Tier 2 vehicles for operation on E10, and we believe, based on available data, that they are capable of operating on gasoline-ethanol blends up to E15 as well.

The test data that has been collected supports our engineering assessment. Several test programs were conducted by CRC, the National Renewable Energy Laboratory (NREL), Oak Ridge National Laboratory and DOE to study the effects of E15 on Tier 2 vehicles, with the key study being the recently completed DOE Catalyst Study, discussed in more detail below. The CRC Screening Study and the DOE Pilot Study measured exhaust and catalyst temperature and/or evaluated the ability of motor vehicles to apply learned fuel trim to adjust for the enleanment due to ethanol during open-loop operation. As discussed above, leaner, hotter exhaust subjects the catalyst to greater risk of high temperatures and long-term catalyst deterioration and damage, and applying the learned fuel trim to open-loop operation is one of several methods manufacturers use to protect against this. Since roughly half of the motor vehicles tested in these test programs, including roughly half of the Tier 2 motor vehicles, did not apply learned fuel trim, and those motor vehicles that did not apply learned fuel trim experienced higher catalyst and exhaust temperatures with E15, these screening studies highlighted the potential for concern. However, the lack of compensating for ethanol content while in open-loop operation indicates only the potential for temperature problems to occur, and elevated temperatures only indicate the potential for catalyst deterioration; motor vehicles that do not apply learned fuel trim may still have sufficient thermal margins.

To evaluate the actual impacts of E15 on Tier 2 motor vehicles, DOE performed a catalyst durability test program,[36] the DOE Catalyst Study, throughout 2009 and 2010 on 19 Tier 2 motor vehicle models from high sales volume models of the various light-duty motor vehicle manufacturers. The specific purpose of the program was to evaluate the long term effects of E0, E10, E15, and E20 on catalyst system durability. The program also provided other limited but valuable information relevant to today's partial waiver decision, such as materials compatibility, evaporative control system integrity, diagnostic system sensitivity and general driveability. Without the results from this test program, EPA would not have had the information necessary to properly assess the long-term exhaust emission (durability) performance of E15. Program results indicate that the changes manufacturers made (calibration, hardware, *etc.*) to their motor vehicles to comply with the Tier 2 standards have in fact resulted in the capability of the motor vehicle catalysts to withstand the additional enleanment caused by E15, regardless of whether or not the motor vehicles utilized learned fuel trim while in open-loop operation. The test program results show that a representative cross section of the Tier 2 fleet maintained their exhaust emission performance on E15 over the full useful life of the motor vehicles. The discussion which follows contains a description of the DOE Catalyst Study and presents and analyzes its results.

i. DOE Catalyst Study Overview

The Intermediate Ethanol Blends Emissions Controls Durability Test Program ("DOE Catalyst Study") was established in 2008, following enactment of the Energy Independence and Security Act of 2007, to investigate the potential impacts of gasoline-ethanol blend levels above 10% on the durability of vehicle emissions control systems. The program was subcontracted to Southwest Research Institute (SwRI), Transportation Research Center (TRC) and Environmental Testing Corporation (ETC).

ii. Vehicle Selection and Matching

Several relevant criteria were used to determine the motor vehicle models selected:

[36] *Catalyst Durability Study,* Department of Energy Tier 2 vehicle testing completed September 2010. Final report due early 2011.

• Tier-2 compliant.

• Manufacturer and sales/registration volumes.

• Whether a motor vehicle did or did not apply learned fuel trim (LFT or non-LFT, respectively) at wide-open throttle (WOT).

Other studies also impacted selection: EPA's EPAct motor vehicle study at Southwest Research Institute (SwRI) which was expanded into the CRC's E–89 study,[37] CRC's E–87–1 study (CRC Screening Study), and the DOE Pilot Study. Based on the motor vehicle models EPA used to represent the Tier 2 fleet in the CRC E–89 study, DOE consulted with CRC and then instructed the national laboratories to utilize the same set of motor vehicle models for the long-term durability studies, with one exception (at the request of CRC, they switched out a Toyota Sienna for a Nissan Quest).

All the motor vehicles within a model set (one motor vehicle for each fuel tested within a model) were matched to prevent confounding of the data by undesirable motor vehicle attribute changes. The engine family, engine displacement, evaporative emissions control family, model year, powertrain control unit calibration, axle ratios, wheel size, and tire size were constrained to be identical within a motor vehicle set. Physical inspections of the motor vehicles to eliminate obvious problematic motor vehicles (such as those with gross fluid leaks, obvious and excessive body damage, *etc.*) were also a part of the selection. Pre-owned motor vehicles' initial odometer readings were to be within 10,000 miles amongst a motor vehicle set.

Table IV.A -1 Vehicle Attribute Summary.

V4 Project Vehicle Summary (Vehicle Aging)				Engine								
				Displ	config	Engine Family	Emissions Standard and Limits				Starting Odometer (x1000miles)	
Southwest Research Institute (Texas)								NMOG	CO	NOx	E0	E15
Year	Vehicle	Fuels										
2006	Chevrolet Silverado	E0	E15	5.3	V8	6GMXT05.3379	Tier 2/ Bin 8	0.156	4.2	0.2	28	17
2007	Honda Accord	E0	E15	2.4	I4	7HNXV02.4KKC	Tier 2/ Bin 5	0.09	4.2	0.07	32	31
2008	Nissan Altima	E0	E15	2.5	I4	8NSXV02.5G5A	Tier 2/ Bin 5	0.09	4.2	0.07	19	10
2008	Ford Taurus	E0	E15	3.5	V6	8FMXV03.5VEP	Tier 2/ Bin 5	0.09	4.2	0.07	17	17
2007	Chrysler Caravan	E0	E15	3.3	V6	7CRXT03.8NE0	Tier 2/ Bin 5	0.09	4.2	0.07	46	40
2006	Chevrolet Cobalt	E0	E15	2.2	I4	6GMXV02.4029	Tier 2/ Bin 5	0.09	4.2	0.07	39	48
2007	Dodge Caliber	E0	E15	2	I4	7CRXB02.4MES	Tier 2/ Bin 5	0.09	4.2	0.07	41	48
Transportation Research Center (Ohio)												
Year	Vehicle	Fuels										
2009	Jeep Liberty	E0	E15	3.7	V6	9CRXT03.74PO	Tier 2/Bin 5	0.09	4.2	0.07	4	4
2009	Ford Explorer	E0	E15	4	V6	9FMXT04.03DC	Tier 2/Bin 4	0.07	4.2	0.04	4	4
2009	Honda Civic	E0	E15	1.8	I4	9HNXV01.8XB9	Tier 2/Bin 5	0.09	4.2	0.07	4	4
2009	Toyota Corolla	E0	E15	1.8	I4	9TYXV01.8BEA	Tier 2/Bin 5	0.09	4.2	0.07	4	4
2005	Toyota Tundra	E0	E15	4	V6	5TYXT04.0NEM	Tier 2/ Bin 5	0.09	4.2	0.07	54	44
2006	Chevrolet Impala	E0	E15	3.9	V6	6GMXV03.9048	Tier 2/Bin 5	0.09	4.2	0.07	31	36
2005	Ford F150	E0	E15	5.4	V8	5FMXT05.4R17	Tier 2/Bin 8	0.156	4.2	0.2	42	45
2006	Nissan Quest	E0	E15	3.5	V6	6NSXT03.5G7B	Tier 2/Bin 5	0.09	4.2	0.07	57	55
Environmental Testing Corp (Colorado)												
Year	Vehicle	Fuels										
2009	Saturn Outlook	E0	E15	3.6	V6	9GMXT03.6151	Tier 2/Bin 5	0.09	4.2	0.07	4	4
2009	Toyota Camry	E0	E15	2.4	I4	9TYXV02.4BEA	Tier 2/Bin 5	0.09	4.2	0.07	4	4
2009	Ford Focus	E0	E15	2.0	I4	9FMXV02.0VDX	Tier 2/Bin 4	0.07	4.2	0.04	4	4
2009	Honda Odyssey	E0	E15	3.5	V6	9HNXT03.5J29	Tier 2/Bin 5	0.09	4.2	0.07	4	4

iii. Fuels and Blending

Emissions and related tests were conducted using an emissions certification gasoline and splash blending batches of E10, E15, and E20 on site. The gasoline-ethanol blends were blended from emissions certification gasoline and denatured fuel-grade ethanol. These emissions test fuels were termed E0 (for ethanol-free emissions fuel), E10 (for 10% ethanol emissions fuel), E15 (for 15% ethanol emissions fuel) and E20 (for 20% ethanol emissions fuel).

Aging fuels were produced by splash blending fuel-grade ethanol with non-ethanol containing gasoline obtained commercially by the subcontractors in their local area, rather than emissions certification gasoline. The aging fuels were designated RE0, RE10, RE15, and RE20 with "R" conveying blending from retail gasoline.

iv. Emissions Test Protocol

Motor vehicles were subjected to emissions (FTP) and related tests at the following points during the test program: (1) At the beginning of mileage accumulation; (2) at least one mid-mileage point; and (3) at the end of mileage accumulation. DOE consulted with CRC on recommended testing procedures. At SwRI and TRC, the acceptance tests also included WOT tests to aid in classifying the vehicles as either LFT or non-LFT motor vehicles. At each emissions test interval, duplicate FTP tests were conducted on each motor vehicle using both the gasoline-ethanol blend assigned to the motor vehicle as well as E0. (*i.e.* the "E15" motor vehicle received duplicate FTPs on both E15 and E0.) The motor vehicles also underwent compression and leak-down checks at each emissions interval. Tier 2 compliant motor vehicles were driven up to their full-useful life (120,000 miles). The initial mileages of the Tier 2 motor vehicles ranged from near zero to approximately 50,000 miles. These vehicles were driven approximately 70,000–120,000 miles during the program.

New motor vehicles were first aged to 4,000 miles to stabilize the engine and emissions control systems, followed by the initial emissions test. The motor vehicles then accumulated mileage until the first mid-aging emissions tests at

[37] E–89, Energy Policy Act (EPAct) Light-duty Vehicle Fuel Effects. (EPA and the National Renewable Energy Laboratory (NREL) are sponsoring extensive testing of ethanol fuel effects in connection with project E–89.)

60,000 miles. This cycle was then repeated to 90,000 miles for the motor vehicles under test at ETC. At TRC and SwRI, the 90,000 mile emissions tests were not conducted. All vehicles ended aging at 120,000 miles. Pre-owned motor vehicle sets with less than 70,000 miles at the start were mid-aging tested at 95,000 miles with end-of-aging tests at 120,000 miles.

v. Mileage Accumulation

The standard road cycle (SRC) was used for all aging. The SRC is the official EPA driving cycle used for aging in the whole motor vehicle exhaust durability procedure. This is a recommended EPA procedure that the manufacturers regularly use for verifying full useful life emissions capability. It has an average speed of 46.3 mph and a maximum of 75 mph. The Nissan Quest aging was changed part way through aging to a series of steady speed laps on the test track at TRC at DOE's direction to accelerate completion of this motor vehicle set.

ETC and SwRI used mileage accumulation dynamometers (MADs) for aging. Motor vehicles at TRC were aged on a closed test track. Drivers followed the SRC as they drove the motor vehicles around the track. To complete the test program required motor vehicles to undergo anywhere from six to nine months of mileage accumulation and emission testing.

vi. Powertrain Component Inspection

At the end of motor vehicle mileage accumulations and emissions testing at SwRI, six pairs of engines were disassembled and analyzed for signs of wear and materials compatibility problems of concern with gasoline-ethanol blends that might indicate durability concerns with E15 that did not show up in the accelerated aging testing performed.[38] The eight different types of evaluations performed included:

- Evaporative Emission System Integrity Check—a low pressure smoke leak test.
- Evaporative Canister Butane Working Capacity Check.
- Cam Lobe Wear—measuring overall cam height to indicate wear.
- Valve Seat Width and Valve Surface Contour—to measure wear on the valve seat.
- Valve Stem Height—to assess valve seat recession.
- Intake Valve Deposit measurement.
- ASTM D5185 Analysis of Engine Oil Drain Samples—to assess the presence of unusually high levels of wear metals.
- Fuel Pump Flow Evaluation.

vii. Summary and Conclusions of the Final Results of the DOE Catalyst Study

Tier 2 motor vehicle testing concluded in late September. Analysis of the FUL emissions performance and emissions deterioration rates showed no significant difference between the E0 and E15 fueled groups. As shown in Tables 2 and 3 below, three E0 aged motor vehicles had failing emissions levels at the end of the test program and one additional motor vehicle failed one of several replicate tests. Two E15 aged motor vehicles had failing emissions levels at the end of the test program. However, none of the emissions failures appeared to be associated with the differences in the aging fuels. There were no emissions component or material failures during aging that were related to fueling. There was a catalyst efficiency fault code on an E0 motor vehicle but not on the E15 counterpart.

TABLE IV.A–2—E0 FUL RESULTS COMPARED TO TIER 2 STANDARDS [39]

Year	Model	LFT@WOT	NO_X	NMOG	CO
2007	Accord	N	Pass	Pass	Pass.
2006	Silverado	Y	Pass	Pass	Pass.
2008	Altima	N	Pass	Fail	Pass.
2008	Taurus	Y	Pass	Pass	Pass.
2007	Caravan	N	Pass	Pass	Pass.
2006	Cobalt	N	Pass	Pass	Pass.
2007	Caliber	N	Fail	Pass	Pass.
2009	Civic	N	Pass	Pass	Pass.
2009	Explorer	Y	Pass	Pass	Pass.
2009	Corolla	Y	Pass	Pass	Pass.
2009	Liberty	N	Pass	Pass	Pass.
2005	Tundra	Y	Pass	Pass	Pass.
2006	Impala	Y	Pass	Pass	Pass.
2005	F150	Y	Pass	Pass	Pass.
2006	Quest	N	N/A	N/A	N/A.
2009	Outlook	Y	Pass	Pass	Pass.
2009	Camry	Y	Pass	Pass	Pass.
2009	Focus	Y	Fail	Pass	Pass.
2009	Odyssey	N	Pass *	Pass	Pass.
	Total Fails		2	1	0.

* Denotes that average of emissions tests were below applicable FUL standard, but had at least one test value above the applicable FUL standard.

TABLE IV.A–3—E15 FUL RESULTS COMPARED TO TIER 2 STANDARDS [40]

Year	Model	LFT@WOT	NO_X	NMOG	CO
2007	Accord	N	Pass	Pass	Pass.
2006	Silverado	Y	Pass	Pass	Pass.
2008	Altima	N	Pass	Pass	Pass.
2008	Taurus	Y	Pass	Pass	Pass.

[38] Southwest Research Institute (SwRI) Project 08–58845 Status Report, "Powertrain Component Inspection from Mid-Level Blends Vehicle Aging Study," September 6, 2010. EPA Docket #EPA–HQ–OAR–2009–0211–14016.

[39] Our assessment of motor vehicles that exceeded emissions standards at FUL mileage accumulation is that the exceedances were not attributable to the fuel used.

TABLE IV.A–3—E15 FUL RESULTS COMPARED TO TIER 2 STANDARDS [40]—Continued

Year	Model	LFT@WOT	NO_X	NMOG	CO
2007	Caravan	N	Pass	Pass	Pass.
2006	Cobalt	N	Pass	Pass	Pass.
2007	Caliber	N	Pass	Pass	Pass.
2009	Civic	N	Pass	Pass	Pass.
2009	Explorer	Y	Pass	Pass	Pass.
2009	Corolla	Y	Pass	Pass	Pass.
2009	Liberty	N	Pass	Pass	Pass.
2005	Tundra	Y	Pass	Pass	Pass.
2006	Impala	Y	Pass	Pass	Pass.
2005	F150	Y	Pass	Pass	Pass.
2006	Quest	N	Fail	Pass	Pass.
2009	Outlook	Y	Pass	Pass	Pass.
2009	Camry	Y	Pass	Pass	Pass.
2009	Focus	Y	Fail	Pass	Pass.
2009	Odyssey	N	Pass	Pass	Pass.
	Total Fails		2	0	0.

* Denotes that average of emissions tests were below applicable FUL standard, but had at least one test value above the applicable FUL standard.

Using standard statistical tools, the resulting test results shown in Tables IV.A–2 and IV.A–3 support the conclusion that E15 does not cause Tier 2 motor vehicles to exceed their exhaust emission standards over their useful life.

We performed a statistical analysis of this emission data to assess the impact of E15 on the rate of deterioration of exhaust emissions. We used a general linear model in SPSS™ to perform this analysis. Each individual test motor vehicle was allowed its own base level of emissions (*e.g.,* the Taurus aged on E0 was allowed one base emission level and the Taurus aged on E15 was allowed a different base emission level). This reflects the fact that individual motor vehicles, even of the same design, have emissions levels that differ to at least the same order of magnitude as the effect of fuel quality on emissions. Each model type (*e.g.,* all of the Taurus motor vehicles as a group) was also allowed its own rate of emissions deterioration. This reflects the fact that motor vehicle design has a significant impact on the rate of emissions deterioration. We then tested the hypothesis that the effect of aging the motor vehicle on E15 caused a non-zero change in the rate of change in non-methane organic gases (NMOG) and NO_X emissions. Each emission test was weighted to reflect the number of replicates performed on that motor vehicle at a specific mileage test point. For example, if only two replicate tests were performed on the Taurus aged on E0 at it mid-level test point (*i.e.,* 67,000 miles), then each emission test was assigned a weight of 0.5. If three replicate tests were performed at that mileage, then each emission test was assigned a weight of 0.33.

The statistical analysis of the remaining Tier 2 exhaust emission data indicated that the rate of deterioration in NMOG emissions decreased on average, while that for NO_X emissions increased. However, the impacts were not statistically significant deterioration at the 90% confidence level.[41] Thus, due to the variability in the effect across the various test motor vehicles, we cannot confidently reject the hypothesis that the emission deterioration rates on both blends are the same. In other words, there is a significant chance that the average impacts observed are the result of the randomness in the data. This conclusion is supported by the fact that the average changes in NMOG and NO_X emissions deterioration rates went in opposite directions. If the catalysts had in fact been deteriorating faster with E15, then all emissions should have deteriorated consistently. Therefore, the catalyst durability test program results also support the conclusion that E15 will not contribute to Tier 2 motor vehicles exceeding their emission standards over their full useful life. The details of this statistical analysis can be found in an EPA Technical Summary located in the docket to this waiver decision.[42]

The results of the vehicle tear-down inspections were analyzed to assess whether E15 exhibited any signs of wear or materials incompatibility that might indicate durability concerns that could lead to elevated exhaust or evaporative emissions that might not have shown up in the FUL emission testing performed.[43] For seven of the eight evaluations performed, there were no apparent differences at the end-of-life between the motor vehicles that were operated on E15 and E0. While individual motor vehicle results varied (as one would expect in inspections such as this), there was no pattern that would suggest greater deterioration on E15, and none of the measurements indicated are a cause for a concern over powertrain durability for the Tier 2 motor vehicles evaluated. The one area where motor vehicles aged on E15 differed in their results was intake valve deposits. E15 showed a consistent and often significant increase in intake valve deposits in comparison to E0. This is not surprising given that prior detergent additive studies have shown E10 to be a more severe test fuel for intake valve deposits than E0. For this very reason the fuel on which fuel additive manufacturers must certify their detergent additive packages contains 10 vol% ethanol. Since the Tier 2 motor vehicles did not show increased exhaust emission deterioration over their FUL with E15 in comparison to E0, the increased intake valve deposits do not appear to have lead to a corresponding emissions increase. As a result, the finding that E15 leads to increased intake valve deposits appears to be primarily an issue to be addressed in

[40] Our assessment of motor vehicles that exceeded emissions standards at FUL mileage accumulation is that the exceedances were not attributable to the fuel used.

[41] The Agency has typically used a confidence level of 90% in CAA section 211(f)(4) waiver requests instead of the more conventional 95% confidence level. We feel that the 90% confidence level increases the likelihood that increases in deterioration would be statistically significant and therefore would be more conservative in this case. However, these differences are also not statistically significant at the 95% confidence level.

[42] Technical Summary of DOE Study on E15 Impacts On Tier 2 Vehicles and Southwest Research Teardown Report. EPA Docket #EPA–HQ–OAR–2009–0211.

[43] *Ibid.*

future gasoline detergent additive formulations.

Finally, the CRC engine durability study[44] has limited relevance for the waiver decision because it used only E20 fuel. Initial data is for eight motor vehicles ranging from MY2001–2009 with initial mileage as high as 110,000 miles. The engines were removed and dynamometer-aged for 500 hours with 50% of the time at wide-open throttle (3500 rpm). Since the study used only E20 fuel and did not test matching engines aged on E0, there is no way to determine the influence of the fuel blend on engine deterioration. There were some elevated leakdown measurements observed in the study but there is no way to determine if they were fuel blend related or would have occurred even with E0 fuel. Also, several motor vehicles were listed as failing the leak tests yet the motor vehicles passed the leak test at later points in the study. In any event, all the engines that completed aging passed their motor vehicle emissions tests.

2. Exhaust Emissions—Immediate Effects for MY2007 and Newer Light-Duty Motor Vehicles

Instantaneous or immediate impacts of a fuel or fuel additive are those that are experienced essentially immediately upon switching from the original fuel. In the case of this partial waiver decision, the immediate exhaust emission impacts of interest are those that are caused by E15 in comparison to E0, which is the fuel on which the motor vehicles were certified. The immediate exhaust emission impacts must be taken into consideration along with the long-term or durability emission impacts discussed in the previous section in assessing the waiver. This section discusses the immediate exhaust emission impacts on MY2007 and newer light-duty motor vehicles. Discussion of immediate exhaust emission impacts on other motor vehicles is addressed in their respective sections. However, since Growth Energy's submission and information supplied by commenters regarding immediate emission impacts of E15 were not specific to the model year of the motor vehicles, this section also contains much of the information on immediate emission impacts for other vehicles as well.

a. Growth Energy's Submission

Growth Energy supplied data produced from several test programs that measured the immediate emission impacts of E15 on motor vehicles spanning a range of model years, including several Tier 2 motor vehicles. Growth Energy claims that the ACE Study.[45] the RIT Study, the Minnesota Center for Automotive Research (MCAR) Study,[46] and a DOE Pilot Study show that E15 results in decreased emissions of NO_X, non-methane hydrocarbons (NMHC), and CO on average, and no increase in NMOG emissions when compared to E0. Growth Energy argues that these studies demonstrate that E15 will not cause or contribute to the failure of motor vehicles to meet their emissions standards. While much of the data cited by Growth Energy was on E20, they argued that because the studies they submitted with their application show favorable emissions performance on gasoline-ethanol blends that contained higher than 15 vol% ethanol (*i.e.,* E20), those results should be applicable to E15 by interpolation.

b. Public Comment Summary

The Alliance of Automobile Manufacturers ("The Alliance") and several others commented that EPA has repeatedly outlined in past waiver decisions and public presentations important methodological considerations necessary to conduct a rigorous test program which would provide data sufficient to satisfy waiver criteria.[47] Comments from the Alliance describe the data requirements EPA has required in the past, specifically noting that those test programs required the following: (1) Use representative test fleets of motor vehicles available in the market; (2) conduct back-to-back motor vehicle pair testing to control for variability; (3) compare test fuel results with a baseline certification fuel; (4) use Federal certification test procedures (FTP) for emissions testing; (5) evaluate emissions effects over the full useful life for durability testing through real-world aging; and (6) perform statistical analyses to provide defensible results. The Alliance went on in their comments to highlight deficiencies in one or more of these data requirements in each of the studies cited by Growth Energy.

Additionally, the Alliance and others argue that none of the studies submitted by Growth Energy used nationally "representative" test fleets. The Alliance points out that the American automobile fleet takes about 20 years to turn over, and that a well-executed study should have a test fleet that is proportionally similar to the model years that comprise the national fleet. The Alliance argues that a bulk of the emissions data cited in Growth Energy's waiver request focus on newer (*i.e.,* Tier 2) motor vehicles and do not adequately represent the national motor vehicle fleet and that these older motor vehicles may be more sensitive to the effects of higher gasoline-ethanol blends and constitute a greater portion of the number of motor vehicles currently in use. Many comments recommend that the Agency deny Growth Energy's request based on the potentially adverse effects of E15 on older motor vehicles.

Several commenters, including the automobile manufacturers, petroleum refiners, environmental organizations and State agencies, noted the expected linear relationship between ethanol content in gasoline-ethanol blends and increased NO_X emissions. These commenters pointed out that the EPA Predictive Models, MOVES model and the MOBILE6.2 model all predicted increased NO_X emissions as a gasoline-ethanol blend increases the ethanol content. These models are used for air quality modeling purposes for compliance with State and Federal air quality standards and are based on comprehensive motor vehicle testing spanning decades. These commenters argued further that these increases in NO_X may cause a sizable portion of the motor vehicle fleet to exceed emissions standards, especially if a motor vehicle was close to the emissions standard.

c. EPA Analysis

The Agency agrees with commenters that there are several limitations of the studies cited by Growth Energy and/or the analyses they performed, which undermine their conclusions. The ACE study cited by Growth Energy does not provide useful information to assess the emissions performance of motor vehicles for purposes of this waiver decision since it tested three non-flex fuel Tier 2 motor vehicles primarily under high-speed and high-load conditions, atypical of most in-use motor vehicle operation and not representative of motor vehicle certification conditions. The study likely shows that the high heat of vaporization and high octane of ethanol

[44] CRC Project No. CM–136–09–1B Engine Durability Study of Mid-Level Ethanol blends, EPA Docket #EPA–HQ–OAR–2009–0211–14003.5.

[45] Optimal Ethanol Blend-level Investigation, Final Report prepared by Energy & Environmental Research Center and Minnesota Center for Automotive research for American Coalition for Ethanol "ACE Study". EPA Docket # EPA–HQ–OAR–2009–0211–0002.26.

[46] Use of Mid-Range Ethanol/Gasoline Blends in Unmodified Passenger Cars and Light Duty Trucks, prepared by Minnesota Center for Automotive research July 1999 "MCARStudy." EPA Docket #EPA–HQ–OAR–2009–0211–0002.24.

[47] *See* Alliance of Automobile Manufacturers Comments, National Petrochemical and Refiners Association, the American Petroleum Institute's Comments, and the Alliance for the Safe Alternative Fuels Environment comments in EPA Docket #EPA–HQ–OAR–2009–0211.

can enhance vehicle performance under wide-open throttle conditions and high loads, but the Agency believes that it is not relevant for evaluating emissions under normal operating conditions as observed on properly loaded motor vehicles tested on certification test cycles generally required for a waiver emission impacts demonstration.

The RIT Study cited by Growth Energy was an interim report of ongoing work in which E0 and E20 fuels were tested in 10 1998–2004 model year motor vehicles from the Monroe County Fleet Center, none of which were designed to comply with Tier 2 emission standards. The emissions testing performed at the time of Growth Energy's application failed to properly measure emissions related to the ethanol (*i.e.,* alcohols and aldehydes) which contribute to the NMOG emissions. Furthermore, the testing schedule did not perform back-to-back testing of the different fuels at common motor vehicle mileage intervals, thus confounding fuel and normal deterioration effects. As discussed below, we believe these shortcomings were subsequently corrected in later testing through the support of the NREL, but the data cited by Growth Energy could not be used to quantify the immediate emissions impacts of E15.

The MCAR Study cited by Growth Energy tested 15 motor vehicles of various model years from 1985 to 1998. However, the emissions were measured over only a hot portion of the certification cycle and the individual test results needed for analysis were never submitted or made available to the Agency. Therefore, it could not be used to compare the emissions performance of the motor vehicles to the emissions standards. Furthermore, since only E10 and E30 were tested, it cannot be used to quantify the immediate emission impacts relative to the official E0 certification fuel.

Only the DOE Pilot Study cited by Growth Energy provides useful information for assessing the immediate exhaust emission impacts of E15. It measured emissions from 16 vehicles, including seven Tier 2 compliant motor vehicles, on E0, E10, E15, and E20 splash blends over the LA92 drive cycle. However, even it is of limited usefulness in drawing conclusions regarding the impact of E15 across the large in-use motor vehicle fleet due to the limited size and nature of the test program (fleet makeup, test fuels). The DOE Pilot Study was not designed to quantify the emissions impact across the fleet but instead to probe a limited sample of high sales volume motor vehicles certified to different emission standards for any immediate emission problems. By itself, it is not a basis for drawing any definitive conclusions with respect to E15 emissions performance.

Thus, each of the individual studies is of limited value in evaluating the immediate emissions impact of E15 across the various groups of motor vehicles at issue in this partial waiver decision. As a group, these studies are no stronger as they do not fill the gaps in each of the various studies. Therefore, the Agency does not believe that the studies submitted by Growth Energy adequately support the conclusions that Growth Energy drew from them regarding the immediate exhaust emission impacts from using E15. At the same time, the Agency believes that there is sufficient data and information available to demonstrate that the immediate emissions impact of E15 follows the same pattern as E10 in that there will be a decrease in NMOG (as well as NMHC and total HC) and CO emissions and an increase in NO_X emissions. While the magnitude of the NO_X emissions increase is greater with E15 it is still not enough to cause at least Tier 2 compliant motor vehicles to violate their NO_X emissions standard.

There is a long history of test programs that have been carried out on light-duty motor vehicles and trucks that have quantified the emission impacts of blending ethanol up to 10 vol% into gasoline. These test programs, dating back to the earliest days of gasoline-ethanol blends, have found that the oxygen content of ethanol enleans the A/F ratio in motor vehicles during open-loop operation, causing a decrease in HC and CO emissions, but also results in a corresponding increase in NO_X emissions. These test programs have also shown that during normal closed-loop operation the combustion characteristics of ethanol contribute to small increases in NO_X emissions. There are other factors that can play into the emission impacts, such as other changes to gasoline that occur or are made when ethanol is added, the high heat of vaporization and high octane of ethanol, and the design and control algorithms of the motor vehicle. However, similar emission trends with ethanol have been seen consistently in most carefully controlled and properly conducted studies. These studies have been used to develop emission models, such as the EPA Predictive Models [48] incorporated into the Agency's MOVES model,[49] that have been thoroughly peer reviewed. The result is that for a typical E10 blend of gasoline, exhaust NMHC emissions have been found to decrease by about 5%, and NO_X emissions to increase by about 6%, relative to E0.[50]

While the magnitude of impact may vary by a few percent depending on the motor vehicle technology and how other fuel properties change when ethanol is blended into gasoline, the relative magnitude and direction of the impacts remains consistent for typical fuels.[51]

While there is a great deal known about the immediate impacts of gasoline-ethanol blends on emissions from the past studies and modeling, it is all based on pre-Tier 2 motor vehicles and only ethanol blends up to E10. The issue for the waiver is whether the impacts of E15 would be significantly different in comparison to E0 and cause motor vehicles to violate their emission standards over their full useful life, and whether there is sufficient information to support such a conclusion for Tier 2 motor vehicles as well as other motor vehicles. While the information provided by Growth Energy was of limited value, we believe that the additional information that is now available can be used to assess the immediate emissions impacts on Tier 2 motor vehicles sufficiently to respond to the E15 waiver request.

CRC recently completed a test program (E–74b) that evaluated the emissions performance of E10 and E20 compared with E0 ("CRC Emissions Study").[52] The study tested 15 MY1994–2006 motor vehicles on E0, E10, and E20. The motor vehicles represented a cross-section of several motor vehicle technologies and emissions compliance levels, and included three Tier 1, five NLEV, and seven Tier 2 motor vehicles. The test fuels were match-blended to yield appropriate test program volatility

[48] A detailed description of the development of the EPA Predictive Models is available in a Technical Support Document: "Analysis of California's Request for Waiver of the Reformulated Gasoline Oxygen Content Requirement for California Covered Areas", EPA420–R–01–016, June 2001.

[49] The Agency's MOVES model has undergone extensive peer review and testing, and incorporates the EPA Predictive Models.

[50] These effects are based on the EPA Predictive Models and are generally consistent with conclusions of CRC E–74b report (*e.g.,* Figure ES–2). Fuels properties evaluated were based on market averages and were as follows: E0 had aromatics content of 29.5 vol%, a T50 of 215 °F, a T90 of 325 °F, and an RVP of 8.9 psi and E10 had aromatics content of 24.9 vol%, a T50 of 202 °F, T90 of 325 °F, and an RVP of 8.9 psi. Other parameters not mentioned here were assumed to be held constant between the blends.

[51] Results based on data mostly from vehicle models that predated the Tier 2 emission standards, so several recent test programs have been focused on Tier 2 vehicles that will soon make up the majority of the in-use fleet.

[52] CRC Report No. E–74b, "Effects of Vapor Pressure, Oxygen Content, and Temperature on CO Exhaust Emissions", May 2009, EPA Docket #EPA–HQ–OAR–2009–0211–13980.

goals while attempting to maintain other desired property targets, such as aromatics content and distillation behavior. The study's authors attempted to evaluate increased oxygen levels through the blending of ethanol in a variety of gasolines with fuel parameters representative of those found in the real world. Emissions performance testing was completed using the FTP at 75 °F and 50 °F. The study found a statistically significant positive linear relationship between the amount of ethanol blended into gasoline and NO_X emissions when controlling other fuel parameters. In other words, as the level of ethanol blended into gasoline increased, the amount of NO_X emissions also increased, and this effect remained relatively consistent across the motor vehicle technologies tested. Specifically, the study found that NO_X emissions increased with E10 by about 9% relative to E0, consistent with the projection from the EPA Predictive Models when the study's fuel properties are input. NO_X emissions for E20 increased by about 19% relative to E0. The test program also found that HC emissions declined from 8% to 16% over this same range. While not linear, a relationship of decreasing emissions with increasing ethanol content was also observed for CO emissions. Presumably the impacts of E15, had they tested it, would have fallen somewhere between those of E10 and E20.

The DOE Pilot Study cited by Growth Energy tested 16 different MY1999–2007 light-duty motor vehicles on E0, E10, E15 and E20. These motor vehicles included three Tier 1, six NLEV, and seven Tier 2 motor vehicles of varying odometer mileage, generally proportional to age (*i.e.,* older motor vehicles had higher miles). Test fuels were splash blended with the certification E0 fuel allowing the other fuel properties (aromatic content, RVP, *etc.*) to change with ethanol dilution. The motor vehicles were tested over the LA92 drive cycle (also known as the Unified Cycle) which is considered to be representative of real-world acceleration rates and speeds.[53] The study found small reductions in NO_X and NMOG emissions across the different fuels that were not statistically significant. While these findings do not show the NO_X emissions increase and NMOG and CO emissions decrease that might be anticipated, this may have been due to the limited scope of the program, the test cycle, and other changes in the fuel properties known to directly impact emissions. Nonetheless, the results do not show that the immediate NO_X emissions impacts of E15 to be of concern.

During the course of the DOE Catalyst Study (*see* Section IV.A.1.d), some back-to-back tests of E15 and E0 fuels were performed. This portion of the testing was not designed to be able to quantify the immediate emission impacts with any degree of statistical confidence unless the impacts turned out to be very large, and in fact it did not show any statistically significant changes in NO_X or NMOG emissions for E15 compared to E0. At the same time, the data is useful in supporting the conclusion that the immediate emission impacts of E15 compared to E0 are not large, and likely in the same range as other studies have shown.

Finally, as mentioned above, RIT performed additional testing subsequent to the results Growth Energy submitted as part of its waiver request application. These later results were presented at a meeting of the Mid-Level Ethanol Blends Research Coordination Group on May 5, 2010.[54] These results showed a 13.9% reduction in HC (NMOG was not measured), 26.9% reduction in CO, and a 6.2% increase in NO_X for E20 in comparison to E0. Again, presuming E10 and E15 results would lie within this range, these results are generally consistent with earlier studies and models and continue to confirm that no large increases in NO_X emissions are expected.

When EPA assesses the more recent information and data available, we believe it shows both: (1) That Tier 2 motor vehicles exhibit similar immediate emission impact trends (small increases in NO_X and small decreases in NMHC and CO) as the data and modeling show for older motor vehicles; and (2) that the immediate emission impacts of E15 continue to show the same trends as E10 with the effects being slightly exaggerated due to the higher ethanol content. These four studies (CRC E74b, the DOE Pilot Study, the DOE Catalyst Study, and the RIT Study) are all of limited size and scope and thus show considerable variation in their results, for NO_X emissions in particular. However, taken together they suggest that the immediate emission impacts of E10 are likely to be comparable to those that would be projected using the EPA Predictive Models and that a slightly larger NO_X emission impact would be expected with E15. Thus, the NO_X emissions impact of E15 is likely to be in the range of 5% to 10% based on extrapolation from E10 modeling using the Agency's Predictive Models, and this impact would be expected to be roughly comparable for newer Tier 2 motor vehicles as well as older motor vehicles. For example, a Tier 2 motor vehicle that had NO_X emissions levels of 0.030 grams per mile ("g/mi") on E0 would be expected to have NO_X emissions levels of 0.033 or less if the same motor vehicle was tested on E15.

Although the overall weight of the available data shows that E15 will cause an increase in NO_X emissions, the issue is whether such increases, by themselves or in combination with long-term durability effects, would cause motor vehicles to exceed their certified emissions standards. Given the relatively small magnitude of the immediate NO_X emissions increase in relation to the large compliance margins that motor vehicle manufacturers have traditionally built-in to the products they certify,[55] and the lack of any significant increase in NO_X emissions deterioration with E15 in comparison to E0 (as discussed in section IV.A.1.a.), it is not anticipated that using E15 will cause or contribute to Tier 2 compliant motor vehicles exceeding their emissions standards.

A survey of official EPA Certification data showed that the average compliance margins for the MY2007 light-duty motor vehicle fleet was over 50% for NO_X emissions.[56] This margin is designed into motor vehicles by the manufacturer to account for variations in production vehicles and changes to the motor vehicle during actual field usage. Additionally, data collected from EPA's In-use Verification Program (IUVP) demonstrate large compliance margins for motor vehicles operating in real-world conditions. IUVP is a manufacturer run program in which manufacturers test motor vehicles for emissions levels and submit the results to EPA. IUVP was designed to ensure that light-duty motor vehicles are meeting emissions standards in-use

[53] The Alliance commented that only the FTP test cycle should be used for emission impacts. While the LA92 cannot be used for confirmation of vehicle emissions compliance, it is used regularly in engineering and research work, including by manufacturers to measure emission impacts and confirm OBD monitor operation and therefore the Agency believes it remains a valid cycle for emissions analysis.

[54] RIT–CIMS/USDOT E20 Test and Evaluation Program May 2010, EPA Docket #EPA–HQ–OAR–2009–0211–14003.8.

[55] A compliance margin is the difference between the emission standard and a vehicle or engine's actual certification emission level. This certification level includes the manufacturer's projected rate of deterioration over the useful life of the vehicle.

[56] *See 2007 Progress Report: Vehicle and Engine Compliance Activities.* These compliance margin values are consistent with the general trend EPA has seen for Tier 2 vehicles.

versus only through the certification process. According to the data submitted to EPA, the in-use compliance margins are similar to compliance margins experienced during certification. For IUVP testing for MY2007 as of August 2010, the average compliance margin for light-duty motor vehicles certified to the Tier 2 Bin 5 standard was over 60%.[57]

In addition, the results of the recently completed DOE Catalyst Study also supports this conclusion for Tier 2 motor vehicles. While the Catalyst Durability Test Program was carried out to assess long-term exhaust emissions (durability) impacts, the immediate emission impacts of ethanol are also captured in the testing. All but two of the Tier 2 motor vehicles tested continued to comply with their exhaust emission standards at FUL despite both the immediate and durability impacts of E15 on emissions. One motor vehicle appeared to exceed the standard not due to E15, but other problems, as it also exceeded the standard on E0. The other motor vehicle model experienced catastrophic issues with the comparable E0 and E20 motor vehicles which were unable to complete the testing. Those motor vehicles that complied with the standard on E15 continued to comply as is typical in IUVP data.[58]

d. Conclusion

While data is limited on Tier 2 motor vehicles, and particularly with E15, there is a long history of test programs that have been carried out on light-duty motor vehicles and trucks that have quantified the immediate emissions impacts of blending ethanol into gasoline. The common theme across these various test programs is that, consistent with combustion theory, the enleanment of the A/F ratio caused by the oxygen in ethanol leads to an immediate reduction in HC and CO emissions and a corresponding increase in NO_X emissions. While other factors influence this, such as the combustion characteristics of the ethanol itself, other changes that occur in the gasoline when ethanol is added, and the test conditions under which the emissions are measured, cause some variations in study results, the bottom line is that the emissions changes are fairly well known. Several more recent studies have been performed looking at the impacts of gasoline-ethanol blends on more recent Tier 2 compliant motor vehicles, as well as some older model year motor vehicles. The size, scope, and design of these studies limit the ability to draw any firm conclusion to quantify the precise magnitude of the immediate emissions impacts. However, analysis of this more recent data in the context of historical data and modeling leads to the conclusion that Tier 2 motor vehicles likely respond similarly to older technology motor vehicles with respect to immediate emissions impacts, and that the magnitude of the immediate emissions impacts of E15 are relatively small, with decreases in NMHC and CO emissions and increases in NO_X emissions in the range of 5 to 10% depending on how other fuel properties change. For Tier 2 motor vehicles, there is generally a significant margin in both motor vehicle certification and in-use to emit within the emission standards even if the motor vehicle experiences the predicted immediate NO_X increases from E15 when compared to E0.

The Agency believes that the data above, coupled with the average compliance margins, are sufficient to show that the immediate exhaust emissions effects by themselves would not cause motor vehicles to exceed their exhaust standards over their useful lives. As discussed earlier, however, whether the fuel or fuel additive will cause motor vehicles to exceed their exhaust emission standards requires consideration of the combined impact of immediate emissions increases and the long-term exhaust emissions (durability) effects.[59]

3. Evaporative Emissions on MY2007 and Newer Light-Duty Motor Vehicles

a. Introduction

EPA has set evaporative emission standards for motor vehicles since 1971. During the ensuing years, these evaporative standards have continued to evolve, resulting in additional evaporative emissions reductions. Thus, consideration of the impact of E15 on evaporative emissions compliance requires consideration of the applicable evaporative emissions standards to which the particular motor vehicles were certified. There are now five main components to motor vehicle evaporative emissions that are important for our standards: (1) Diurnal (evaporative emissions that come off the fuel system as a motor vehicle heats up during the course of the day); (2) hot soak (evaporative emissions that come off a hot motor vehicle as it cools down after the engine is shut off); (3) running loss (evaporative emissions that come off the fuel system during motor vehicle operation); (4) permeation (evaporative emissions that come through the walls of elastomers in the fuel system and are measured as part of the diurnal test); and (5) unintended leaks due to deterioration/damage that is now largely monitored through onboard diagnostic standards.

Prior to MY1999, the evaporative emissions standards addressed diurnal and hot soak emissions, but the test procedure did not require control of running loss and permeation emissions. The Enhanced Evaporative Emissions requirements were fully phased in for Light-duty motor vehicles and light-duty trucks by MY1999. These new requirements included both new standards and new test procedures: The two-day and three-day diurnal tests with new canister loading procedures, and a running loss test. In addition to the new procedures, the useful life was

[57] Tier 2 Bin 5 is the certification standard for a large majority of vehicles certified in MY2007 (approximately 80%). *See 2007 Progress Report: Vehicles and Engine Compliance Activities.*

[58] EPA, in collaboration with DOE and CRC has recently completed the testing part of the largest fuels emission research program conducted in the past two decades to assess the impacts of gasoline fuel properties on emissions, including the relationship between ethanol content and higher NO_X emissions. E–89 "Comprehensive Gasoline Light-duty Exhaust Fuel Effects Test Program." The test program evaluated emission changes on a motor vehicle test fleet consisting of 15 Tier 2 vehicles (including three FFVs) that was specifically selected to be representative of the makes and models in the national light-duty motor vehicle fleet. The focus was on Tier 2 vehicles to fill a data gap, since existing emission models are based on testing conducted on older technology vehicles. The program used 27 fuels of varying volatility (RVP), aromatic content, distillation range (T50 and T90) and ethanol concentrations (E0, E10, E15 and E20), which were blended specially to allow emission impacts to be attributed to one fuel parameter or another. Each vehicle in the test program had multiple emissions tests conducted on each fuel resulting in nearly 1000 emissions tests. While testing has been completed, the Agency is still in the process of working with DOE and CRC to evaluate the test data and develop emission models based on it to allow an understanding of the impacts of fuel changes on emissions. However, since the evaluations of the data have not been completed and the data is not publicly available, EPA is not relying on the data for purposes of evaluating the waiver request. EPA has reviewed the data preliminarily solely to determine whether it would be appropriate to delay making a decision until the evaluation is complete and the test program results could be incorporated into a decision on the waiver. EPA's view based on its preliminary review of the data is that it is appropriate to go forward at this time with the waiver decision, as it is anticipated that the test program will reinforce the results found in the earlier studies and in the EPA Predictive Models.

[59] Separately, the Agency has been performing analysis needed to support the anti-backsliding analysis required under the Energy Independence and Security Act. We are now in the process of assessing possible control measures to offset the potential increases in ozone and particulate matter that are expected to result from the increased use of renewable fuels required by EISA and in response to the May 21, 2010 presidential memorandum directive. (NO_X emissions contribute to the formation of both pollutants.) We will incorporate the results of our analysis under this assessment in a proposal on new motor vehicle and fuel control measures.

extended from 5 years/50,000 miles to 10 years/100,000 miles for light-duty motor vehicles.

Along with the Enhanced Evaporative Emissions requirements, EPA introduced the On Board Diagnostic (OBD) requirements for evaporative leak detection monitors. This required motor vehicles to detect a leak equivalent to .040 inch in the fuel or evaporative emissions system. Beginning in MY2001, EPA allowed manufacturers to comply with California OBD regulations which required motor vehicles to detect a leak equivalent to a .020 inch. While not required Federally, many manufacturers developed one leak detection system for sale in all 50 States which complied with the more stringent California requirement.

The Federal Tier 2 evaporative emissions standards[60] were phased in beginning in 2004 with the exhaust standards and were fully phased in by 2007 for light-duty motor vehicles (2009 for HLDT and MDPV). These standards were significantly lower (over a 50% reduction for LDVs and LLDTs—as seen in Table 1 below) and used the same test procedures, which were introduced with the Enhanced Evaporative Emissions requirements. However, one important change was made in that a demonstration of evaporative system durability on E10 was required to address concerns with respect to permeation of hydrocarbons through elastomers in the fuel and evaporative emission systems. This prompted manufacturers to change materials to those with improved permeation barriers with ethanol. Once again in 2009 the evaporative emission standards for LDVs were cut nearly in half with the introduction of the Federal LEV II requirements, a harmonization of Federal and California evaporative standards. *See* Table IV.A–4 below. This section discusses the evaporative emissions impacts on MY2007 and newer light-duty motor vehicles. Discussion of evaporative emission impacts on older motor vehicles is addressed in sections IV.B. and IV.C. However, since the information we received through Growth Energy's waiver request application, information supplied by commenters, and other available information regarding evaporative emission impacts of ethanol blends were not specific to the model year of the motor vehicles, this section also contains some of the information covering older motor vehicles as well.

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[60] This Decision refers to several vehicle types as commonly used acronyms: Light-duty motor vehicles (LDV), light-duty trucks (LDT), light light-duty trucks (LLDT), heavy light-duty trucks (HLDT), and medium-duty passenger vehicles (MDPV). *See* "Vehicle Weight Classifications" found at: *http://www.epa.gov/otaq/standards/weights.htm.*

Table IV.A-4 Federal Evaporative Emissions Standards from 1999 to Present

EVAP Emission Standards at full useful life	3 day diurnal + hot soak*		2 day diurnal + hot soak*		Running Loss	Useful life Mi or yrs
	LDV and LLDT 1,2	Truck LDT3, LDT4	LDV and LLDT 1,2	Truck LDT3 LDT4	LDV and LDT	
Enhanced Evap 1999 to 2008 (HLDT only in 2008)	2.0 g/ test	2.0 (< 30 gal) 2.5 (> 30 gal)	2.5 g/ test**	2.5 (< 30 gal) 3.0 (> 30 gal)	0.05 g/ mi	10 yr 100k mi LDV/LDT1,2 11 yrs 120 K LDT3,4
Tier 2 2007 to 2009 (HLDT only in 2009)	.95 g/ test	1.2 g/ test	1.2 g/ test	1.5 g/ test		10 yr 120k mi
LEV II Near Zero Evap	.50 g/ test LDV .65 g/test LDT1,2	.90 g/ test	.65 g/ test LDV .85 g/test LDT1,2	1.15 g/ test		10 yr-120k mi Fed 15 yr-150k mi Cal

* The standard is based on the sum of the highest single day diurnal and the hot soak measurements.
**3.0 g/ test for LDT2 beginning in 2001

b. Growth Energy's Submission

Growth Energy primarily argued that based on the similar volatility and permeation characteristics of E15 to E10, the evaporative emissions for motor vehicles using E15 should be no

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worse than those from motor vehicles using E10. Growth Energy pointed to two studies to support this conclusion. The first study cited was the E–65–3 study on permeation conducted by the CRC.[61] The E–65–3 study measured the impact of E6, E10, E20, and E85 gasoline-ethanol blends on permeation and diurnal canister breakthrough emissions in comparison to E0 on test rigs taken from five MY2000–2005 California motor vehicles. The testing was performed on California fuels using California test procedures.

The second study cited was completed by the University of Stockholm for the government of Sweden to investigate the potential effects that increased ethanol levels blended into gasoline may have if approved for use in Sweden ("Stockholm Study").[62] The Stockholm Study is primarily a literature review that includes studies and experiences with gasoline-ethanol blends in several countries (*e.g.,* Brazil, the Netherlands, and Australia). As part of the Stockholm Study, a small test program compared vapor generation rates from two summer-time gasoline fuels blended with ethanol at contents of zero, five, 10, and 15 vol%. The Stockholm Study found that the impact of ethanol on the RVP of gasoline blends peaked somewhere between E5 and E10, consistent with past studies.

Other than cross-referencing materials compatibility testing, Growth Energy did not address the potential impacts of E15 on evaporative emissions durability, hot soak and running loss emissions, or fuel system integrity (leaks as monitored by the OBD system) to assess noncompliance with the evaporative emissions standards. Growth Energy simply used these two studies to argue that the evaporative emissions of E15 will be lower or no worse than E10 or E6. They argued that since the CRC Permeation Study and the Stockholm Study show no increases in evaporative emissions between E10 and E15, that materials compatibility testing showed no problem, and that if EPA can place a condition requiring finished fuels to meet ASTM volatility specifications, evaporative emissions criteria for a waiver are satisfied.

c. Public Comment Summary

Several commenters point to design flaws and limitations with both the Stockholm Study and CRC Study which underscore the need for more investigation into E15's impact on vehicles' evaporative emissions. API and others argue that the fuels used in the Stockholm Study's evaporative emissions test program do not resemble fuels produced and used in the United States. API argues that RVP of the base fuels tested in the program are relatively high in comparison to summertime non-ethanol fuels used in the US (9.14 and 10.15 psi). API also argues that since the test program did not complete the evaporative emissions testing in the VT–SHED with actual vehicles and did not utilize the EPA approved Federal Test Procedure, it would be difficult to determine what the actual emissions results for E15 would have been under real world conditions.

Similarly, many commenters noted limitations and concerns with the CRC E–65–3 permeation study cited by Growth Energy. The study did not evaluate evaporative emissions from entire motor vehicles, but rather from test rigs set up specifically to study permeation rates with various gasoline-ethanol blends. While the study also measured diurnal emissions by measuring breakthrough of the canister, it did so only using very low RVP fuels that met California's reformulated gasoline standards. Further, the test rigs were uniquely configured for precise permeation measurement and not for a quantitative assessment of vapors from canister breakthrough.

Several commenters allude to the fact that Growth Energy provided no analysis of how evaporative emissions control systems will behave over the full useful lives of motor vehicles. The New York Department of Environmental Conservation ("NYDEC") expressed in particular their concern that full useful life testing is needed since E15 could cause increased water absorption which in turn may lead to decreased canister capacity and evaporative emissions breakthrough of the canister.

Several comments noted that Growth Energy often compares performance results of E15 to E10 rather than E15 to certification fuel (E0) to satisfy waiver criteria. AllSAFE and the Alliance both suggest that EPA has a legal obligation to only consider comparisons of E15 to certification fuel. AllSAFE argues that EPA has required that CAA section 211(f)(4) waiver requests compare the test fuel with certification fuel over the past 30 years, and that comparing E15 to E10 would be making a comparison between two fuels that are not "substantially similar" to certification fuel. AllSAFE continues by arguing that allowing comparisons to fuels that have been granted waivers rather than a comparison to fuels that are substantially similar to certification fuels may allow for "incremental creep" that might mask emissions effects of new fuels or fuel additives.

d. EPA Analysis

Growth Energy's conclusions with respect to evaporative emission impacts are not adequately supported by the evidence they submitted. They did not provide any test data of in-use motor vehicles showing that they continued to meet their evaporative emission standards over their full useful life, but rather provided only limited information to address these concerns. The Stockholm Study they cited cannot be used to assess actual motor vehicle emission performance in comparison to their standards, but rather simply quantifies the potential increase in vapor generation rates (fuel volatility) for various gasoline-ethanol blends. Increased vapor generation may result in increased motor vehicle emissions, but one needs to evaluate this in the context of evaporative emissions control systems on actual motor vehicles.

The CRC E–65–3 permeation study cited by Growth Energy did not evaluate evaporative emissions from entire motor vehicles, but rather from test rigs set up specifically to study permeation rates with various gasoline-ethanol blends. This study measured diurnal using only very low RVP fuels that met California's reformulated gasoline standards. As a result, it cannot be used to assess the impact on diurnal emissions of higher volatility fuels. However, perhaps the most important limitation of this study is simply that it was a predecessor to much more comprehensive studies not addressed by Growth Energy (E–77, E–77–2, E–77–2b, E–77–2c)[63] into the permeation and evaporative emission impacts of various gasoline-ethanol blends that grew out of the original E–65–3 study.

In addition to these study limitations, perhaps the most important concern is that Growth Energy failed to use the available information to perform the correct comparison. To grant a waiver for a fuel or fuel additive under CAA section 211(f)(4), it must be shown that motor vehicles will continue to meet their evaporative emission standards over their full useful life. Short of actual test data on motor vehicles demonstrating this, the evaluation of the potential emissions impacts must compare motor vehicles using the new fuel or fuel additive to their emissions performance on the fuel they were

[61] CRC Report No. E–65–3, *Fuel Permeation from Automotive Systems: E0, E6, E10, E20 and E85 Final Report,* December, 2006. EPA Docket #EPA–HQ–OAR–0211–14012.

[62] Growth Energy Request Letter—Tab 4, 1st half, EPA Docket #EPA–HQ–OAR–2009–0211–0002.12.

[63] These studies are available at *http://www.crcao.org.*

certified on, in this case E0. Instead, when considering the potential permeation and diurnal emission impacts, Growth Energy only drew their conclusion for E15 relative to E10 and E6, which themselves have been demonstrated in the CRC studies to cause elevated permeation and diurnal emissions.

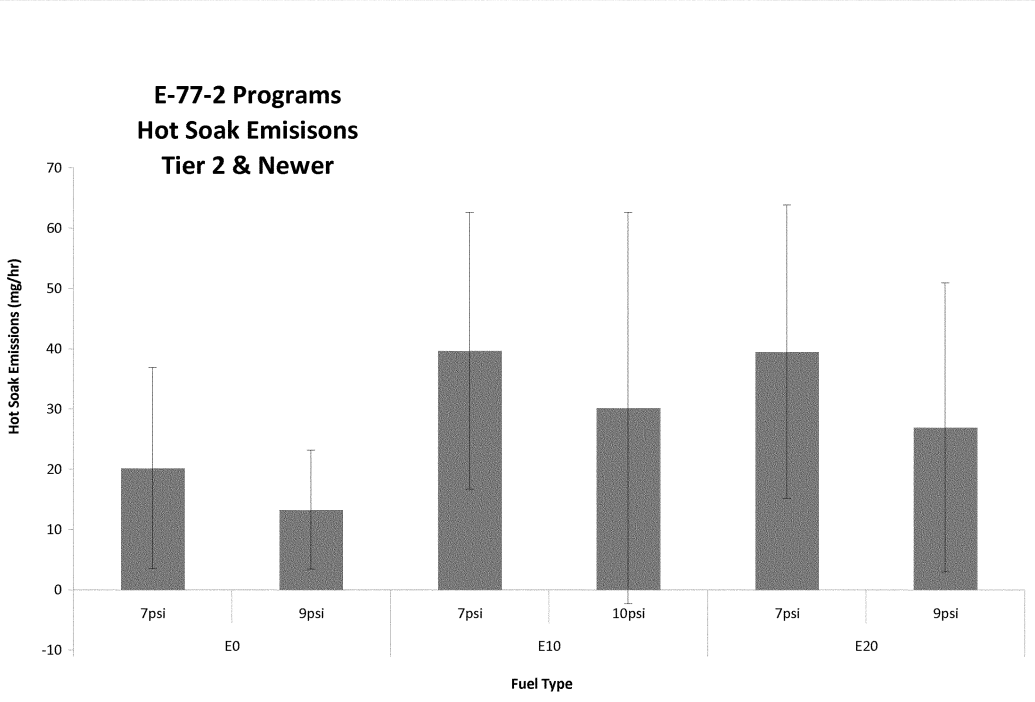
Growth Energy also failed to address potential long-term evaporative emission durability concerns in any meaningful way, referencing only the materials compatibility work discussed in section IV.A.4.

Despite the limitations of the Growth Energy petition with respect to vehicle evaporative emissions, the Agency believes that sufficient information is available through other studies to support the conclusion that as long as E15 meets a summertime gasoline volatility level of no higher than 9.0 psi, Tier 2 compliant motor vehicles—which includes all MY2007 and newer gasoline-fueled light-duty motor vehicles and trucks, and medium-duty passenger vehicles—are expected to continue to comply with their evaporative emissions standards on E15.

By virtue of testing of motor vehicles with gasoline-ethanol blends for more than three decades, it is known that gasoline-ethanol blends can have negative impacts on evaporative emissions when compared to E0 on which the motor vehicles are certified. Ethanol impacts diurnal emissions primarily through its impact on the volatility of the gasoline-ethanol blend, boosting the RVP of the final gasoline-ethanol blend by approximately 1 psi unless the gasoline blendstock is produced to offset the increase. Permeation emissions through elastomers in fuel tanks, lines, valves, and connectors have been shown to be strongly influenced by the presence of ethanol in the fuel, though the Tier 2 standards have minimized this impact for Tier 2 compliant motor vehicles. Hot soak and running loss emissions will change in chemical composition with gasoline-ethanol blends and could be impacted over the long term by impacts of ethanol on motor vehicle component materials. Ethanol is also known to cause degradation of certain materials that have been used in motor vehicle gasoline and evaporative emission control systems that could lead to increased evaporative emissions over time. As a result of the changing emission standards and motor vehicle designs over the years, these impacts of ethanol on evaporative emissions will vary depending on the age of the motor vehicle. The discussion which follows is focused on the impact on Tier 2 motor vehicles.

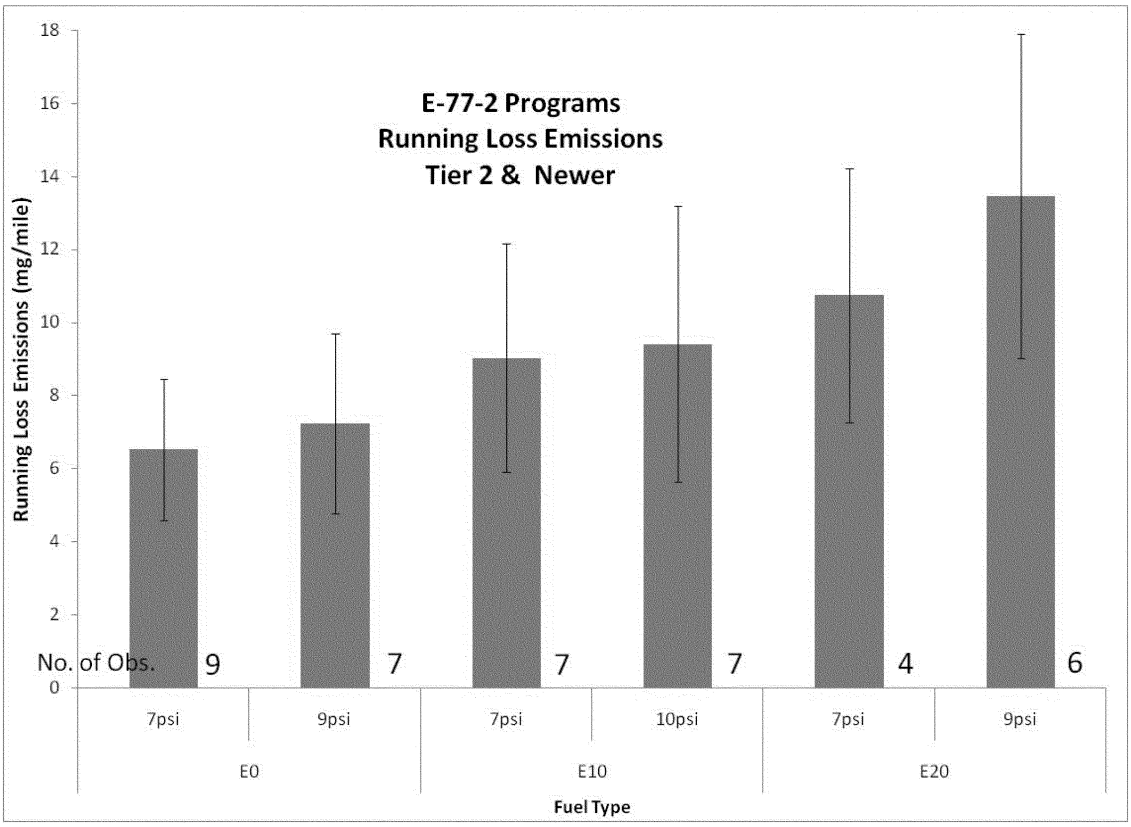
For hot soak and running loss emissions, E15 should not impact compliance with the evaporative emissions standards (*see* Figures 1 and 2). Data from the CRC E–77 test programs suggest that there may be some correlation between hot soak and running loss [64] emissions and ethanol content, but the impact is small, of questionable statistical significance, and may be related to permeation that occurs during the testing (*see* Figures IV.A–1 and 2).

Figure IV.A-1. Hot Soak Emissions



[64] Running loss emissions measured in the E–77 programs did not use the certification cycle. The study was focused on the worst case for permeation emissions and therefore used back-to-back LA92 cycles to increase the tank temperature with more aggressive driving. The certification cycle uses the NYCC which has many stops and starts, making it more difficult to purge the canister. There was no canister breakthrough measured during running loss tests in the study, therefore the chart in Figure 2 shows the effects of ethanol and RVP on running loss permeation.

Figure IV.A-2. Running Loss Emissions

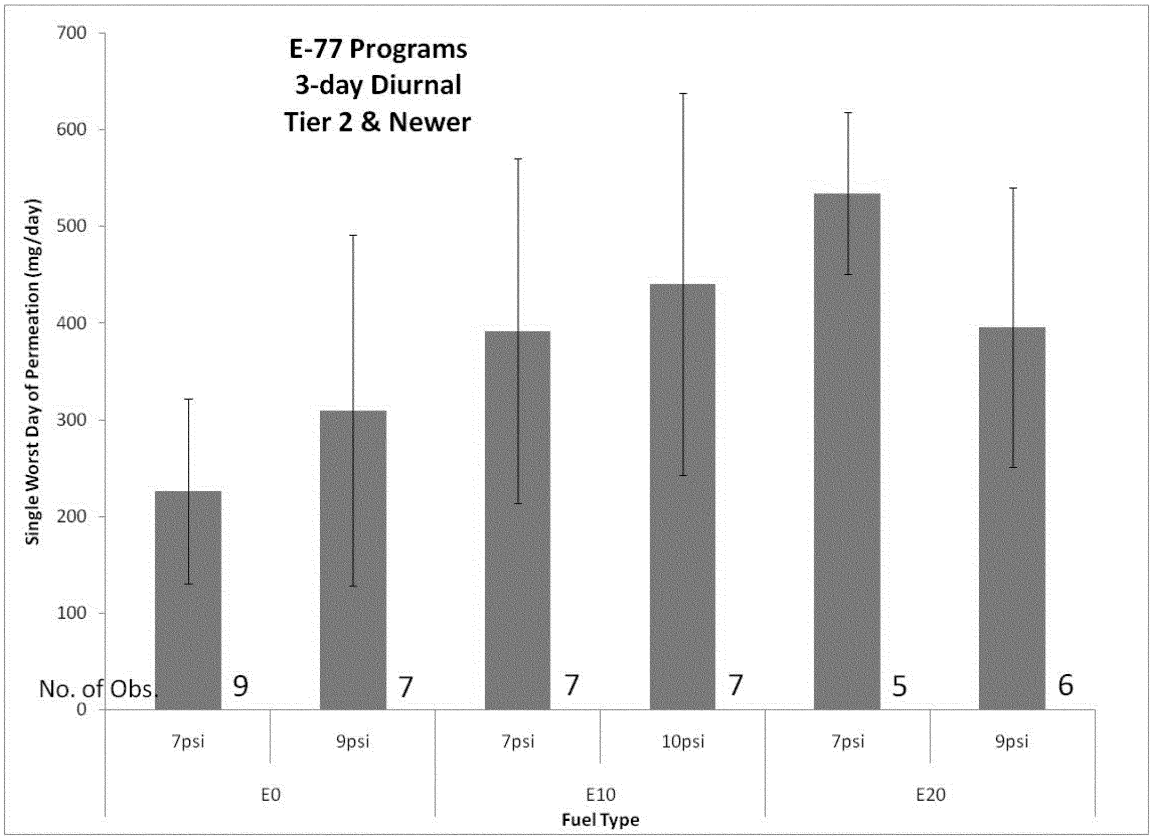


The CRC E–77 test programs also support the conclusion that diurnal evaporative emissions with E15 are likely to be comparable to those with E0 at the same RVP. Testing performed on E0, E10, and E20 shows that diurnal emissions are a function of the volatility of the fuel, not the ethanol content. As the volatility of the fuel was increased, the number of motor vehicles which experienced canister emissions breakthrough also increased, with seven of eight Tier 2 motor vehicles experiencing canister breakthrough at 10.0 psi RVP. These elevated diurnal emissions are not unexpected since the increased volatility of 10.0 psi versus 9.0 psi fuel results in roughly a 25% increase in evaporative vapor generation that must be captured by the canister beyond what has been required of manufacturers in motor vehicle certification. Almost any canister breakthrough would be enough to cause Tier 2 motor vehicles to exceed their evaporative emissions standard. However, since these tests were done on a more severe diurnal cycle of 65 °F–105 °F (California cycle), as opposed to the Federal requirement of 72 °F–96 °F, these test results only serve to highlight the concern that fuel with a higher volatility than 9.0 psi RVP during the summer will lead to motor vehicles exceeding their evaporative emissions standard in-use, but do not demonstrate it. At the same time, the Agency is also not aware of any data that would show that E15 with an RVP greater than 9.0 psi would in fact allow motor vehicles to continue to meet their evaporative emissions standards. Given this lack of data and the significant potential for increased evaporative emissions at higher gasoline volatility levels, the E15 waiver can only be considered in the context of E15 that maintains the same volatility as required of E0 certification fuel. As long as the volatility of the fuel does not exceed 9.0 psi during the summer, diurnal emissions from E15 are not anticipated to cause the motor vehicles to exceed their evaporative emissions standards. In addition to the increased evaporative emissions impacts that would result from allowing E15 to have a higher RVP than E0, as discussed in section X, EPA interprets CAA section 211(h)(4) as limiting the 1.0 psi waiver to gasoline-ethanol blends that contain 10 vol% ethanol, including limiting the provision concerning "deemed to be in full compliance" to the same 10 vol% blends. This interpretation is also consistent with how EPA has historically implemented CAA section 211(h)(4) through 40 CFR 80.27(d), which provides that gasoline-ethanol blends that contain at least 9 vol% ethanol and not more than 10 vol% ethanol qualify for the 1.0 psi waiver of the applicable RVP standard.

While the CRC E–77 test programs were extremely valuable in assessing diurnal emissions, their primary purpose was to allow the quantification and modeling of evaporative permeation emissions separate and apart from other evaporative emissions for E0, E10, and E20. Some key findings of the test programs were that gasoline-ethanol blends can significantly increase permeation emissions compared to pure gasoline. However, consistent with the results from the E–65–3 test program, it appears that the magnitude of the impact is relatively constant across E6, E10, and E20 blends, *i.e.,* no statistically significant difference. In other words, permeation emissions are a strong function of the presence of ethanol in the gasoline, not a strong function of the concentration within the range tested. Consequently, results for E15 would be anticipated to be comparable to those

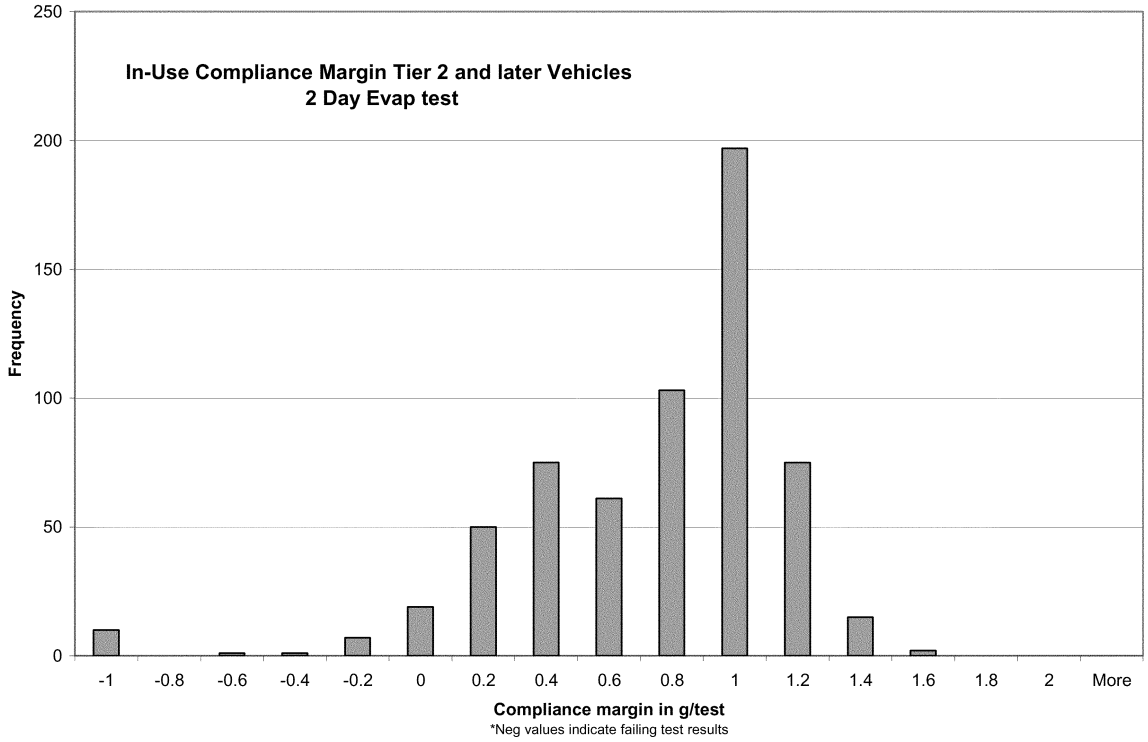
for E10 and E20. The results of the test program also demonstrate the effectiveness of the Tier 2 evaporative emissions standards at reducing permeation emissions. Based on the test results shown in Figure IV.A–3, the additional permeation emissions caused by the ethanol in E15 relative to results with E0 would appear to add little if anything, given the confidence intervals, to the evaporative emissions measurements of a Tier 2 motor vehicle operating over the Federal test cycle. Given the magnitude of manufacturer's evaporative emissions compliance margins for Tier 2 motor vehicles, as shown in Figure IV.A–4, any increase in permeation due to E15 should not be sufficient to cause Tier 2 motor vehicles to exceed their evaporative emission standards.

Figure IV.A-3. Three day Diurnal Test Permeation Emissions[65]



[65] Permeation here will include some background motor vehicle emissions, such as off-gassing from plastic components. The test procedure excluded canister breakthrough emissions and any refrigerant and methanol windshield washer solvent emissions.

Figure IV.A-4. In-use 2-day Eva Test Compliance Margin Tier 2 and Newer Motor Vehicles[66]



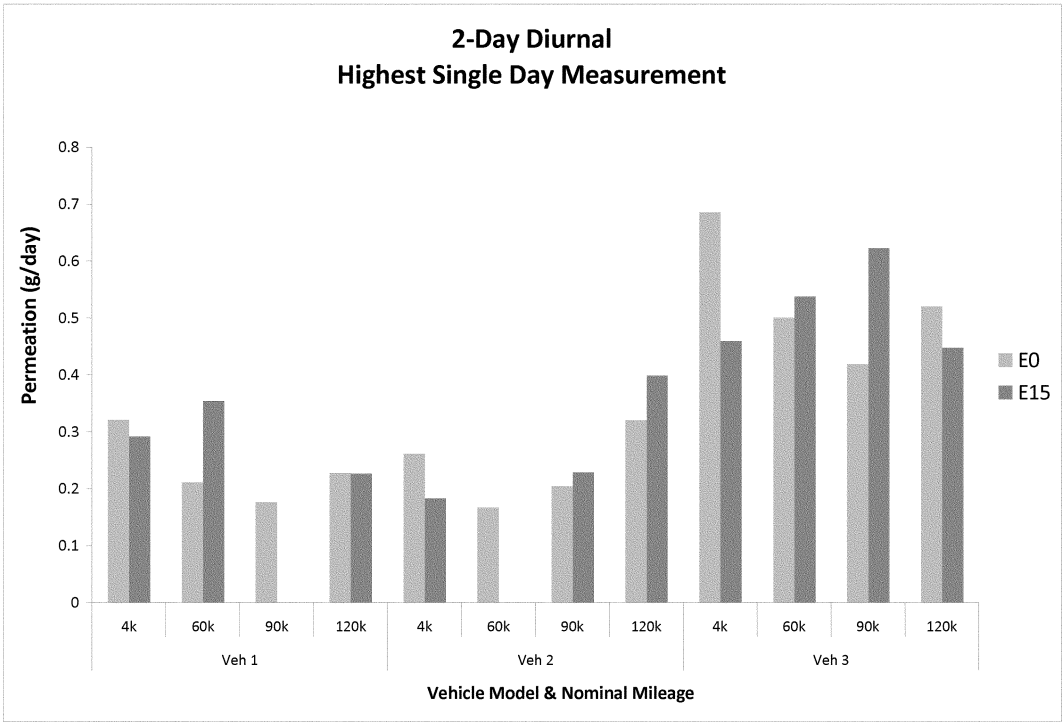
In addition to immediate evaporative emission impacts, Tier 2 motor vehicles' evaporative emissions controls systems were designed for regular E10 use, and they should be compatible and durable with E15 use over the full useful life of the motor vehicle. While they are tested for compliance with their applicable evaporative emissions standards on E0, these motor vehicles are required to demonstrate durability of the evaporative emissions control systems by performing aging with E10; therefore, these motor vehicles must demonstrate that they meet their evaporative emissions standards over their full useful lives after essentially operating exclusively on E10 prior to the certification testing. In other words, the seals, connections and other evaporative and fuel system hardware must be designed to meet evaporative emissions standards over their full useful lives after aging exclusively on E10. In addition to designing them for sustained E10 exposure, these designs must have sufficient design robustness to encompass production variability in materials and tolerances. Robustness in the design of these components should provide the safety margin manufacturers target for volume production. That same robustness is what we believe should allow for durability on E15, and the available test data supports this conclusion.

Testing conducted as part of the DOE Catalyst Study supports the conclusion that Tier 2 motor vehicle evaporative emissions systems should be durable in-use when operating on E15. The program, described above in section IV.A.1, did not show any evidence of evaporative emissions related problems. The onboard diagnostic monitors on the motor vehicles did not set any fault codes for evaporative emission system leaks. Furthermore, no physical differences were found between the impacts of E15 and E0 on motor vehicle components exposed to fuel or fuel vapor during the teardowns of the 12 Tier 2 motor vehicles analyzed (six aged on E0 and six aged on E15).[67] In the same study, one of DOE's contractors performed evaporative emission testing on eight of the Tier 2 motor vehicles (four aged on E0 and four aged on E15) on which they were performing motor vehicle aging and exhaust emission deterioration testing. They performed evaporative emission tests at the same mileage intervals where they measured exhaust emission performance. While this was only a limited sample size, and not directly applicable to Federal certification testing due to the lower RVP of the test fuels, they did not show any greater deterioration in evaporative emission performance over time on E15 compared to E0 (*See* Figure IV.A–5). While EPA is aware of another ongoing study, AVFL–15, which is looking at the durability of fuel system components, our understanding is that it is performing the testing on E20 using an atypical, "aggressive" ethanol. Consequently, while it may provide useful information for the manufacturers in designing their motor vehicles for the worst case conditions, it would not appear that it would have any bearing on the E15 partial waiver decision being made today.

[66] The two-day evaporative in-use data includes light-duty motor vehicles, light-duty trucks, and MDPVs, with the appropriate standards for each type of motor vehicle given in Table IV.A–4.

[67] Technical Summary of DOE Study on E15 Impacts on Tier 2 Vehicles and Southwest Research Teardown Report. *See* EPA–HQ–OAR–2009–0211.

Figure IV.A-5. Evaporative Testing within DOE Ethanol Total Vehicle Aging Study[68]



[68]

e. Conclusion

In assessing the potential impacts of E15 on evaporative emissions in their waiver application, Growth Energy did not draw their conclusions by comparing E15 to certification fuel (E0), but rather compared E15 to other gasoline-ethanol blends. In addition, Growth Energy provided only limited information on whether E15 would cause motor vehicles to violate their evaporative emission standards over their full useful lives. In fact, they made only a passing reference to potential evaporative emissions durability impacts of E15. As a result, they did not adequately support their waiver application with respect to evaporative emissions, either immediate emission impacts or long-term durability impacts. However, both evaporative emission testing performed in the CRC E–77 test programs (E–77, E–77–2, E–77–2b, E–77–2c) and limited evaporative emission testing as part of the DOE Catalyst Study support the conclusion that as long as E15 meets a summertime gasoline volatility level of no higher than 9.0 psi, Tier 2 motor vehicles are expected to continue to comply with their evaporative emission standards over their full useful lives when using E15.

4. Materials Compatibility for MY2007 and Newer Light-Duty Motor Vehicles

a. Introduction

Materials compatibility is a key factor in considering a waiver request since poor materials compatibility can lead to serious exhaust and evaporative emissions compliance problems not only immediately upon using the new fuel or fuel additive, but especially over time. In most cases one would expect any materials incompatibility to show up in the emissions tests, but there may be impacts that do not show up due to the way the testing is performed or because the tests simply do not capture the effect. As a result, along with emissions testing, materials compatibility is a key factor in assessing the emissions durability of a fuel or fuel additive. This section discusses materials compatibility issues for MY2007 and newer light-duty motor vehicles. However, since Growth Energy's submission and information supplied by commenters regarding immediate emissions impacts of E15 were not specific to the model year of the motor vehicles, this section also contains much of the information and discussion on emission impacts on older motor vehicles that is further discussed in section IV.C.

b. Growth Energy's Submission

Growth Energy submitted a series of studies completed by the State of Minnesota and the Renewable Fuels Association (RFA)[69] that investigated materials compatibility of motor vehicle engines and engine components using three test fuels: E0, E10, and E20 ("Minnesota Compatibility Study"). The Minnesota Compatibility Study looked at 19 metals ("Metals Study"),[70] eight elastomers (rubber materials) ("Elastomers Study"),[71] eight plastics

[68] The vehicles in this study were not aged over standard evaporative emissions systems aging protocol but rather underwent rapid mileage accumulation. Three vehicles are presented here as the fourth vehicle developed a leak and the data was not comparable for fuel effects.

[69] State of Minnesota and Renewable Fuels Association. *The Feasibility of 20 Percent Ethanol Blends by Volume as a Motor Fuel,* EPA Docket #EPA–HQ–OAR–2009–0211–0337.

[70] "The Effects of E20 on Metals Used in Automotive Fuel System Components;" Bruce Jones, Gary Mead, Paul Steevens, and Mike Timanus; Minnesota Center for Automotive Research at Minnesota State University, Mankato; February 22, 2008. EPA Docket #EPA–HQ–OAR–2009–0211–0338.

[71] "The Effects of E20 on Elastomers Used in Automotive Fuel System Components;" Bruce Jones, Gary Mead, Paul Steevens, and Chris Connors; Minnesota Center for Automotive

("Plastics Study"),[72] and 24 common fuel sending unit and fuel pump combinations ("Fuel Pumps Study" and "Fuel Pump Endurance Study"),[73] [74] currently used in automotive, marine, small engine, and fuel system dispensing equipment for physical or chemical effects due to ethanol.[75] The Compatibility Study concluded that "the effects of 20 percent ethanol blended fuels would not present problems for current automotive or fuel dispensing equipment." While much of the data cited by Growth Energy was on E20, they argued that because E20 showed comparable performance to E10 or E0, E15 should also be comparable by interpolation. In addition, Growth Energy stated that materials used to construct motor vehicle fuel systems have been certified to industry standards (SAE J1681) that are qualified using fuels containing 15% methanol, which is much more aggressive than ethanol. Since these standards have been used by the automotive industry for the last 15 years, Growth Energy concluded that most motor vehicles in use today should have fuel and evaporative systems compatible with up to 15% ethanol.

c. Public Comment Summary

Commenters responded to Growth Energy's claims by arguing that E15's effect on fuel system materials has not been properly studied. Many commenters noted that Growth Energy may have selectively excluded important findings from the Minnesota Compatibility Study.

Regarding the Metals Study, some comments noted that 14 out of the 19 metal samples that were tested exhibited greater than 50% measurable mass changes when tested with E20 compared to E10, and if those metals had been compared to E0 instead of E10, some mass changes would have exceeded 200%. The Alliance stated that such mass changes in metals "can be a very noteworthy indication of heavily accelerated corrosive effects" since unprotected metals often accelerate in a non-linear fashion.[76] With respect to specific materials, commenters stated that E15 will increase corrosion of terne plate gas tanks which were used in light-duty motor vehicles prior to the mid-1990s.

The Alliance criticized the Elastomers Study for testing raw materials instead of actual fuel system components (such as hoses, seals, and diaphragms), and argued that the impacts of mid-level gasoline-ethanol blends on raw materials would differ substantially from manufactured parts because manufacturers vary the compounds used in the construction of fuel system parts. The Alliance commented further that most of the materials tested were neither being used nor expected to be used in the future. The Alliance also commented that the study failed to justify how a 500 hour exposure test period provides the ability to predict compatibility of materials. The Alliance added that while studies have shown generally acceptable materials compatibility with ethanol up to 10 vol% ethanol, higher dosages have degraded certain metals, elastomers, plastics, and motor vehicle finishes.[77] The Alliance also commented that many researchers have found that the effects of gasoline-ethanol blends on elastomers may be non-linear with increasing ethanol content and that a blend containing 10–25% ethanol may be more harmful to elastomers than E85 or E100.[78] Moreover, the Alliance noted in their comments that over 30 years of research has led to the conclusion that concentrations between 15 and 50% ethanol provide the most challenging environment for elastomers compared to other ethanol levels. Regarding specific elastomers, commenters stated that E15 will damage fuel system components made of nitrile rubber while fluorocarbon elastomers have shown the best resistance to swell, tensile strength, and elongation for ethanol gasoline blends at 10 vol%.[79] [80] [81]

Some commenters also expressed concerns with a particular material, polybutlyene terephthalate (PBT), tested in the Plastics Study. The Alliance noted that PBT experienced a slight elevation in tensile elongation as the percentage of ethanol was increased, and that the study was performed at temperatures lower than would be experienced under real-world driving conditions. Since materials like PBT undergo a chemical transformation when exposed to ethanol, the Alliance argued that the elongation effect on PBT would be greater at the elevated temperatures found in real-world driving conditions. The Alliance concluded that E15 will damage fuel system components made of PBT and noted that at least one fuel system supplier used PBT in fuel pump modules between model years 1993 and 2004.

Several comments noted that the sample size for the Fuel Pumps Study was too small to draw conclusions about the effects of E20 and that the duration of the test program included only a short-term, static soak test of 720 hours as opposed to testing periods of at least 2,000 hours and up to 10,000 hours usually used to validate fuel pump designs and materials. Several commenters referred to the materials compatibility work in the Orbital Study[82] [83] which evaluated the effects of E20 on fuel system components for several older model Australian passenger vehicles.[84]

Research at Minnesota State University, Mankato; February 22, 2008. EPA Docket #EPA–HQ–OAR–2009–0211–0002.5.

[72] "The Effects of E20 on Plastic Automotive System Components;" Bruce Jones, Gary Mead, and Paul Steevens; Minnesota Center for Automotive Research at Minnesota State University, Mankato; February 21, 2008. EPA Docket #EPA–HQ–OAR–2009–0211–0002.8.

[73] "The Effects of E20 on Automotive Fuel Pumps and Sending Units;" Nathan Hanson, Thomas Devens, Colin Rohde, Adam Larson, Gary Mead, Paul Steevens, and Bruce Jones; Minnesota State University, Mankato; February 21, 2008. EPA Docket #EPA–HQ–OAR–2009–0211–0002.28.

[74] "An Examination of Fuel Pumps and Sending Units During a 4000 Hour Endurance Test in E20;" Gary Mead, Bruce Jones, Paul Steevens, Nathan Hanson, and Joe Harrenstein, Minnesota Center for Automotive Research at Minnesota State University, Mankota, March 25, 2009. EPA Docket #EPA–HQ–OAR–2009–0211–2721. Also available at *http://www.mda.state.mn.us/news/publications/renewable/ethanol/e20endurance.pdf.*

[75] Effects assessed in the studies include: Pitting, surface texture change, discoloration, or loss of mass for metals; appearance, volume, weight, tensile strength, elongation, and hardness for elastomers; mass loss or gain, volume loss or gain, tensile elongation, impact resistance, and tensile strength for plastics; and corrosion and longevity as measured by flow and pressure tests for pumps and sending units.

[76] "Alliance of Automobile Manufacturers Comments on Clean Air Act Waiver Application to Increase the Allowable Ethanol Content of Gasoline to 15 Percent, A–22. EPA Docket #EPA–HQ–OAR–2009–0211–2551.1.

[77] SAE J1297, revised July 2007, Surface Vehicle Information Report, Alternative Fuels.

[78] SAE 800786, "Effects of Mixtures of Gasoline With Methanol and With Ethanol on Automotive Elastomers," Ismat A. Abu-Isa, General Motors Research Laboratory. SAE 2007–01–2738.

[79] SAE 800786, "Effects of Mixtures of Gasoline With Methanol and With Ethanol on Automotive Elastomers," Ismat A. Abu-Isa, General Motors Research Laboratory.

[80] SAE 800789, "The Volume Increase of Fuel Handling Rubbers in Gasoline/Alcohol Blends," Nersasian, A., Passenger Car Meeting, June 9–13, 1980.

[81] SAE 912413 "An Overview of the Technical Implications of Methanol and Ethanol as Highway Motor Vehicle Fuels," Frank Black, U.S. Environmental Protection Agency, Research Triangle Park, NC.

[82] "Market Barriers to the Uptake of Biofuels Study, A Testing Based Assessment to Determine Impacts of a 20% Ethanol Gasoline Fuel Blend on the Australian Passenger Vehicle Fleet, Report to Environment Australia;" Orbital Engine Company; March 2003.

[83] "Market Barriers to the Uptake of Biofuels Study Testing Gasoline Containing 20% Ethanol (E20), Phase 2B Final Report to the Department of the Environment and Heritage;" Orbital Engine Company; May 2004.

[84] Components were selected from three vehicles, the Holden 1990 VN and 1985 VK Commodore and a 1985 Ford XE Falcon to encompass most

Continued

d. EPA Analysis

The Agency is concerned, based on its review of the literature and automotive industry comments, that most pre-Tier 2 motor vehicles, including Tier 0 vehicles (from the 1980s to 1995) and Tier 1 vehicles (from 1996 to 2001), may have been designed for only limited exposure to E10 and consequently may have the potential for increased materials degradation with the use of E15. This potential for materials degradation may make the emissions control and fuel systems more susceptible to corrosion and chemical reactions from E15 when compared to the certification fuels for these motor vehicles which did not contain any ethanol, and therefore may increase motor vehicle emissions. For MY2000 and older motor vehicles especially, E15 use may result in degradation of metallic and non-metallic components in the fuel and evaporative emissions control systems that can lead to highly elevated HC emissions from both vapor and liquid leaks. Potential problems such as fuel pump corrosion or fuel hose swelling will likely be worse with E15 than historically with E10, especially if motor vehicles operate exclusively on E15. Since ethanol historically comprised a much smaller portion of the fuel supply, in-use experience with E10 was often discontinuous or temporary, while material effects are time and exposure dependent. Thus, issues may surface with E15 that may not have surfaced historically in-use with E10.

Newer motor vehicles, such as Tier 2 and NLEV vehicles (MY2001 and newer), on the other hand, were designed to encounter more regular ethanol exposure compared to earlier model year motor vehicles. IUVP, introduced under CAP2000, requires manufacturers to perform exhaust and evaporative emissions tests on in-use motor vehicles. This emphasis on real-world motor vehicle testing prompted manufacturers to consider different available fuels when developing and testing their emissions systems. Additionally, beginning with Tier 2, the durability demonstration procedures required the demonstration of evaporative emission system durability on E10. As a result, the materials in Tier 2 motor vehicles have been able to mitigate the permeation effects of ethanol in the fuel, as discussed in section IV.A.2. As a result, our engineering analysis would suggest that Tier 2 compliant motor vehicles are more likely to be compatible with E15 than older motor vehicles.

While Growth Energy asserted that 15% methanol was a worst-case fuel for E15 materials compatibility purposes, the Agency is not aware of any analysis or industry standard practice that confirms that motor vehicle materials tested on 15% methanol test fuels will cover gasoline-ethanol blends up to 15% for materials compatibility and evaporative emissions purposes. SAE J1681 provides specifications and formulations for evaluating oxygenates in gasoline, including ethanol, on automotive fuel system components.[85] EPA's evaluation of SAE J1681 does not reveal that 15% methanol would be the surrogate worst case test fuel in evaluating all oxygenates. To the contrary, the fuel formulations for aggressive methanol and aggressive ethanol are different, as described in Appendix E of SAE J1681. EPA believes this difference is to account for contaminants that may be present in these two different products during production and/or transportation of each product. To properly evaluate the potential worse case impacts of a mid-level gasoline-ethanol blend, such as E15, on motor vehicle fuel systems components, the Agency believes it would be prudent to use the aggressive ethanol fuel formulation provided in Appendix E of SAE J1681, to the extent that it reflects E15 according to ethanol content, as well as any contaminant, that may be associated with the production or transportation of an E15 gasoline product. The Agency notes that SAE J1681 includes language describing potential impacts of oxygenates on metals (from by-products derived from oxygenates and especially when water is present), polymers (including elastomers and plastics), and polymer systems (including laminates and multi-layered components).[86]

e. Conclusions

The Agency has reviewed the studies and information submitted by Growth Energy, commenters, and other publicly available information to further assess the potential materials compatibility performance of E15, including the Minnesota Compatibility Studies.[87] The Minnesota studies were on component parts using laboratory bench tests rather than durability studies of whole motor vehicle fuel systems simulating "real world" motor vehicle use. Such tests are typically used to provide a first level screening of potential materials prior to more real-world testing to demonstrate materials compatibility of actual vehicle and engine components. In addition, the study admittedly assessed only a subset of materials used in motor vehicles and nonroad products over the years, and provided no information with which to correlate the materials tested with those in use in either the MY2007 and newer motor vehicles or older motor vehicles and nonroad products. Manufacturers have continually modified engine, fuel system, and emissions control system materials over the years in response to technology needs, in-use fuel quality changes (including E10), and emission standards. In many cases, they have incorporated special coatings and barriers in existing materials to address problems discovered in the field or in emissions testing. Furthermore, as commenters point out, there were differences found in the testing for some of the materials, which would suggest further testing was necessary. Finally, conclusions Growth Energy reached comparing the results of some of the materials on E20 to E10 are not helpful in assessing the impacts of E15 relative to E0. Consequently, while the Minnesota studies are informative, they cannot by themselves be used to draw any definitive conclusions. Rather, the conclusion is that actual vehicle durability testing is warranted.

In the case of MY2007 and newer motor vehicles, the Agency believes that the DOE Catalyst Study has provided the additional information needed. Along with (1) our engineering analysis of the types of changes manufacturers have made in response to the Tier 2 motor vehicle standards and the rapid rise of E10 use across the nation; (2) the limited information available from the Minnesota studies; and (3) the lack of any information from commenters showing definitive problems on Tier 2 compliant motor vehicles, we believe that the durability testing performed by DOE as discussed in section IV.A.1. above is sufficient to provide assurance that MY2007 and newer motor vehicles will not exhibit any serious materials incompatibility problems with E15. Not only did the DOE Catalyst Study not uncover any emissions deterioration problems with E15 in comparison to E0, it also did not uncover any material differences upon tear-down and inspection of six of the motor vehicle pairs tested out to FUL.[88] Therefore, the Agency does not expect that there will

component types within the Australian passenger car fleet.

[85] SAE J1681, "Surface Vehicle Recommended Practice, for Gasoline, Alcohol and Diesel Fuel Surrogates for Materials Testing," Issued 1992–09, Revised 2000–01.

[86] *Ibid.*

[87] SAE J1297, revised July 2007, Surface Vehicle Information Report, Alternative Fuels.

[88] Only a difference in intake valve deposits was seen.

be materials compatibility issues with E15 that would cause MY2007 and newer light-duty motor vehicles to exceed their exhaust or evaporative emission standards over their full useful lives.

5. Driveability and Operability for MY2007 and Newer Light-Duty Motor Vehicles

a. Introduction

In past waiver applications before the Agency, driveability and general operability of the motor vehicle have not necessarily been impacted by the fuel or fuel additive and therefore not significant to the decision making process. However, a change in the driveability of a motor vehicle that results in significant deviation from normal operation (*i.e.,* stalling, hesitation, *etc.*) can conceivably result in unexpected emission increases and should be considered when evaluating a fuel or fuel additive. These increases may not be demonstrated in the emissions certification test cycles but instead be present during in-use operation. A motor vehicle stall and subsequent restart can result in a significant emissions increase because HC and CO emissions rates are typically highest during cold starts. Further, a consumer or operator might tamper with the motor vehicle in an attempt to correct the driveability by modifying the vehicle from its original certified configuration.

b. Growth Energy's Submission

Growth Energy relies on the Minnesota Driveability Study, the RIT Study, the MCAR Study, and the DOE Pilot Study to support their claim that "E–15 will cause no driveability issues" and will not lead to the removal of or the rendering inoperative of emissions control devices or systems based on negative performance impacts. Growth Energy claims that the RIT Study supports the Minnesota Driveability Study's findings by driving 10 motor vehicles with significant mileage (between 30,000 and 120,000 miles) for over 75,000 miles on E20 under "real world conditions." They argue that the RIT Study's drivers did not detect any performance degradation and there were no engine or fuel part failures that required abnormal maintenance.[89] Growth Energy argues that the MCAR Study, which tested 15 in-use cars and light-duty trucks operating on E10 and E30 for a year, showed "no driveability complaints, no reports of cold starting, vapor lock, or hard starting conditions, and no reports of hesitation with the E–30 blend of fuel."[90] Growth Energy contends that the DOE Pilot Study showed that "none of the vehicles tested displayed a malfunction indicator light as a result of the ethanol content, no fuel filter plugging symptoms were observed, no cool start problems were observed in 75 °F and 50 °F laboratory conditions, and no fuel leaks or conspicuous degradation of the fuel systems were observed."[91]

In their application, Growth Energy asserts that the Minnesota Driveability Study, the MCAR Study, and the RIT Study demonstrate that higher gasoline-ethanol blends do not result in driveability or performance problems.

c. Public Comment Summary

Several commenters mention specific methodological issues with the driveability studies included in Growth Energy's waiver request. The Alliance pointed out what they believe to be several flaws with the Minnesota Driveability Study. First, they noted low response rates for the drivers rating operability concerns. Second, the trained drivers did not drive motor vehicles back-to-back on E0 and E20, which made direct comparison of driveability on E0 to E20 impossible. Third, the Alliance argues that many of the batch fuel analyses were suspect, casting doubt on the actual fuel properties used in the study. The Alliance and others had similar critiques with the MCAR Study and also noted that neither the Minnesota Driveability Study nor the MCAR Study were peer-reviewed. With regard to the RIT Study, as mentioned previously, many commenters point out that the study summary provided with Growth Energy's public comments does not provide enough detail to conduct a thorough independent analysis, making it difficult to verify Growth Energy's claims. The Alliance argues that more testing needs to be conducted evaluating how ethanol affects T50 and TV/L in the gasoline-ethanol blends containing greater than 10 vol% ethanol.

Growth Energy responded to these driveability issues in their comments by reiterating the arguments made in their E15 waiver application and noting that the updated summary of the RIT Study that they submitted as part of their comments showed no driveability or mechanical problems with approximately 400 motor vehicles driven on E20 for over 1.5 million miles.

Commenters also raised questions regarding the sensitivity of the OBD system to increased gasoline-ethanol blends and some ongoing studies to quantify potential impacts. Honda submitted some limited data regarding potential motor vehicle sensitivity to higher gasoline-ethanol blends. Additionally, at the Mid-Level Ethanol Blends Research Coordination Group meeting on May 5, 2010, a presentation was made to members regarding possible implications of increased levels of ethanol on the vehicle OBD systems[92]. The presentation described the findings of the first phase of CRC project E–90 which is intended to study the impact of ethanol on OBD systems. Phase 1 of the study was designed to investigate differences in the status of vehicle OBD monitors and other emissions control information in E10 versus E0 areas of the country in an attempt to isolate potential ethanol impacts to OBD. Since E15 and E20 are not currently legal fuels for conventional motor vehicles (*i.e.,* non-flex fuel vehicles), the study used the differences between E0 and E10 to project potential impacts of E15 and E20 on the OBD system but did not actually perform any testing on E15 or E20. Similarly, Honda did not perform any actual testing using E15 or E20 but instead used the E0 to E10 information, combined with potential component tolerance stack-up, to assess risk of having the OBD system set a fault and illuminate the malfunction indicator lamp (MIL).

d. EPA Analysis

The Agency understands the concern for driveability and other operational issues that could potentially occur with an increase in ethanol content. During the initial introduction of ethanol over 30 years ago, problems with hot fuel handling were encountered due to the ethanol boiling in the fuel system, resulting in operational issues like stalls, engine hesitations, misfires and vapor lock preventing hot restarts. Since the introduction of ethanol, motor vehicles have evolved to alleviate these early issues, mainly through fuel system design. These changes included the switch to fuel injection with an associated increase in the system fuel

[89] In Growth Energy's comments submitted during the E15 public notice and comment period, Growth Energy submitted an updated summary for the RIT Study. *See* below for more details.

[90] Application For A Waiver Pursuant to Section 211(f)(4) of The Clean Air Act For E–15 submitted by Growth Energy on behalf of 52 United States Ethanol Manufacturers *see* EPA–HQ–OAR–2009–0211, 33.

[91] Application For A Waiver Pursuant to Section 211(f)(4) of The Clean Air Act For E–15 submitted by Growth Energy on behalf of 52 United States Ethanol Manufacturers *see* EPA–HQ–OAR–2009–0211, 34.

[92] "E15/E20 Tolerance of In-Use Vehicle OBD–II Systems." Presentation available at *http://www.crcao.com/.*

pressure, all of which have worked to reduce the potential for hot fuel issues when operating on gasoline-ethanol blends. In fact, E85 capable FFVs sold today typically operate at similar or the same fuel pressure as their non-FFV counterparts with no reported issues. Due to the stringent emission standards requiring precise fuel control, Tier 2 vehicles have been engineered with the highest fuel pressure systems in vehicle history which make them also highly robust at managing ethanol's low boiling point. The Agency does not believe that properly functioning fuel injected vehicles, particularly Tier 2 vehicles, will encounter any new heat related operational issues with an increase in ethanol content of the fuel to 15 vol%.

Driveability issues could also occur from incompatibility between E15 and manufacturers' approaches at calibrating a motor vehicle for fuels it is expected to encounter in-use. If the error in fuel quantity, caused by the fuel properties of E15 (*i.e.,* oxygen content), is beyond what the system is designed to compensate for, driveability issues (cold start roughness, hesitations) can arise. However, due to the large variability found in fuels in the market today which can result in similar driveability behaviors, from experience with in-use fuels, manufacturers have employed methods to counter or compensate for fuel differences and try to prevent these driveability issues. Because of the stringent Tier 2 emission standards, Tier 2 vehicles required focused attention to cold start fueling to ensure emission compliance while tolerating the different fuel blends that the vehicle could encounter in-use. This resulted in modification of calibration and control strategies by manufacturers to balance the need for precise cold start fuel that meet both emission requirements and operate properly when fuel properties vary in-use. Because manufacturers already calibrate motor vehicles based on their experience with in-use fuels, combined with lack of any reported driveability issues in any of the E15 and E20 test programs during both laboratory and road testing, the Agency believes that properly functioning and maintained motor vehicles will not experience an increase in driveability issues when operating on a properly blended E15 fuel. Collectively, the RIT Study, Minnesota Driveability Study, MCAR Study and a CRC cold start study [93] did not report any fuel related driveability issues demonstrated across different E15 and E20 seasonally blended fuels and verified during winter, summer and shoulder seasons, supporting the Agency's findings.

Motor vehicles produced since approximately 1995 have been equipped with OBD systems that monitor all aspects of the exhaust and evaporative emissions control system. The Agency recognizes that the additional oxygen content in E15 will be identified by the OBD system as a shift in the fueling requirements. In some motor vehicles, a shift in the fuel requirements beyond predetermined thresholds, based on the manufacturer's research, can result in a MIL illumination. However, across the many different test programs with different motor vehicles and duty cycles, including lab testing, mileage accumulation and in-use operation, there were no reported incidences of MIL illumination from the use of increased ethanol for both E15 and E20. Based on this, the Agency believes that properly functioning (*i.e.,* within component tolerances) and maintained motor vehicles will not experience an increase in MIL illumination due to the use of E15. However, for a vehicle that has a component issue or failure (*i.e.,* intake vacuum leak, exhaust leak, *etc.*) which indirectly effects the same OBD monitors as ethanol content, it is possible that the increase in ethanol may push the OBD system monitor over the calibrated thresholds and cause a MIL illumination.

e. Conclusion

The Agency has reviewed the studies and information submitted by Growth Energy, commenters, as well as other information from the emissions and durability test programs to assess the potential for driveability and diagnostic issues on Tier 2 motor vehicles (*i.e.,* MY2007 and newer). With the exception of ethanol content, fuel properties were largely allowed to vary across the different studies and test programs (*i.e.,* gasoline blend stocks varied between programs and season). This included ethanol blends as high as E30 in the MCAR Study and the program with the largest amount of vehicles, the RIT study, operating on E20 throughout the year which included summer, winter, spring, and fall operation. In these two studies where the ethanol levels exceeded E15 and the vehicles were operated in a relatively uncontrolled manner (*i.e.,* not driven on a specific duty-cycle), there were no reported driveability issues or OBD related problems on the vehicles.

The DOE test programs, both the DOE Pilot Study and the DOE Catalyst Study, did not report any occurrence of driveability or diagnostics issues throughout the testing. For the durability program, mileage accumulation on the Tier 2 vehicles occurred at three locations including one location at altitude (Denver Colorado). For the mileage accumulation, fuels where made by splash blending locally available commercial fuels. Vehicle mileage accumulation was performed both on mileage accumulation dynamometers and on a track with actual drivers. There were no reported driveability issues or OBD related problems during the mileage accumulation period on the Tier 2 vehicles at the various testing locations.

The Agency's review of the data and information from the different test programs finds no specific reports of driveability, operability or OBD issues across many different vehicles and duty cycles including lab testing and in-use operation. Thus, while the potential exists for some vehicles more sensitive to ethanol to experience driveability or operability issues, the frequency is likely not more than what is currently experienced in-use today. Therefore, the Agency does not anticipate that there will be driveability, operability or OBD issues with E15 on properly operating and maintained MY2007 and newer light-duty motor vehicles.

6. Overall Immediate and Long-Term Emissions Conclusions

As described in the preceding sections, EPA evaluated Growth Energy's submission based on five factors: Long-term exhaust emissions impact over time, immediate exhaust emissions impact; immediate and long-term evaporative system impacts; the impact of materials compatibility on emissions; and the impact of drivability and operability on emissions. Based on results from the DOE Catalyst Study in particular coupled with our engineering judgment, EPA believes there is strong evidence that MY2007 and newer light-duty motor vehicles will not exceed their emission standards over their useful life when operated on E15. Therefore, EPA is granting the waiver for MY2007 and newer light-duty motor vehicles.

B. MY 2001–2006 Light-Duty Motor Vehicles

EPA is deferring its decision on MY2001–2006 light-duty motor vehicles. DOE is in the process of conducting additional catalyst durability testing that will provide data regarding MY2001–2006 motor vehicles. The DOE testing is scheduled to be completed by November 2010. The data will be made available to the public.

[93] CRC Report No. 652, "2008 CRC Cold-Start and Warm-up E85 and E15/E20 Driveability Program," October 2008.

EPA will then consider these data and other data and information available to make a further determination on the use of E15 in those MY motor vehicles.

C. MY2000 and Older Light-Duty Motor Vehicles

Due to differences in vehicle standards and technology over time and in light of the data and information available, the Agency has chosen to split consideration of the E15 waiver request into model year groupings. This section concerns MY2000 and older light-duty motor vehicles.

TABLE IV.C–1—TIER 0 AND TIER 1 EMISSION STANDARDS PHASE-IN BY MODEL YEAR

	Tier 0	Tier 1 Phase-in percentage		
		MY1994	MY1995	MY1996
Passenger car	MY1981 and newer*	40	80	100
Light duty truck <6000 GVW	MY1988 and newer	40	80	100
Light duty truck >6000 GVW	MY1990 and newer		50	100

* Final diesel particulate standard required came in 1987.

MY2000 and older light-duty motor vehicles have much less sophisticated emissions control systems compared to today's vehicles and, as described below, may experience conditions that lead to immediate emission increases and may exceed their emission standards if operated on E15. Vehicles produced prior to the mid-1980s were equipped primarily with carbureted engines. The A/F ratio of the carburetor is preset at the factory based on the expected operating conditions of the engine such as ambient temperature, atmospheric pressure, speed, and load. As a result, carburetors have "open loop" fuel control which means that the air and fuel are provided at a specified, predetermined ratio that is not automatically adjusted during vehicle operation. As fuel composition can vary, an engine with a carburetor and open loop fuel control would never know if it achieved the desired A/F ratio or not. Since the vehicles at this time operated "open loop" all of the time with no ability to react to changes in the A/F ratio, the addition of ethanol to the fuel tended to make the A/F ratio leaner, typically resulting in an immediate emission impact of reducing HC and CO emissions, but increasing NO_X emissions. However, some of these older open loop systems already operate at the lean edge of combustion on current commercial fuels so an increase in ethanol may cause them to begin to misfire resulting in HC and CO increases.

As a result of the Clean Air Act of 1970, EPA established standards and measurement procedures for exhaust, evaporative, and refueling emissions of criteria pollutants. From 1975 into the 1980s, vehicles became equipped with catalytic converters, first with catalysts capable of oxidizing HC and CO, and then, in response to EPA's 'Tier 0' standards, with three-way catalysts that also reduced NO_X. With the 'Tier 0' standards, closed loop fuel control was required to maintain proper fuel air ratio control necessary to achieve high conversion efficiency in the three way catalyst. In most vehicles this was accomplished through the use of feedback carburetors. Vehicles produced from the late 1980s and even more so into the 1990s, as a result of more stringent California and Federal standards, evolved to incorporate more sophisticated and durable emission control systems. These systems generally included an onboard computer, oxygen sensor, and early electronic fuel injection with more precise closed loop fuel compensation and therefore A/F ratio control during more of the engine's operating range. However, even with the use of closed loop systems through the late 1990s, the emission control system and controls remained fairly simple with a limited range of authority and were primarily designed to adjust for component variability (*i.e.,* fuel pressure, injectors, *etc.*) and not for changes in the fuel composition. During this period, ethanol was only available in very limited areas of the U.S. so the manufacturers' designs of the emission controls and the durability of emission control hardware generally did not account for the increased oxygen content of ethanol. As a result, this generation of vehicles certified to Tier 0 and early Tier 1 emission standards experienced immediate emission impacts of ethanol and likely also deteriorated at different rates when exposed to ethanol. These designs continued to evolve during the early period of the Tier 1 emission standards as manufacturers and component suppliers gained experience with vehicles in-use. However, the largest improvements to emission controls and hardware durability came after 2000 with the introduction of several new emission standards and durability requirements forcing manufacturers to better account for the implications of in-use fuels on the evaporative and exhaust emission control systems.

The NLEV program for exhaust emissions began Federally with MY2001 (MY1999 in the northeast trading region within the NLEV program) for all cars and light trucks up to 6000 lbs. GVW. This program essentially adopted the existing California LEV certified vehicles as a national vehicle program. These NLEV vehicles met more stringent emission standards for all criteria emissions requiring substantial changes to emission control hardware and strategies compared with Tier 1 vehicles. The LEV and NLEV programs largely were the start of a migration to emission control hardware and strategies resembling future Tier 2 program approaches (*e.g.* independent catalyst per bank on V engines). Many of the improvements (*i.e.* catalyst designs, washcoat formulation) may have been leveraged by the remaining new Tier 1 vehicles, mainly the over 6000 lbs. GVW trucks not required to comply with the NLEV standards, but to what degree is unknown.

The CAP2000 program was implemented for MY2001 and later vehicles. The CAP2000 program was designed to place more emphasis on in-use performance of vehicle emission controls with vehicles operating nationwide on the different available fuels. The IUVP introduced under CAP2000 requires manufactures to perform exhaust and evaporative emissions tests on customer vehicles. These tests must be performed at low and high mileage intervals and include at least one vehicle per test group [94] at 75% of full useful life. This emphasis on real world vehicle testing prompted manufacturers to consider different available fuels when developing and testing their emissions systems.

[94] EPA certifies light-duty motor vehicles on a test group basis. A test group is a group of vehicles having similar design and emission characteristics.

Under the CAP2000 program, manufacturers are allowed to design durability processes that predict in-use deterioration. Prior to CAP2000, manufacturers would run traditional durability programs to calculate emissions deterioration which generally required that vehicles accumulated mileage out to their full useful life under highly controlled conditions and fuels. Under the new program with increased emphasis on in-use emission levels, manufacturers must confidently ensure that their in-use emission deterioration is as predicted.

The Enhanced Evaporative Emissions requirements were fully phased in for light-duty vehicles by 1999. These new requirements included both new standards and new test procedures: The 2-day and 3-day diurnal tests with new canister loading procedures. In addition, the durability demonstration procedures that took effect with the Tier 2 program beginning in 2004 required the use of at least the maximum ethanol concentration permitted by Federal law that is commercially available for the entire service accumulation period.

Along with the Enhanced Evaporative Emissions requirements, OBD requirements for evaporative leak detection monitors were introduced. This required vehicles to detect a leak equivalent to .040 inch in the fuel or evaporative emissions system. Beginning in 2001, EPA allowed manufactures to comply with California OBD regulations, which required vehicles to detect a leak equivalent to a .020 inch. While not required Federally, many manufacturers developed one leak detection system for sale in all 50 States, which complied with the more stringent California requirement.

By MY2004, the SFTP was fully phased in. Additional test procedures were developed to better represent the driving habits and conditions experienced in actual customer driving. These procedures expanded the vehicle testing to include the US06 test, a high speed and high acceleration cycle, the SCO3 test, an air conditioning test cycle run in an environmental test chamber at 95 °F, and a 20 °F cold test run on the FTP cycle. These additional test cycles coupled with the in-use testing required under CAP2000 have pushed manufactures to develop robust emissions control systems capable of withstanding the higher temperatures experienced on these more severe cycles.

The tightening evaporative emission standards, the durability requirement to include prolonged exposure to ethanol in the fuel, the CAP2000 requirement to test high mileage in-use vehicles, and the OBD leak detection requirement have all combined to compel manufacturers to develop more durable evaporative emission systems and focus on testing with fuels that would be encountered in customer vehicles, including fuels containing ethanol. Thus, MY2000 and older vehicles have not benefitted from many of the design changes that MY2007 and newer light-duty motor vehicles have. Therefore, we do not have the same confidence with MY2000 and older light-duty motor vehicles as we do with MY2007 and newer light-duty motor vehicles with respect to operation on E15.

1. Growth Energy's Submission

Growth Energy's waiver application covered all model years of motor vehicles—they made no specific claims specific to MY2000 and older motor vehicles. A summary of Growth Energy's submission with respect to the potential impacts of E15 on (1) exhaust emissions, both long-term durability and immediate impacts, (2) evaporative emissions, both long-term durability and immediate impacts, (3) materials compatibility, and (4) driveability and operability for MY2007 and newer light-duty motor vehicles is discussed in the respective subsections within Section IV.A. Since Growth Energy's waiver application was for all model years of motor vehicles, the summary of their submission contained in Section IV.A is also applicable here for MY2000 and older light-duty motor vehicles.

2. Public Comment Summary

Similar to the broad applicability of Growth Energy's submission, the public comments received tended to cover all model years of light-duty motor vehicles, and the summary of comments received contained in section IV.A. is also applicable here. However, the Alliance specifically commented that historically, it has taken about 20 years for an entire vehicle fleet to turn over, but with current depressed sales due to poor economic conditions, the turn-over rate could be slower in the near future and that a well-executed study should have a test fleet that is proportionally similar to the model years that comprise the national fleet. The Alliance argued that the bulk of the emissions data cited in Growth Energy's waiver request focus on newer (*i.e.,* Tier 2) vehicles and do not adequately represent the national vehicle fleet and that these older vehicles may be more sensitive to the effects of higher ethanol blends and constitute a greater portion of the number of vehicles currently in use. Specifically the Alliance commented that the DOE Pilot Study presents data from R. L. Polk describing the U.S. fleet but did not select the vehicles to statistically represent that fleet. The study included no Tier 0 vehicles, for example, and the selected test vehicles did not proportionally represent the vehicles in the Polk table. The test program generally ignored pre-1999 motor vehicles, even though they will continue to be a large portion of the legacy fleet for many years. These older motor vehicles are most likely to have operational and emissions issues with E15 and E20.

The Alliance also commented that many years of automaker experience with developing and producing vehicles capable of using E22, E85 and E100 fuels have shown that engines need to be hardened for resistance to ethanol. Use of ethanol blends in unhardened engines can result in bore, ring, piston and valve seat wear. Deterioration of these components can lead to compression and power loss, misfire and catalyst damage

Finally, EPA recently received a report by Ricardo [95] commissioned by the Renewable Fuels Association specifically discussing the potential impacts of E15 on MY2000 and older light-duty motor vehicles. This report's conclusions stated that:

> "While performing an engineering assessment on a fleet of such magnitude as the current U.S. motor vehicle fleet, it was necessary to make certain assumptions and approximations to allow an overall assessment to be made. Due to this unavoidable circumstance, there are certain exceptions to the overall findings of this study which may occur in the field due to unpredictable conditions outside the scope of normal operation. Without investigating each and every vehicle in the fleet individually for its reaction to an E15 fuel blend, there cannot be 100% certainty that some vehicles will not observe adverse effects from the use of E15. However, using statistical analysis, the fleet was reduced to a more manageable and representative collection of platforms and manufacturers. The vehicles arising from this methodology were evaluated and served as representative vehicles for the time period.
>
> The effect of E15 on various vehicle systems were assessed for vehicles in the 1994 to 2000 MY time period. Overall, moving from the use of E10 to E15 in the current U.S. light vehicle fleet is seen as a low risk from an engineering analysis perspective. While certain risks do remain, they are manageable and exist in vehicles that are outside the normal bounds of "standard" vehicles in the 1994 to 2000 MY timeframe."

[95] Ricardo Inc., *Technical Assessment of the Feasibility of introducing E15 Blended Fuel in U.S. Vehicle Fleet, 1994 to 2000 Model Years,* 10 September, 2010. EPA Docket #EPA–HQ–OAR–2009–0211–14007.1.

3. EPA Analysis and Conclusion

a. Scope of MY2000 and Older Data to Support a Waiver Decision

As highlighted by the Alliance in their comments, Growth Energy did not provide information to broadly assess the emission performance of E15 in all motor vehicles in the in-use fleet, and this is particularly true of MY2000 and older motor vehicles. Furthermore, there are important differences in design between the MY2000 and older and MY2007 and newer (Tier 2) vehicles that makes it impossible to simply rely on data collected on more recent model year vehicles.

Growth Energy did make reference to the RIT and MCAR studies which included some vehicles from MY2000 and older. However, as discussed in section IV.A, these studies have the following limitations: The vehicles tested in these studies do not fully represent the MY2000 and older fleet. The RIT study only performed emissions testing on 2 vehicles from MY2000 and older and the mileage accumulated on E20 for each vehicle was far less than the 120,000 mile FUL. Since the MCAR study did not use Federal test procedures it would be difficult to determine compliance to Federal emissions standards. Therefore, it is not possible to draw adequate conclusions concerning the potential impacts of E15 on the emission performance of MY2000 and older vehicles from these studies.

The Agency is not aware of any other information that would allow us to fully assess the potential impacts of E15 on the emission performance of MY2000 and older vehicles. The recently released Ricardo study, despite its focus on MY1994–2000 motor vehicles, does little to change this understanding. EPA believes that the Ricardo study offers little additional data and information with which to assess the emissions effect of E15 on MY2000 and older motor vehicles. First and most importantly, Ricardo did not perform any emissions or durability testing of E15 on MY2000 and older light-duty motor vehicles. Rather, they conducted a literature search of existing data and information already cited by Growth Energy, commenters, or otherwise available to the Agency, and simply focused their discussion on MY1994–2000 vehicles instead of all MY2000 and earlier vehicles. Second, the only new data and information provided in the Ricardo study was their visible inspection of fuel system components from 11 MY1994–2000 motor vehicles that were evaluated for any visible signs of material compatibility or durability issues. The fuel systems were collected from a reclamation service in Southeast Michigan (Southeast Michigan has had varying levels of E10 market penetration over the years). However, as the authors acknowledge, since no vehicle history records were available to indicate to what extent the fuel systems may have been exposed to E10, if at all, during their lifetimes, it is impossible to draw any definitive conclusions regarding the effects of ethanol on these components. Finally, the authors did not draw any conclusions as to the potential impacts of E15 relative to E0. The authors only concluded that "The analysis concluded that the adoption and use of E15 would not adversely affect fuel system components in properly engineered vehicles, nor would it cause then to perform in a sub-optimal manner, when compared to the use of E10."

In addition to the paucity of data on MY2000 and older motor vehicles, as discussed below, there are reasons for concern with the use of E15 in these motor vehicles, particularly with respect to long-term exhaust and evaporative emissions durability. This makes it difficult to rely on an engineering assessment and makes the need for actual emissions data critical.

b. Exhaust Emissions—Long-Term Durability

i. General Tailpipe Emissions Durability Concerns

Ethanol enleans the A/F ratio, which leads to increased exhaust gas temperatures and therefore potentially incremental deterioration of emission control hardware and performance. Over time, the enleanment caused by ethanol has the potential to cause catalyst failure. This effect of E15 and the use of closed loop fuel trim to mitigate the effect are discussed in more detail in section IV.A.1.c.i above.

The A/F ratio of the carburetor is preset at the factory based on the expected operating conditions of the engine such as ambient temperature, atmospheric pressure, speed, and load. As a result, carburetors have "open loop" fuel control, which means that the air and fuel are provided at a specified, predetermined ratio that is not automatically adjusted during vehicle operation. As fuel composition can vary, an engine with a carburetor and open loop fuel control would never know if it achieved the desired A/F ratio or not. Since the vehicles at this time operated "open loop" all of the time with no ability to react to changes in the A/F ratio, the addition of ethanol to the fuel tended to make the A/F ratio leaner. This leaner operation could increase catalyst temperature and therefore increase the emissions deterioration rate.

For MY2000 and older light-duty motor vehicles, which are capable of operating with closed loop fuel control, the fuel trim range is generally more limited than the range for newer vehicles, and these vehicles may use their full range of fuel trim adjustment to account for normal component deterioration. Injectors, sensors and changes to fuel pressure may shift with time and aging to use all of the fuel trim's range of adjustment. The additional oxygenate in E15 may actually shift the A/F ratio more than the earlier introduction of E10 if the engine's A/F feedback cannot compensate because it has reached its adjustment limit. In short, MY2000 and older motor vehicles and earlier are at risk of having insufficient thermal margins to accommodate ethanol blends up to E15 due to the limits of their fuel trim authority.

There is very little test data on the use of E15 in older vehicles but the concern is more than just theoretical. Three studies—the CRC Screening Study, DOE Pilot Study, and the Orbital Study—discussed in section IV.A. highlight in particular the concern with MY2000 and older motor vehicles. The CRC Screening Study (E–87–1) was a test program developed to look at the effects of mid-level ethanol blends on U.S. vehicles. This screening study was the first phase of a two-phase study evaluating the effects of mid-level ethanol blends on emission control systems. The purpose of this first phase of the study was to identify vehicles which used learned fuel trims to correct open loop air-fuel rations. Under the test program a fleet of 25 test vehicles was identified and acquired with six of those vehicles being MY2000 and older. The study collected vehicle speed, oxygen sensor air-fuel-ratio, and catalyst temperature data for four fuels (E0, E10, E15, and E20). The results of the three ethanol blended fuels compared to E0 showed that four of the six MY2000 and older vehicles tested failed to apply long-term fuel trim to open loop operation in order to compensate for increasing ethanol levels. And that these same four vehicles exhibited increased catalyst temperatures when operated on E20 as compared to E0. While the subsequent DOE Catalyst Study concluded that this learned fuel trim was not important for MY2007 and newer motor vehicles because they are durable (and therefore can handle E15) as discussed in section IV.A, there was no such follow on program for MY2000 and older motor vehicles so the

durability of these vehicles on E15 is unknown.

Another study suggests that many MY2000 and older motor vehicles may also have emission exceedances if operated on E15. In 2003, the Orbital Engine Company issued a report on the findings of vehicle testing it completed to assess the impact of E20 on the Australian passenger vehicle fleet. While the Australian vehicles in this study were not representative of U.S. vehicles of the same model years, they are similar to MY2000 and older U.S. motor vehicles with respect to technology and emission standards. The testing program covered vehicle performance and operability testing, vehicle durability testing, and component material compatibility testing, on nine different vehicle makes or models, five vehicles from MY2001 and four vehicles from MY1985 to MY1993. Testing results showed increases in exhaust gas temperature in five of the nine vehicles tested with three showing increases in catalyst temperature. Enleanment was found to occur in six of the nine vehicles tested, with three having closed loop control—the old vehicles without closed loop control all displayed enleanment. In general, the increase in exhaust gas temperature was found to follow those vehicles with enleanment. Furthermore, one vehicle in the study experienced catalyst degradation sufficient to make the tested vehicle no longer meet its applicable Australian emission standards.

Hence, based on this very limited test data and our engineering judgment, we can conclude that MY2000 and older motor vehicles have the potential to experience conditions when operated on E15 which may ultimately lead to an increase in exhaust emissions. Specifically, enleanment followed by higher exhaust temperatures could cause accelerated catalyst deterioration. Furthermore, there are potential concerns other than just catalyst durability for these older vehicles, as highlighted by the Alliance in their comments. Absent actual emissions durability testing, it is not possible to know the validity of these emissions concerns with E15 in MY2000 and older motor vehicles. Unlike for MY2007 and newer motor vehicles we are not aware of any existing test program which can address the lack of data concerning MY2000 and older motor vehicles.

ii. Immediate Exhaust Emission Impacts

Growth Energy claims that the ACE Study, the RIT Study, the MCAR Study, and the DOE Pilot Study show that E15 results in decreased emissions of NO_X, NMHC, and CO on average, and no increase in NMOG emissions when compared to E0. Growth Energy argues that these studies demonstrate E15 will not cause or contribute to the failure of vehicles to meet their emissions standards. While much of the data cited by Growth Energy was on E20, they argued that because the studies they submitted with their application show favorable emissions performance on blends that contained higher than 15% ethanol (*i.e.* E20), those results should be applicable to E15 by interpolation.

As discussed in IV.A.1, the ACE study, RIT Study, and MCAR Studies offer little value in assessing the impact of E15 on immediate exhaust emissions. Since the DOE Pilot Study focused only on motor vehicles newer than MY2000, Growth Energy provided very little information of value in assessing the immediate exhaust emission impacts of E15. Furthermore, very little data has been collected on E15 on MY2000 and older vehicles. However, also as discussed in section IV.A.1.b., the Agency believes that there is sufficient data on older vehicles to quantify the immediate emission impacts of E10 on older vehicles and furthermore sufficient data from testing E15 primarily on newer vehicles to have a reasonable projection of what the immediate emission impacts of E15 are likely to be on MY2000 and older vehicles. Specifically, as discussed in section IV.A.1.b., EPA would anticipate, that the immediate emission impact of E15 will be similar for both older vehicles and MY2007 and newer vehicles—to decrease NMOG (as well as NMHC and total HC) and CO emissions and to increase NO_X emissions, with increases in NO_X in the range of 5–10%. The importance of this NO_X increase is a function of what the durability impacts might be, since they must be taken into consideration together when evaluating potential impacts on compliance with emissions standards.

c. Evaporative Emissions

Much of the discussion in section IV.A.2 applies to MY2000 and older motor vehicles. However it is important to note that this group of vehicles has several key differences.

First, the majority of these vehicles were designed and built prior to the enhanced evaporative emissions requirements. These vehicles were tested using the 1-hour diurnal plus hot soak procedure only. The CRC E–77 test programs showed that permeation emissions are considerably higher on pre-Tier 2 motor vehicles than on Tier 2 motor vehicles. Therefore it is expected that permeation emissions with E15 on MY2000 and older motor vehicles will be much higher than that discussed in section IV.A.3. for MY2007 and newer motor vehicles. However, given that the evaporative emission standards that applied to MY1998 and older motor vehicles (pre-enhanced evaporative emission control standards), used only a 1-hour diurnal test, the increased permeation emissions would not show up appreciably in the certification testing and could not cause motor vehicles to exceed the emission standard.

Second, the MY2000 and older motor vehicles were not required to demonstrate evaporative emissions durability with fuels containing ethanol. Furthermore, E10 had a limited market share during the time when many of these motor vehicles were designed and built. This raises the concern that the fuel and evaporative emissions system components may not have been designed for constant exposure to E10, and especially not E15. These older motor vehicles could experience significant material compatibility issues (as discussed below) that could lead to elevated evaporative emissions over time or both fuel and vapor leaks. Thus, while the immediate evaporative emission impacts of E15 may not be a waiver concern, evaporative emission durability would be a primary concern for MY2000 and older motor vehicles. Finally, these motor vehicles were not subject to OBD leak detection, so if problems did occur there would be no OBD warning for the vehicle owner.

d. Materials Compatibility

The Agency has reviewed the studies that have shown generally acceptable materials compatibility in newer motor vehicles (*i.e.* Tier 2 motor vehicles) with ethanol up to 10% by volume, but degradation of certain metals, elastomers, plastics, and vehicle finishes with higher dosages.[96] However, most of these studies, including the Minnesota Compatibility Study, were on component parts using laboratory bench tests rather than durability studies of whole vehicle fuel systems simulating "real world" vehicle use. In addition, there is no way to correlate the results of the study with MY2000 and older motor vehicles. Many different materials were used over the years and we do not have data that shows which manufacturers used which specific materials at various points in time. We can conclude, however, that some portion of the fleet may experience changes that could result in

[96] SAE J1297, revised July, 2007, Surface Vehicle Information Report, Alternative Fuels.

accelerated component failures beyond what would be expected on E0 or E10. We are especially concerned that older motor vehicles may not have been designed to accommodate ethanol blends.

The Agency believes, based on its review of the literature and automotive industry comments, that a number of pre-Tier 2 motor vehicles, including Tier 0 motor vehicles (from the 1980s to 1995) and Tier 1 motor vehicles (from 1996 to 2001), may have been designed for only limited exposure to E10 and consequently may have the potential for increased material degradation with the use of E15 even though they are beyond their useful life requirements. This potential for material degradation may make the emissions control and fuel systems more susceptible to corrosion and chemical reactions from E15 when compared to the certification fuels for these motor vehicles which did not contain any ethanol, and therefore may increase vehicle emissions. For MY2000 and older motor vehicles, especially, E15 use may result in degradation of metallic and non-metallic components in the fuel and evaporative emissions control systems that can lead to highly elevated hydrocarbon emissions from both vapor and liquid leaks. Potential problems such as fuel pump corrosion or fuel hose swelling will likely be worse with E15 than historically with E10, especially if motor vehicles operate exclusively on it. Since ethanol historically comprised a much smaller portion of the fuel supply, in-use experience with E10 was often discontinuous or temporary, while material effects are time and exposure dependent. Thus, issues may surface with E15 that have not surfaced historically in-use.

The authors of the Ricardo study acknowledge that "Many materials have been used in the fuel systems of light duty motor vehicles, small engines, and off-road equipment. Limiting the scope to light duty motor vehicles, including passenger cars and light trucks, from the target range of model years (1994 to 2000) it is impractical to complete a comprehensive survey of the materials that might be exposed to liquid fuels." This highlights the concern that older motor vehicles could experience significant material compatibility issues.

e. Driveability and Operability for MY2000 and Older Light-Duty Motor Vehicles

Very little test data was submitted regarding driveability and general operability of MY2000 and older light-duty motor vehicles operating on E15. However as discussed in the MY2007 and newer light-duty motor vehicle analysis, past issues with driveability and operability of older technology fuel controls have been observed with fuels containing ethanol. Hence, absent data to prove otherwise, there is uncertainty regarding the ability of MY2000 and older motor vehicles to handle E15. We have concerns that these motor vehicles could experience driveability and operability issues that may also lead to an emissions increase.

f. Conclusions

It is the burden of the applicant to demonstrate that any new fuel or fuel additive that requires a waiver under CAA section 211(f)(4) of the substantially similar prohibition in CAA section 211(f)(1) will not cause or contribute to the failure of motor vehicles to meet their emissions standards over the vehicles' full useful life. Growth Energy has not made this demonstration for MY2000 and older light-duty motor vehicles as Growth Energy has not provided sufficient data and information to broadly assess the performance of these motor vehicles while using E15. Additionally, based on our own engineering judgment after review of all available data and information for MY2000 and older light-duty motor vehicles, we find that there are concerns about potential emissions increases with the use of E15 in these vehicles, particularly regarding long-term exhaust and evaporative emissions (durability) impacts and materials compatibility. Therefore, the Agency has concluded that it cannot grant a waiver for the use of E15 in MY2000 and older light-duty motor vehicles based on existing data.

V. Nonroad Engines and Equipment (Nonroad Products)

A. Introduction

Past waiver decisions were made solely on the basis of the emission impacts of the fuel or fuel additive on motor vehicles. However, with the passage of the Energy Independence and Security Act of 2007, CAA section 211(f)(4) was expanded to require that the emissions impacts on nonroad engines and nonroad vehicles (collectively referred to as nonroad products in this section) also be taken into consideration when reviewing a waiver application. Nonroad products for the following discussion is defined as those nonroad products that contain spark-ignition engines and are used to power such nonroad vehicles and equipment as boats, snowmobiles, generators, lawnmowers, forklifts, ATVs, and many other similar products. These nonroad products are typically used only seasonally and occasionally during the season which is very different from the daily use of automobiles. Due to the seasonal and occasional use, consumers can hold onto and use their nonroad products over decades with some being 30 or 40 years old. Nonroad engines are typically more basic in their engine design and control than engines and emissions control systems used in light-duty motor vehicles, and commonly have carbureted fuel systems (open loop) and air cooling (extra fuel is used in combustion to help control combustion and exhaust temperatures).

EPA received authority to regulate emissions from nonroad products with the Clean Air Act Amendments of 1990. Through a series of subsequent rulemakings, EPA has promulgated exhaust emission standards for the categories of new nonroad engines that use motor vehicle gasoline: (1) Small spark-ignition engines, (2) large spark-ignition engines, (3) marine spark ignition engines, and (4) recreational engines. Evaporative emission standards (tank permeation, hose permeation, diurnal and running loss) have been promulgated on a portion of the nonroad products in these categories. Thus, like for motor vehicles, EPA's emissions impact analysis for nonroad products concentrates on the following four major areas: (1) Exhaust emissions, both immediate and longer-term durability, (2) evaporative emissions, both immediate and long-term; (3) materials compatibility, and (4) driveability.

The following table summarizes the various nonroad products and their applicable emissions standards. The current standards are to be met after a period of engine aging which is done on either a dynamometer or chassis per regulation requirements per nonroad sector.

Table V.A -1 Summary of Nonroad Sectors and Applicable Emission Standards

NONROAD SECTOR (Spark Ignition Only)	Current/Future Emission Standards	
	Exhaust Emission Standards (g/kWhr or other noted)	Evaporative Emission Standards
SMALL ENGINES <19KW – first regulated 1997		
Class I Lawnmowers, pumps	2012: HC+NOx: 10, CO: 519 Life: 125/250/500 hours	First evaporative standards in 2010-2016 -fuel tank permeation -fuel line permeation -running loss -diurnal
Class II Garden tractors, utility vehicles	2011: HC+NOx: 8, CO: 519 Life: 250/500/1000 hours	
Class III Trimmers	2007: HC+NOx: 50, CO: 805 Life: 50/125/300 hours	
Class IV Trimmers, blowers, chainsaws		
Class V Chainsaws	2007: HC+NOx: 72, CO: 603 Life: 50/125/300 hours	
LARGE ENGINES – first regulated 2004		
>19kW and not included in another category -typically retrofitted automotive engines, -Commercial applications – mowing, power generating, farm, construction, industrial	2007: General cycle: HC+NOx: 2.7, CO: 4.4 Life: 7 yrs/5000 hours whichever first 2007: Severe Duty: HC+NOx: 2.7, CO: 130 Life: 7yrs/1500 hours whichever first	-Fuel line permeation -diurnal emissions -running loss emissions

MARINE ENGINES – first regulated 1997 (OB and PWC), 2010 SD/I		
Outboard (OB)	2010 =/< 4.3kW: HC+NOx: 30 >4.3kW: HC+NOx: calculation based on engine's max power CO: </=40kW= calc based on engine's max power, >40kW=300 g/kWhr LIFE:350 hours/10 yrs (OB) LIFE: 350 hours/5 yrs (PWC)	First regulations in 2009: Fuel tank permeation Fuel line permeation Diurnal fuel tank vapor Refueling emissions provisions
Personal Watercraft (PWC)		
Sterndrive Inboard Engines (SD/I) -Typically marinized basic automotive engines	2010: HC+NOx: 5 g/kWhr CO: 75 g/kWhr LIFE: 480 hours/10 yrs High performance engine standards	
RECREATIONAL ENGINES – first regulated 2006		
Nonroad Motorcycles[97]	2007: HC+NOx: 2.0 g/km CO: 25 g/km LIFE: 5 yrs/ 5,000/ 10,000 km depending on size	First regulations 2008: fuel tank and fuel line permeation
ATV	2007: HC+NOx: 1.5 g/kW CO: 35 g/kW LIFE: =/>100cc: 5 yrs/ 1,000 hrs/ 10,000km <100cc: 5 yrs/500 hrs/5,000km	
Snowmobiles	2010-2011: HC: 75 CO: 275 LIFE: 400 hours/ 5 yrs/ 8,000 km 2012 standards exist with max allowable family emission limits	

Typical emission control strategies for nonroad products include enleanment and engine redesign with some limited number of nonroad products adding catalysts. A limited number of nonroad products have also incorporated electronic fuel injection; however the vast majority of all nonroad products still use open loop fuel systems (either carbureted or fuel injected) and hence do not adjust automatically for oxygenated fuel. The result of all this is that there is a broad range of nonroad engine and equipment designs across the nonroad sector, making it difficult to apply data or conclusions from one nonroad product broadly. For example, the following list shows the various trends in design changes in nonroad engines due to emission regulations.

- Small spark-ignition Class I and Class II (nonhandheld) engines are typically open loop carbureted 4-stroke, side valve or overhead valve design, air and fuel cooled engines. Engine manufacturers have incorporated changes to the engine designs (improving combustion chamber design, adding valve guides, improving cooling, *etc.*), incorporated catalysts on some models and enleaned engine operating A/F ratios from past richer operation approaches.

[97] On-highway motorcycles have separate emissions standards and minimum useful life requirements, which may be found in 40 CFR Part 86 Subpart E.

• Small spark-ignition Class III–Class V (handheld) engines are typically open loop carbureted 2-stroke,air and fuel cooled engines. Engine manufacturers have incorporated changes to the 2 stroke engine designs including reduced scavenging, lean out the A/F ratio, from past richer operation approaches, and catalysts (on some models). Some manufacturers have switched to 4-stroke design or mixed (2- and 4-stroke) design where the application allows.

• Large Spark Ignition Engines are typically retrofitted automobile engines and a number of them do run on motor vehicle gasoline. These engines are water cooled and run feedback electronic controls much like their automotive equivalent.

• Marine outboard and personal watercraft engines were typically open loop carbureted 2 stroke engines. Today these engines are typically open loop 4-stroke engines or direct injected 2-stroke engines. Engines are water cooled.

• Marine sterndrive/inboard engines are typically open loop 4-stroke carbureted or electronic fuel injection and emission regulations in 2010 are expected to result in catalysts on sterndrive/inboard engines and possibly closed loop electronic fuel injection. Engines are water cooled.

• Off-highway motorcycles and ATVs have typically been open loop carbureted 2-stroke and 4-stroke engines but are becoming more 4-stroke design with some fuel injection. These engines are typically air and fuel cooled.

• Snowmobile engines have typically been open loop carbureted 2-stroke engines but have recently started to migrate towards fuel injection and even some 4-stroke engines.

B. Growth Energy Submission

Growth Energy provided only limited information in support of their waiver request application regarding the potential emission impacts of E15 on nonroad products. For addressing the potential long-term exhaust emission (durability) impacts, Growth Energy refers to a single study of ethanol blend use in nonroad engines: the DOE Pilot Study. Growth Energy states in its application that the DOE Pilot Study compared regulated emission levels from a comprehensive and nationally representative fleet of 28 small nonroad engines (SNREs), and that the DOE Pilot Study showed that regulated emissions were no worse for E15 and E20 when compared with E0. Growth Energy argues that the DOE Pilot Study demonstrates that E15 will not cause or contribute to nonroad engines failing to meet emissions standards.

For addressing immediate exhaust emission impacts, Growth Energy referenced a 1999 SAE report, "The Effect of High Ethanol Blends on Emissions from Small Utility Engines." [98] The study conducted emissions testing on three MY1994 small (12.5 hp) engines using SAE and EPA procedures. Ethanol was splash blended with a commercial RBOB to produce E0, E10, E25, and E50. The small engine set included two 12.5-hp (9.3 kW gross rating) Briggs & Stratton side-valve engines, and one 12.5-hp Kohler overhead-valve engine. The engines started out running rich on E0, but became leaner with increasing ethanol content. As the ethanol concentration increased, HC and CO emissions decreased, and NO_X emissions increased. The emissions results were fully consistent with the observed stoichiometries. Because NO_X is regulated by standards for $HC+NO_X$, from a regulatory perspective, the overall emission performance was relatively unaffected by the changes in ethanol content. Growth Energy claims this study demonstrates that E15 should not have any impact on $HC+NO_X$ emissions.

Growth Energy did not submit any test data that evaluated how the use of E15 would impact evaporative emissions and evaporative emissions controls for nonroad products, either for immediate emission impacts or long-term evaporative emission impacts (durability).

They did, however, cite the Minnesota Compatibility Study to address potential materials compatibility concerns with E15; materials compatibility issues could also lead to evaporative (short-term permeation or long-term durability) as well as long-term exhaust emission impacts. Growth Energy suggests that the Minnesota Compatibility Study tested commonly used materials in the construction of nonroad engines and that the DOE Pilot Study concluded that "no obvious materials compatibility issues were observed during [the] testing" of SNREs.[99] Growth Energy argues that the Minnesota Compatibility Study demonstrates that SNREs should experience no significant materials compatibility problems with E15.

Growth Energy did not provide any data or information quantifying the potential impacts of E15 on the operability or driveability of nonroad products. Instead, they pointed to the DOE Pilot Study discussed above which evaluated long-term emission performance of SNREs. Growth Energy claims that the DOE Pilot Study demonstrates that the use of E15 will not have a discernable impact on the performance and operability of SNREs. They stated that since the DOE Pilot Study shows that the engine performance of SNREs varies considerably regardless of fuel type used that it is not possible to isolate the effects of ethanol on the operability of SNREs.[100]

In their comments, Growth Energy wrote that there "is no scientific basis" for excluding SNREs in a waiver for E15, and further states that the DOE Pilot Study "found no statistically significant impact on operations from higher-blend ethanol, including E–15." Growth Energy also argues that there are no studies that show that E15 will create problems for nonroad engines (marine engines specifically).

C. Public Comment Summary

AllSAFE and several other commenters argued that the DOE Pilot Study's test program is too small and unrepresentative of the national SNRE population. The commenters pointed out that the DOE Pilot Study only looked at 10 different small spark ignited engines <19kW.[101] The commenters noted that those engines were only from three of the possible seven main classes of SNREs.[102] The commenters stated that in 2008, over 1,000 individual SNREs were certified by EPA, so the 10 engines tested were not comprehensive and nationally representative.

Commenters also noted that the DOE Pilot Study itself says that "DOE's test program could focus only on a small subset of these engine families." AllSAFE also argues that the DOE Pilot Study demonstrates that every lawn and garden engine tested showed significant increases in emissions and greater emissions control system deterioration with increasing ethanol levels.

[98] Bresenham, D. and Reisel, J. "The Effect of High Ethanol Blends on Emissions from Small Utility Engines," SAE 1999–01–3345, JSAE 9938100, 1999.

[99] EPA Docket Number: EPA–HQ–OAR–2009–0211–0002.6: Growth Energy Application, 34.

[100] EPA Docket Number: EPA–HQ–OAR–2009–0211–0002.6:. Growth Energy Application, 34.

[101] The study contained two parts; (1) a pilot (new engine) emission study and (2) a study of emissions after a full life durability dynamometer aging. Four different engines were used in the full life durability portion (Briggs & Stratton, Honda, Stihl, Poulan) and multiple engines for each of these were utilized in the study. The multiple engines were used to age different engines on different ethanol blend fuels (E0, E10, E15 and E20).

[102] Small spark ignition engines are grouped into seven Classes and include Class I, Class I–A, Class I–B, Class II, Class III, Class IV and Class V. The engines in the DOE Pilot Study were in Class I, Class II and Class IV for the pilot study and in Classes I and IV for the full life study.

Furthermore, AllSAFE points out that the DOE Pilot Study demonstrated higher exhaust temperatures with increasing ethanol levels, which may adversely impact numerous emission-related components, including pistons, crankshafts, gaskets, and catalysts (particularly under off-nominal conditions).

AllSAFE's submittal contained emission results on the testing of a Briggs and Stratton 6.0 horsepower Quantum engine (Class I) on E20 ("Briggs and Stratton Study"). AllSAFE points out that the Briggs and Stratton Study demonstrated that new engine emission testing of the Quantum engine on E20 had an adverse effect on NO_X emissions. Exhaust emission testing results on the engine showed a decrease of approximately 32% in HC emissions and an 133% increase in NO_X emissions using E20 when compared to E0, which resulted in 10.5% increase in HC+NO_X emissions. [103]

Many commenters contend that use of E15 in nonroad products causes material compatibility concerns and necessitates further investigation into the impacts of the use of E15 in nonroad engines. Commenters point to two additional studies not cited in Growth Energy's waiver application: (1) An Orbital Study; and, (2) the Briggs and Stratton Study. The Orbital Study is a separate nonroad product study (i.e.: separate from the Orbital Study on Australian motor vehicles), that conducted 2,000-hour bench testing with E20 on materials from the fuel systems of a Mercury 15hp Marine Outboard engine and a Stihl F45R Line Trimmer ("Orbital Nonroad Products Study"). The Orbital Nonroad Product Study found that E20 caused severe corrosion, rusting and pitting of metallic and brass components, such as the carburetor body and throttle, piston rings, crankshaft seal housing, crankshaft bearings and surfaces, connecting rod, cylinder liner, throttle blades. The study also found that E20 caused swelling, distortion and degradation of the fuel delivery hose, fuel primer bulbs, fuel line connector, and crankshaft seal. The Orbital Nonroad Products Study concluded that these problems would likely cause: (1) Oxides that may dislodge and damage the engine; (2) the loss of intended fuel-air metering and control, and (3) fuel leakage.

The Briggs and Stratton Study submitted in Exhibit C of the AllSAFE comments contains evaluations of the impacts of E20 on EPA-certified engines through soaking fuel components [104] and this report was cited by other commenters. After six months of soaking, the study showed 5–10% greater swelling and mass gained by gaskets and rubber parts for parts soaked in E20 compared to E0. The epoxy for the Welsch plug, a plug placed over the progression holes in the carburetor body, dissolved in E20 and coated the plug. In a running engine, that could result in the plug falling out and fuel leaking from the carburetor, resulting in a potential increase in evaporative emissions. The inlet needle seats and the fuel cap gaskets swelled, which could also lead to increases in evaporative emissions. Garden tractor fuel tank caps and seals "exhibited extreme swelling" in E20 versus E0.[105] AllSAFE argues that these conclusions corroborate the Orbital Nonroad Products Study's findings and highlight the need for additional research into E15's effects on the materials used in SNREs and other nonroad products.

AllSAFE and others note that the DOE Pilot Study found many issues with SNREs that were not discussed in Growth Energy's waiver application. For example, commenters noted the following problems from the DOE Pilot Study: (1) Three Weed Eater blower engines failed, one on E0 and two on E15; (2) one Weed Eater blower would not idle on E20 and (3) another Weed Eater blower would not make full power on E20; (4) a Stihl line trimmer had high idle with E15 and E20 that caused clutch engagement at idle; and (5) a Briggs and Stratton 3500 kW generator stalled and experienced loss of power and abrupt stopping of the engine on E20.

Commenters also point to the operability problems that arose in the Briggs and Stratton Study. In the study, a 6.0 HP Quantum engine was used for temperature, durability and performance, and evaporative testing. AllSAFE and others note that higher operating temperatures were observed with increasing ethanol content. The authors say that the higher temperatures caused material compatibility issues, citing a head gasket failure after 25 hours of "very light duty testing." [106] The RPM stability was observed to decrease for both E10 and E20 over E0, with the decrease for E20 close to three times larger than for E10. The stability decrease can lead to harsh audible speed oscillations which may be deemed unacceptable for many applications which require stable engine speeds (*e.g.,* generator, lawn equipment, *etc.*).[107] Tests on starting showed a decrease in acceleration using E20 in comparison to E10 and E0.

Several commenters argue that Growth Energy does not provide data concerning the performance of many categories, classes, and families of nonroad engines on E15, and the test data from the DOE Pilot Study is not adequate to cover all nonroad applications. Notable data gaps include information regarding marine engines, snowmobiles, recreational vehicles, motorcycles, and several classes of small nonroad engines that were not tested in the DOE Pilot Study. In addition, several commenters noted, some of the operability issues may pose a significant safety hazard to operators of small nonroad engines due to higher idle speeds and inadvertent clutch engagement.

D. EPA Analysis

1. Scope of Nonroad Data to Support a Waiver Decision

Prior to assessing the technical merits of the information submitted by Growth Energy to support their waiver application with respect to nonroad products, it is necessary to first assess the completeness of the application. Listed above are four major categories of nonroad engines, and these categories are further broken down into various classes based on the fundamental differences in engine and vehicle design within these classes. EPA has promulgated exhaust and evaporative emission standards for these different categories at various times and these regulations have resulted in various approaches to engine calibration and design.[108] Therefore, to assess the potential impacts of E15 on nonroad products requires data representing the cross section of different nonroad engine categories. EPA highlighted this necessity in discussions with Growth Energy, RFA, DOE, and other

[103] HC reduction estimated from graph while No_X and HC+NO_X changes were stated in the report.

[104] The Briggs and Stratton Study stated "A fuel soak test was performed on all parts that come into direct contact with the fuel. These parts include carburetor bodies of zinc and aluminum, brass fuel metering jets, rubber and fiber gaskets, rubber primer bulbs, floats, and fuel bowls." No engine was specifically mentioned.

[105] It was not clear exactly what parts were used for the fuel soaking tests. It was stated in the study that a 6.0 HP Quantum engine was used, specifically "engine 123K02 0239E1 04061458 was used for all testing except exhaust emissions." However, it was stated that "parts" were soaked, not an engine.

[106] EPA Docket Number: EPA–HQ–OAR–2009–0211–2559.

[107] Generator sets need constant speed in order to provide reliable power for tasks. Lawnmowers require consistent engine speed in order to maintain constant blade tip speed whose top speed is governed by a safety standard.

[108] *See* Tables in 73 FR 59034, 59036 (10/8/08).

stakeholders even prior to the receipt of the E15 waiver application.[109]

The following table summarizes the many potential breakouts of nonroad engine technologies currently in the in-use fleet. Growth Energy gave us data in four areas shown below. Even in areas in which Growth Energy provided data, those data were very limited. Since Growth Energy has not provided information to broadly assess the nonroad engine and vehicle sector, since there are important differences in design between the various classes and categories, and since the Agency is not aware of other information that would allow us to do so, it is not possible for the Agency to fully assess the potential impacts of E15 on the emission performance of nonroad products. In addition, as discussed below, there are reasons for concern with the use of E15 in nonroad products, particularly with respect to long-term exhaust and evaporative emissions durability, and materials compatibility, so the need for data is all the more important.

TABLE V.D–1—NONROAD ENGINES AND ENGINE TECHNOLOGIES OVER THE PAST 14 YEARS

SMALL SI	Pre-reg: 2-stroke	Pre-reg: 4-stroke (ohv/sv)	Phase 1: 4-stroke (ohv/sv)	Phase 1: 2-stroke w/cat	Phase 2:	Phase 2: 2-stroke w/cat	Phase 2: 4-stroke	Phase 3:	Phase 3: w/cat
Class I	X	X ohv	X sv	-	-	-	X sv **	X sv	X sv
		X SV	Xohv				X ohv **	X ohv	
Class II	-	X sv **	X sv	-	-	-	X ohv	X ohv	-
		X ohv **	X ohv						
Class III	X	-	X	X	-	X	-	-	-
Class IV	X	-	X	X	-	X **	X **	-	-
Class V	X	-	X	X	-	X	-	-	-

MARINE	Pre-reg: 2-stroke	Pre-reg: 2-stroke IDI	Phase 1: 4-stroke	Phase 1: 2 DI	Phase 1: 4-stroke Carb	Phase 1: 4-EFI	Phase 2: 4-str closed loop catalyst
Outboard	X	X	X (few)	X	X	X	-
PWC	X	X	-	X	-	X	-
SD/I	-	-	X	-	X	X	X

RECREATIONAL	Pre-reg: 2-stroke	Pre-reg: 4-stroke	Phase 1: 4-stroke closed crankcase	Phase 1: 4-stroke	Phase 1: 2-stroke	Phase 2: 2-stroke	Phase 3: 2-stroke	Phase 3: 4-stroke
NRMC	X	X	X	X	X*	N/A	N/A	N/A
Snow Mobiles	X	X	X	X	X	X	X	X
ATV	X	X	X	X	-	N/A	N/A	N/A

*NRMC: allows 2-stroke competition bikes.
** Data Provided by Growth Energy on one/two engine families per group.

2. Long-Term Exhaust Emissions (Durability)

Ethanol contains oxygenates which result in a leaner operating A/F ratio. Unlike light-duty vehicles, the overwhelming majority of nonroad engines are "open loop" and do not automatically adjust for oxygenated content of the fuel. Hence they are subject to direct and continuous effects to changes in combustion characteristics (*i.e.,* leaner mixture) of increased ethanol in the fuel which typically result in hotter combustion and exhaust temperatures during operation. These changes in combustion result in general increases in NO_X emissions and decreases in HC emissions. This increase in temperature will vary between engines and engine operating conditions. In addition to the NO_X emission increases that are observed almost immediately with increased ethanol levels, there is a concern that an increase in temperature can compromise long-term durability of the engines resulting in a significant deterioration of all emissions over time.

The potential for an increase in operating temperatures to cause long-term durability issues for engines is shown in the accelerated full life aging emission results in the DOE Pilot Study[110]. Four new Class I B&S consumer and four new Class I Honda commercial engines were aged on non-ethanol and ethanol blends (one engine each on E0, E10, E15 and E20). All engines were tested on non-ethanol fuels when new and at the end of aging on their respective fuel. The change in emissions on non-ethanol fuel gives a basis for comparison of the deterioration effects of aging on various ethanol blend fuels.[111] For the B&S Class I engines, it was found that the non-ethanol aged engine leaned over time with CO decreasing and NO_X increasing. For the ethanol aged engine, the increases in CO along with the increases in HC illustrate the possibility of valve warpage and valve seat distortion, or piston/piston ring/engine block distortion due to the increased combustion temperatures. In these cases the combustion becomes less efficient, and hence CO and HC emissions increase, due to the leak past

[109] EPA Docket #EPA–HQ–OAR–2009–0211–2559.2, API Technology Committee Meeting, Chicago, 6/4/08.

[110] Effects of long term storage and seasonal use were not captured in the accelerated aging.

[111] DOE Pilot Study contained data from which the following changes in emissions were calculated. On the B&S consumer engines, the engine aged on non-ethanol fuel had no change in HC, +76% in NO_X and −47% in CO. The engines aged on E10, E15 and E20 showed changes in HC of +44%, +149%, +99% and NO_X changes of −5%, 0% and 14%, and CO changes of +36%, +109% and +17%, respectively. The Honda commercial engine showed that the engine aged on non-ethanol fuel had emission changes of +25% HC, 0%NO_X and 14%CO. The engines aged on E10, E15 and E20: HC: 4%, 42% and 69%, NO_X: 11%, −14%, −16% and CO: +5%,+16%,+24%, respectively.

the valves or piston rings. The Honda Class I engine aged on non-ethanol showed small increases in both HC and CO, however the trend was clear in the ethanol engines that the HC and CO emissions increased and NO_X decreased in line with increasing amounts of ethanol. Some of the variability in emission results are due to the fact that these engines are mechanically governed, single cylinder (high vibration), carbureted, open loop, air and fuel cooled and hence engine aging is subject to a number of mechanical and quality factors.

The DOE Pilot Study cited by Growth Energy assessed the potential long-term durability emission effects of several SNREs in the <19kW category that were aged under conditions that were representative of aging for emission standards (constant dynamometer aging). While the study was limited and there was considerable variability in the results across the engines tested, as AllSAFE highlights, the fact that two Weed Eater blower engines failed on E15, a Stihl line trimmer had high idle with E15, and other problems were experienced with testing on E20, suggests the potential for serious durability concerns with E15 in nonroad products. At a minimum, a comprehensive nonroad test program would be needed to support Growth Energy's assertions. We know of no such program underway.

The engine failures in the DOE Pilot Study are also consistent with our engineering assessment. The leaner operation and subsequently hotter burning mixture and exhaust temperatures expose engine components to operating temperatures which may be beyond design expectations for a particular engine. Unlike light-duty vehicles which implement liquid cooling systems (*i.e.,* antifreeze) to control vital engine component temperatures, most nonroad engines rely on air and fuel cooling. Proper cooling on air cooled engines depends on anticipated combustion and exhaust temperatures which are mainly controlled by the A/F mixture. Depending on the engine category, engine cooling may be critical to durability and therefore the ability to continue to operate on E15. Some engines that run too lean for an extended period of time may also result in engine seizure in which the metal of the piston, piston rings and engine cylinder expand into each other due to the increased temperatures and hence cannot function.

While data on long-term durability on E15 of other nonroad categories does not currently exist, we believe that many of the concerns expressed regarding small SI engines may to varying degrees be indicative of other nonroad categories as well. These concerns include concerns of open loop carburetion or open loop fuel injection and enleaned 4-stroke engine running on a fuel with oxygenates where there used to be richer running 2-stroke or 4-stroke engines.

3. Immediate Exhaust Emission Effects

In evaluating the emission impacts of a new fuel or fuel additive, the Agency not only considers potential long-term durability impacts, as discussed above, but also the existence and magnitude of any immediate exhaust emission impacts that are evident immediately upon switching to the new fuel or fuel additive. Growth Energy referred to two studies for immediate tailpipe emission effects and they include the DOE Pilot Study and a 1999 study on "The Effect of High Ethanol Blends on Emissions from Small Utility Engines".

The DOE Pilot Study contained emissions at new engine condition for two sets of Phase 2 SNRE's. One set was used for the pilot study and the second set was used for the useful life durability study. The results showed that emission changes from the use of E15 resulted in increased NO_x emissions and decreased HC and CO emissions. For both Class I engines the HC and CO emissions decreased and NO_x emissions increased in comparison to E0. The overall change of HC+NO_x (the form of the emissions standard for nonroad engines) for a particular engine was dependent on whether the NO_x increased more than the HC decreased, but in general it appears that the two changes tended to balance each other out for the engines and fuels tested.

Class II engines were examined in a second study [112] referred to by Growth Energy. The study conducted emission testing on three MY1994 SNREs (12.5 hp) engines using SAE and EPA procedures and showed that pre-regulation Class II engines experienced a similar trend with respect to immediate exhaust emission impacts as Class I engines in the DOE Pilot Study. In their comments, AllSAFE also pointed to recent testing described in a Briggs and Stratton Study of exhaust emission testing on a Quantum engine using E20. It showed a decrease in HC emissions and a 133% increase in NO_x emissions using E20 when compared to E0, which resulted in 10.5% increase in HC + NO_x emissions. While it was on E20 instead of E15, this data is still helpful in showing that despite a very large percentage impact on NO_x emissions, the overall immediate emission impact of E15 on the combined HC+NO_x emission standard is likely to be a relatively small one. Nevertheless, since the available studies do not provide data for other nonroad engine categories it is unclear how broadly these results can be extrapolated across other nonroad products. Therefore the number of engines and applications tested needs to be widened before any conclusions can be made for all of nonroad products.

4. Evaporative Emissions

Different evaporative emission standards have been established for the different nonroad engine categories. As shown in Tables V.D.4–1 and V.D.4–2 below, evaporative emissions standards for nonroad products are focused on three aspects: (1) Fuel line and fuel tank permeation; (2) vapor loss through diurnal or running loss conditions where the volatility of the fuel will be important for compliance; and, (3) the durability of the nonroad product in achieving these standards over its full useful life. The test fuel for fuel tank permeation is E10 and the test fuel for hose permeation is CE10. The test fuel for the diurnal standards is certification fuel (E0) with a volatility of 9.0 RVP. These standards came into effect in 2007 for Large SI engines, 2008 for recreational vehicles and are being phased in from 2009–2015 for Small SI engines and Marine SI engines. For each of these standards, permeation requirements are based on the use of a test fuel containing 10 vol% ethanol.

[112] Bresenham, D. and Reisel, J. "The Effect of High Ethanol Blends on Emissions from Small Utility Engines," SAE 1999–01–3345, JSAE 9938100, 1999.

Table V.D.4-1 : Large Spark-Ignition Engine Evaporative Emissions Standards

Fuel line permeation	Nonmetallic fuel lines must meet the permeation specifications of SAE J2260 (November 1996)
Diurnal emissions	Evaporative HC emissions may not exceed 0.2 grams per gallon of fuel tank capacity
Running Loss	Liquid fuel in the fuel tank may not reach boiling during continuous engine operation in the final installation at an ambient temperature of 30°C

Table V.D.4-2 : Nonroad Spark-Ignition Engines 19 Kilowatts and Below, Recreational Engines and Vehicles, and Marine Spark-Ignition Engines -- Evaporative Emission Standards[113]

	Engine Category			Model Year	Fuel Line Permeation[a]		Fuel Tank Permeation (g/m^2/day @ 28°C)	Running Loss	Diurnal g/gal/day	Useful Life [c] (years)	Warranty Period (years)
					Nonroad Fuel Lines (g/m^2/day)	Cold-Weather Fuel Lines [b] (g/m^2/day)					
Federal	Small SI Equipment [d]	Nonhandheld	Class I	2012+	15 [e, f]	-	1.5 [f, g, h] (ABT)	Design Std [i]	Optional [j]	5	2
			Class II	2011+	15 [e, f]	-	1.5 [g, h] (ABT)	Design Std [i]	Optional [j]	5	2
		Handheld (Classes III, IV, &V)		2010	-	-	1.5 [g, h] (ABT)	-	-	5	2
				2012	15 [k]	290					
				2013		275					
				2014		260					
				2015		245					
				2016+		225					
	Marine SI			2009	15 [l]	-	-	-	-	PWC: 5 All other vessels & portable marine fuel tanks: 10	2
				2010			-		0.40 [n]		
				2011+			1.5 [g, m] (ABT)				
	Recreational Vehicles			2008+	15	-	1.5 (ABT)	-	-	5	30 months [o]

***for a full list of footnotes to this table, see http://www.epa.gov/otaq/standards/nonroad/nonroadsi-evap.htm**

[a] Fuel lines used with handheld small spark-ignition (SI) engines installed in cold-weather equipment (as defined in 40 Code of Federal Regulations (CFR) 1054.80) must meet the standards for EPA cold-weather fuel lines.

[e] Nonhandheld fuel line permeation requirements begin January 1, 2009.

Growth Energy did not submit any data that evaluated how the use of E15 would impact evaporative emissions and evaporative emissions controls for nonroad products, and instead relied on light-duty motor vehicle information. The Agency is not aware of any test data to evaluate these impacts of E15 on nonroad products. However, from an engineering standpoint, it would appear that the main concern with the use of E15 in nonroad products for evaporative emissions would be durability, and these concerns stem from materials compatibility concerns in the fuel system, as discussed in the next section. For diurnal emissions compliance, as for light-duty motor vehicles, our belief is that as long as E15 meets the same volatility as E0 certification fuel (9.0 psi RVP), then its emissions performance should be comparable. Testing on vehicles discussed in section IV.A.3. has shown that diurnal emissions are primarily a function of the volatility of the fuel, not the ethanol content, and there is no reason to suggest otherwise for nonroad products. However, due to the rudimentary evaporative emissions controls on most nonroad products, any higher volatility would lead to higher evaporative emissions, potentially causing the nonroad products to exceed their standards. In the case of the permeation related evaporative emissions standards, it is likewise possible that the designs certified for E10 use may also qualify with E15. As discussed in section IV.A.3., permeation testing on light-duty fuel tanks (CRC E77 studies) seems to suggest permeation with E15 may be comparable to that with E10, assuming the RVP will not increase between the two fuels. Since nonroad permeation standards already use E10 as the test fuel, this would suggest that nonroad products would continue to meet their permeation standards with E15. The only question is whether the test results on light-duty motor vehicle fuel systems would be applicable to tanks and hoses used in nonroad products.

5. Materials Compatibility

Materials compatibility is one of the key issues that the Agency reviews due to the potential for very large exhaust or evaporative emission impacts of a fuel or fuel additive, not only in the short

[113] The complete table is available at *http://www.epa.gov/otaq/standards/nonroad/nonroadsi-evap.htm.*

term, but especially over the life of the motor vehicle or nonroad product. Growth Energy argues that the Minnesota Compatibility Study demonstrates that SNREs should experience no significant problems with E15. However, as highlighted by commenters, the focus of the Minnesota Compatibility Study was on the materials used in motor vehicles' fuel systems and that nonroad engine manufacturers use different elastomers, polymers, and plastics not investigated in the Minnesota Compatibility Study. Furthermore, a wide range of materials have been used over the years by the many different nonroad products manufacturers for the many different nonroad products currently in use. The study does not claim to have tested all materials nor provide any means of quantifying the degree to which the materials tested reflect those in the current fleet. Growth Energy contends that the DOE Pilot Study showed no material compatibility issues. However, several commenters note that the DOE Pilot Study's authors point out that materials compatibility issues "were not specifically characterized as part of this study." [114] The Agency's review of the DOE Pilot Study is that the main focus was to measure emissions changes from the use of various fuels in SNREs over a test procedure that lasted 125–500 hours (or 10–40 days at 12.5 hours/day). Materials compatibility issues are mostly seen over a length of time of unused fuel sitting in the fuel tank and in the fuel system, and this was not a focus of the study. For the Minnesota Compatibility Study, there was minimal if any applicable information for the vast range of nonroad products and no information to correlate the materials tested with those in the in-use fleet of nonroad products.

Due to the unique chemical and physical characteristics of ethanol, in comparison to gasoline, one must be careful in selecting materials for use in motor vehicles and nonroad products to ensure long-term materials compatibility. Otherwise, materials incompatibility can lead to long-term exhaust and evaporative emission increases that may or may not be detected in certification and compliance testing, as well as product operability problems that could lead to product tampering and premature engine failure.

Two studies cited by commenters serve to highlight the importance of materials compatibility with gasoline-ethanol blends: (1) The Orbital Nonroad Products Study; and (2) the Briggs and Stratton Study. The Orbital Nonroad Products Study conducted 2,000-hour bench testing with E20 on materials from the fuel systems of a Mercury 15hp Marine Outboard engine and a Stihl F45R Line Trimmer. The Orbital Nonroad Products Study found that E20 caused severe corrosion, rusting and pitting of metallic and brass components, such as the carburetor body and throttle, piston rings, crankshaft seal housing, crankshaft bearings and surfaces, connecting rod, cylinder liner, and throttle blades. The study also found that E20 caused swelling, distortion and degradation of the fuel delivery hose, fuel primer bulbs, fuel line connector, and crankshaft seal. The Orbital Nonroad Products Study concluded that these problems would likely cause: (1) Oxides that may dislodge and damage the engine; (2) the loss of intended fuel-air metering and control; and (3) fuel leakage.

The Briggs and Stratton Study presented results of a completed evaluation of the impacts of E20 on EPA-certified engines through soaking fuel components. After six months of soaking, the study showed 5–10% greater swelling and mass gained by gaskets and rubber parts for parts soaked in E20 compared to E0. The epoxy for the Welsch plug, a plug placed over the progression holes in the carburetor body, dissolved in E20 and coated the plug. In a running engine, that could result in the plug falling out and fuel leaking from the carburetor, resulting in a potential increase in evaporative emissions. The inlet needle seats and the fuel cap gaskets swelled, which could also lead to increases in evaporative emissions. Garden tractor fuel tank caps and seals "exhibited extreme swelling" in E20 versus E0.[115]

Given the available information to suggest a cause for materials compatibility concerns that could lead to elevated exhaust and evaporative emissions, we do not believe the information provided by Growth Energy adequate addresses materials compatibility for E15 use in nonroad products.

6. Driveability and Operability

E15 will introduce a leaner A/F ratio to the engine compared to motor vehicle gasoline in use today. The open-loop fuel systems on the nonroad engines will not adjust for this and the engines will be subject to potential immediate and long-term operability and drivability issues, such as those described in the DOE Pilot Study.[116] The concern regarding operability and driveability is that if the use of E15 resulted in poor operation of nonroad products, causing such things as misfires, backfires or carburetor malfunctions, then this would cause short-term and long-term emission increases. In addition, it would encourage consumers to adjust and/or tamper with their nonroad products to improve performance. Most nonroad products that have been designed to our emission standards have been required to be tamper resistant to protect the emissions performance of the product. However, this also means that if the nonroad product operates poorly on E15, it will continue to do so, which may increase emissions and shorten its life.

E. Conclusion

It is the burden of the applicant to demonstrate that any new fuel or fuel additive that requires a waiver under CAA section 211(f)(4) of the substantially similar prohibition in CAA section 211(f)(1) will not cause or contribute to the failure of nonroad engines and nonroad vehicles to meet their emissions standards over the engines' or vehicles' full useful life. Growth Energy has not made this demonstration as Growth Energy has not provided sufficient data and information to broadly assess the performance of all nonroad products while using E15. Additionally, based on our own engineering judgment after review of all available data for nonroad products, we find that there are emissions-related concerns with the use of E15 in nonroad products, particularly regarding long-term exhaust and evaporative emissions (durability) impacts and materials compatibility issues. Therefore, the Agency has concluded that it cannot grant a waiver for the use of E15 in nonroad products based on existing data.

[114] EPA Docket #EPA–HQ–OAR–2009–0211–0335: "Effects of Intermediate Ethanol blends on Legacy Vehicles and Small Non-Road Engines, Report 1," October 2008, page 3–12, NREL/TP–540–43543 and ORNL/TM–2008/117.

[115] It was not clear exactly what parts were used for the fuel soaking tests. It was stated in the study that a 6.0 HP Quantum engine was used, specifically "engine 123K02 0239E1 04061458 was used for all testing except exhaust emissions." However, it was stated that "parts" were soaked, not an engine.

[116] The DOE Study of February 2009 on Small SI engines includes information in Table 3.5: A Class I consumer engine was described to lose power at full load on E20 however did run well if more fuel was put into the engine. A Class IV engine was found to have 25% higher idle speed due to the fact that the extra oxygen in the fuel improves combustion and hence speed increases (they do not have speed governors). A Class IV 2-stroke handheld engine seized on E20. A Class I commercial engine showed erratic operation at light loads due to unstable governor.

VI. Heavy-Duty Gasoline Engines and Vehicles

Given its limited market, heavy-duty gasoline engines and vehicles have not been the focus of test programs and efforts to assess the potential impacts of E15 on such engines and vehicles. From a historical perspective, the introduction of heavy-duty gasoline engine and vehicle technology has lagged behind the implementation of similar technology for light-duty motor vehicles. Similarly, emissions standards for this sector have lagged behind those of light-duty motor vehicles, such that current heavy-duty gasoline engine standards remain comparable, from a technology standpoint, to older light-duty motor vehicle standards (for example Tier 1 emissions standards). Consequently, we believe the concerns raised for MY2000 and older motor vehicles are also applicable to the majority of the in-use fleet of heavy-duty gasoline engines and vehicles. Additionally, Growth Energy did not provide any data specifically addressing how heavy-duty gasoline engines and vehicles' emissions and emissions control systems would be affected by the use of E15 over the full useful life of these vehicles and engines. Thus, a waiver is not being granted for these engines and vehicles.

VII. Highway and Off-Highway Motorcycles

Growth Energy did not provide any data addressing how motorcycle emissions and emissions control systems would specifically be affected by the use of E15 over their full useful life. Like heavy-duty gasoline engines and vehicles, highway and off-highway motorcycles have not been the focus of test programs to evaluate the effects on these motorcycles while using E15. While some newer highway and off-highway motorcycles incorporate some of the advanced fuel system and emissions control technologies that are found in passenger cars and light-duty trucks, such as electronic fuel injection and catalysts, many do not have the advanced fuel trim control of today's motor vehicles that would allow them to adjust to the higher oxygen content of E15. More importantly, older highway and off-highway motorcycles do not have any of these technologies (*i.e.,* their engines are carbureted and/or they do not have catalysts) and are therefore more on par with MY2000 and older motor vehicles and light-duty trucks. Consequently, we believe the discussion for MY2000 and older motor vehicles applies to highway and off-highway motorcycles.

VIII. E12 Midlevel Gasoline-Ethanol Blends

On June 7, 2010, EPA received a letter from Archer Daniels Midland Company (ADM) to consider, within the context of Growth Energy's E15 waiver application, allowing 12 vol% ethanol in gasoline (E12) for the introduction into commerce for all motor vehicles.[117] ADM also requested that EPA modify its "substantially similar" interpretive rule under CAA section 211(f)(1) and allow higher oxygen content, thus allowing for introduction of E12 into the marketplace without need for a waiver. On July 20, 2010, ADM sent a Technical Support Document (TSD) in support of these requests ("ADM TSD").[118] On September 3, 2010 API submitted its response to both ADM documents, arguing that ADM's analysis contained several critical flaws and suggested that EPA not approve E12 to be introduced into commerce for all motor vehicles.[119] On September 17 and 24, 2010, the Alliance and AllSAFE submitted their own responses with similar arguments.[120] We are treating all of these letters as late comments received on the Growth Energy waiver request application. The following sections address ADM's request and supporting rationale,[121] the responses received, and our own analysis regarding ADM's request.

In the ADM TSD, ADM made several arguments for its requests that EPA grant a CAA section 211(f)(4) waiver for E12 and that EPA amend its CAA section 211(f)(1) "substantially similar" interpretive rule and consider E12 "substantially similar" to its certification fuels. For example, in making its argument for granting an E12 waiver, ADM presented some new data, such as evaluations of fuel survey data regarding levels of ethanol in gasoline in the national market today. ADM used their survey results to attempt to evaluate expected emissions impacts and other related issues from using E12 and to conclude that the E12 supposedly now in use in the national gasoline market was not resulting in any motor vehicle problems that adversely affect emissions. ADM also argued that EPA already effectively allows E12 in the marketplace through previously issued letters and its models. In making all of these arguments, it appears that ADM was essentially attempting to address the four factors discussed in Section III that EPA analyzes when reviewing a waiver request. In other words, ADM was apparently making these arguments in an attempt to assert that E12 satisfies these four factors so EPA should grant a waiver for E12. EPA generally disagrees with ADM's conclusions and addresses each of these arguments, as well as the comments received on the ADM submission, below.

A. First Argument: E12 Is Already Used in the Marketplace With No Reported Problems

1. ADM Argument

In its request, ADM argued that based on surveys and studies, E12 is already in significant use and there have not been any problems reported in-use or in the studies. To support their argument, ADM relied on fuel sample survey data from "selected years and seasons" from the seasonal Northrop Grumman motor gasoline surveys.[122] ADM suggested that these data provide "significant and substantial compelling data demonstrating that ethanol blends approaching E12 are currently available and are being used in the United States without incident".[123] Additionally, ADM argues that around 30% of samples reported in select years and seasons from 1990 through 2009 have denatured ethanol contents greater than 10.5 vol%. ADM specifically cites the summer 2008 Northrop Grumman motor gasoline survey data as showing that over 70% of samples had denatured ethanol contents of higher than 10 vol% ethanol and approximately 30% of samples had 11 vol% or greater denatured ethanol contents.[124]

2. API, AllSAFE, and Alliance Comments

Commenters pointed out that ADM's data is based upon measurements of

[117] Woertz, P.A. Letter to Lisa P. Jackson. 7 June 2010. *See* Docket ID EPA–HQ–OAR–2009–0211–13999.

[118] *Technical Support Document For Archer Daniles Midland Company's Request for Approval of Ethanol-Gasoline Blends of Up To And Including 12 Percent Ethanol, July 20, 2010,* EPA Docket #EPA–HQ–OAR–2009–0211–13995.

[119] CRC Project No. CM–136–09–1B, EPA Docket #EPA–HQ–OAR–2009–0211–14008.

[120] *See* Docket #EPA–HQ–OAR–2009–0211–14005.1, p.7 and Docket # EPA–HQ–OAR–2009–0211–14004.1, p.3.

[121] In the ADM TSD, ADM in many cases uses data and other information either submitted as part of the Growth Energy application or addressed by EPA above in Section IV for ADM's assertions regarding E12. For example, ADM uses data and information from the Growth Energy application to discuss materials compatibility issues for E12. This data and information has already been evaluated and addressed by EPA in the appropriate sections above. This Section VIII will only address new data and information submitted regarding E12 in the ADM, API, AllSAFE and Alliance submissions that were not previously submitted elsewhere as part of Growth Energy's waiver request application.

[122] *See* ADM TSD, 5–8.

[123] *See* ADM TSD, 5.

[124] *See* ADM TSD, 5–8.

"denatured" ethanol [125] and that the Northrop Grumman data is actually based upon tests which measure actual ethanol content. Commenters also pointed out that one possible reason for the higher ethanol contents in ADM's analysis may have been an attempt to take the volume of the denaturant into account for each fuel sample. API stated that this may mislead the reader since the pertinent data is actual ethanol or neat ethanol content and inclusion of an assumed denaturant was inappropriate in making the case that higher ethanol contents were routinely in the marketplace.

Commenters also argued that ADM failed to provide any peer-reviewed test program or published test data that shows that the possible prevalence of E12 in some areas did not result in substantial mechanical failures. API and the Alliance also analyzed the Northrop Grumman data and other datasets and concluded that ADM's conclusions about the prevalence of E12 in the marketplace were not accurate. In its submission, AllSAFE aligned itself with these comments.

3. EPA Analysis

The Agency evaluated the Northrop Grumman data and found that the actual number of samples that had measured ethanol contents greater than 10 vol% ethanol and 11 vol% ethanol were very low. For example, Figure VIII.A.3–1 below shows the distribution of all fuel samples included in the summer 2008 Northrop Grumman motor gasoline survey that had greater than 5 vol% ethanol.[126]

Figure VIII.A.3-1 – Summer 2008 Distribution of Measured Ethanol Content for Fuel Samples from Northrop Grumman Survey Data

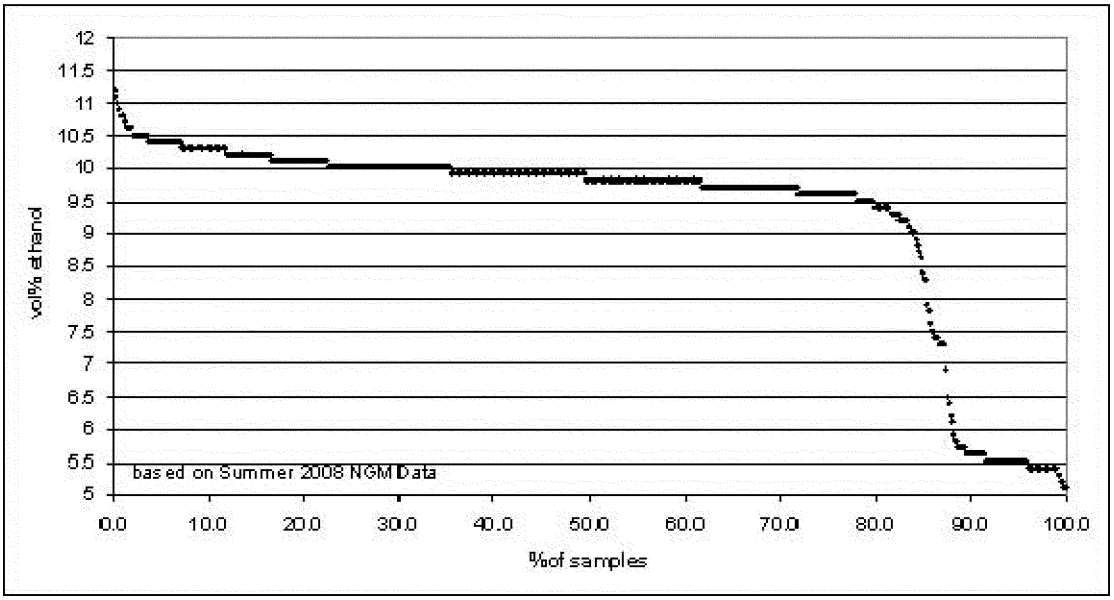


Figure VIII.A.3–1 shows that less than 0.5% of samples in the summer of 2008 had measured ethanol concentrations greater than 11 vol% and only approximately 2% of samples had measured ethanol concentrations greater than 10.5 vol%. Due to inherent variability of the ASTM test procedure used to measure the concentration of ethanol in gasoline (both within the same testing laboratories and between different laboratories), the observed distribution in measurements of ethanol content is precisely what one would expect to see for fuel samples that actually contained no more than 10 vol% ethanol. Since the blending equipment used at terminals to blend ethanol and other additives into gasoline is extremely precise, and our understanding and experience is that the industry practice is to be as close to 10% as possible, there is no reason to believe that ethanol levels greater than 10 vol% have been experienced in-use except in the infrequent circumstances of blending equipment failure. Recognizing the variability in the ASTM test method results, the Northrop Grumman data actually confirms this to be the case. Had ethanol concentrations actually been at 11 vol% or even 12 vol% in practice, then the variability associated with test measurements would have resulted in some samples measuring as high as 13 vol% or 14 vol%. Such levels have not been seen.

These results are also similar to results using other data sources. Figure VIII.A.3.–2 shows the distribution of ethanol content measurements for the fuel samples containing greater than 5 vol% ethanol collected by the Alliance from 2007 through 2009. Again, these data show the expected distribution of measurements around 10 vol% that one would expect for fuels actually containing 10 vol% ethanol using a test method with significant variability.

[125] By regulation denaturant is required to be added to fuel-grade ethanol in order that it not be sold for non-fuel purposes such as the production of beverages.

[126] We chose to look at only samples that contained greater than 5 vol% ethanol because those appear to be the samples included in ADM's analysis. *See* ADM TSD, page 8.

Figure VIII.A.3-2: 2007 Through 2009 Distribution of Ethanol Content for Fuel Samples from the Alliance of Automobile Manufacturers Survey Data

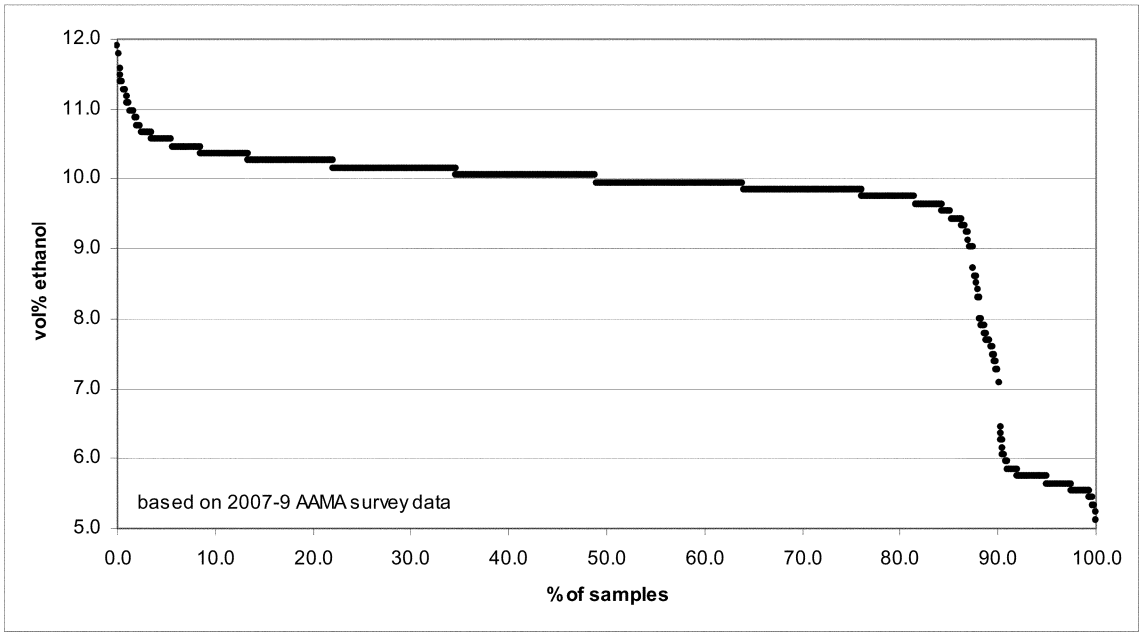
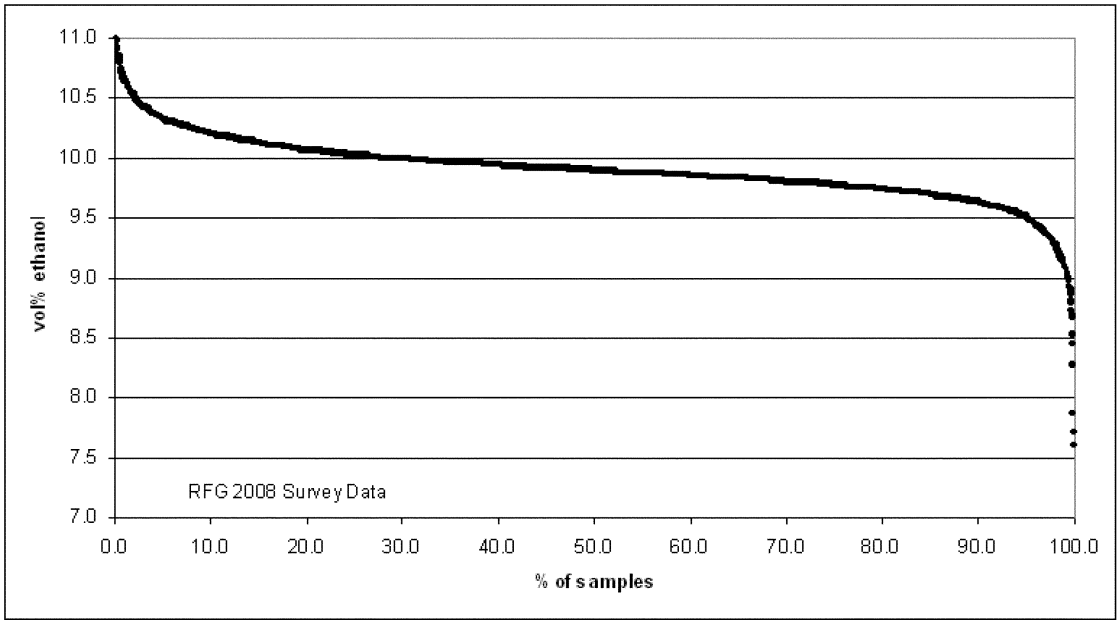


Figure VIII.A.3–3 shows data for summer 2008 from the RFG Survey Program. Although these data do not represent the nation as a whole, they are obtained from a robust survey program designed to estimate RFG fuel parameters. As can be seen, this data shows the same consistent distribution around 10 vol% as the Northrop Grumman and Alliance data.

Figure VIII.A.3-3: Summer 2008 Distribution of Ethanol Content for Fuel Samples from the RFG Survey Program



As highlighted by API, we believe one possible reason for the slightly lower results from our analysis and ADM's analysis is that an attempt may have been made to take the volume of the denaturant into account for each fuel sample. Northrop Grumman reports ethanol content as vol% measured with ASTM 5599; however, ADM describes their analysis in terms of denatured ethanol. Adjusting the ethanol content of samples to include denaturant would shift the distribution and show a higher percentage of fuels containing greater than 10 vol% ethanol.[127] However, the original waiver for E10 allowed for 10 vol% anhydrous ethanol and testing of fuel samples as mentioned above indicate that the full 10 vol% ethanol is actually utilized in making E10. We therefore believe this would be an inappropriate adjustment of ethanol content that may be misleading since denaturant is typically unleaded gasoline and therefore would not be expected to have an adverse effect on motor vehicles and nonroad products.

Additionally, ADM's analysis of the historical data was not complete. The data selected from the Northrop Grumman surveys are limited; for example, the 2005 survey uses only 173 fuel samples and appeared to ignore other fuel samples in the same survey for the same year and also used only selected seasons and years for their arguments. When we look at all the data available, including all the Northrop Grumman data, the Alliance data, and the RFG survey data, in the context of the ASTM test method variability, we conclude that it supports a conclusion that in-use ethanol levels have not exceeded 10 vol%. Otherwise measurements would have been considerably higher.

Furthermore, even if one were to accept ADM's argument that there have been isolated geographically or temporally oriented situations where gasoline-ethanol blends up to and including E12 were in common use for a period of time, ADM has not provided a method of determining or measuring whether problems occurred.

B. Second Argument: EPA Effectively Allows Gasoline-Ethanol Blends Greater Than E10

1. ADM Argument

ADM also argued that EPA guidance at various times in the late 1980s and 1993 indicated EPA's allowance for gasoline-ethanol blends containing greater than 10 vol% ethanol. ADM sites three letters from EPA in support of their argument.[128] For the first two letters, ADM's argument was based on EPA-stated oxygen contents for average E10 gasoline-ethanol blends or maximum oxygen contents for E10 blends. With respect to the third letter, ADM argued that by allowing contaminant levels of MTBE in gasoline for ethanol blending, EPA was endorsing the intentional "stacking" of 10 vol% ethanol on top of gasoline with up to 2 vol% MTBE, thus allowing for higher oxygen levels equivalent or nearly equivalent to E12. ADM then argues that the letters essentially were an EPA allowance to utilize up to 11.7 vol% ethanol.

2. EPA Analysis

ADM inappropriately concludes that EPA was approving ethanol content above 10 vol% in the first two letters. These two letters merely stated various oxygen weight contents as estimates of the weight percent of oxygen in a 10 vol% gasoline-ethanol blend, depending upon the density of the gasoline into which the ethanol was added.[129] Neither EPA letter states, nor was there any intention conveyed, that it was legal to blend ethanol above 10 vol% into unleaded gasoline.

In the third letter, EPA had recognized how ubiquitous MTBE had become in the fungible gasoline distribution system, including in pipelines and terminals. The allowance for very small amounts of MTBE in gasoline to be blended with ethanol (so-called "stacking") was allowed to address the ubiquitous presence of MTBE in some fungible systems at that time, making it a low-level contaminant for gasoline used in E10. Typically the MTBE was in trace amounts in gasoline and was not close to 2 vol%. The letter recognized this as a contaminant so that it would not be unlawful to add up to 10 vol% ethanol into the base gasoline. Refiners were not permitted to intentionally produce a gasoline using 2 vol% MTBE and 10 vol% ethanol. EPA has not stated that it is permissible to utilize over 10 vol% ethanol under the original ethanol waiver and the data discussed above shows that, in practice, it is only rarely (and impermissibly) used above 10 vol%.[130]

C. Third Argument: EPA's Models Allow Greater Than 10 Vol% Ethanol

1. ADM Argument

ADM further argued that E12 is implicitly allowed by virtue of the oxygen limits allowed in the Complex Model. ADM argued that since the Complex Model[131] provides valid emissions results for a fuel with up to 4% oxygen by weight (wt%), and E12 is "close" to this weight percent limit since it represents 4.2 wt% to 4.4 wt% in gasoline, EPA, through this model, has effectively already allowed use of E12.

2. API and Alliance Comments

API pointed out that the 4 wt% oxygen limit was meant as a range limit, taking into account the variability of densities that exist in gasoline across the nation. API states that "ADM * * * twists the logic stated by EPA in 1994 for increasing the high end of the valid range for fuel oxygen content to 4.0 wt% in the RFG Complex Model. ADM asserts that this action by EPA meant that it had 'already authorized' the use of E11.7 vol% gasoline-ethanol blends. This interpretation confuses the issue of weight percent oxygen in the final gasoline-ethanol blend versus the volume percentage of ethanol added to the fuel. ADM acknowledges that the density of the base hydrocarbon blend stock (BOB) is critically important in the weight percent calculation, but then totally ignores it. To translate from 4.0 wt% oxygen to 11.7 vol%, ADM had to have made an assumption regarding the BOB density, but it fails to provide any information as to the nature and/or basis for it."[132]

API goes on to state that "EPA's 1994 ruling did not 'authorize' the use of E11.7, it simply recognized the range of BOB densities that exist in commerce and allowed for the resulting wt% oxygen that might be observed with E10. In fact, a careful reading of the 1994 regulatory text reveals that there is not one shred of evidence that even hints at the possible consideration (in 1994) of

[127] Since most ethanol is denatured with hydrocarbon mixtures, typically gasoline itself, EPA is unaware how the denaturant content could have been determined if the samples tested were samples of gasoline-ethanol blends.

[128] *See* ADM TSD, 9.

[129] Gasoline densities typically vary seasonally and geographically to account for varying performance requirements such as variations in requirements for cold and hot weather or high-altitude regions. The oxygen content of 10 vol% ethanol in gasoline varies as the density of the gasoline into which it is blended varies. For example, when 10 vol% ethanol is added to a relatively low-density winter gasoline, the oxygen content from the ethanol will be relatively heavier than when the same ethanol is added to a heavier or higher density summertime fuel.

[130] Although very small amounts of oxygen were added when trace contaminant amounts of MTBE were allowed when such gasoline had been inadvertently added to 10 vol% ethanol, MTBE would, in any event, have different effects on vehicles/engines in that it is a less polar molecule resulting in different impacts regarding materials compatibility.

[131] The "Complex Model" is a regulatory model used to predict the emissions effects of various gasoline properties, including oxygen content.

[132] *See* API Comment, Docket #EPA–HQ–OAR–2009–0211–14000.1, 2.

gasoline-ethanol blends containing greater than 10 vol%." The Alliance specifically aligned itself with the comments on this issue from API.

3. EPA Analysis

We do not agree with ADM's argument. The 4 wt% oxygen limit in the Complex Model was meant as a range limit on the weight of oxygen in the gasoline-ethanol blend, taking into account the variability of densities that exist in gasoline across the nation. It did not change the 10 vol% limit for ethanol use in gasoline. It recognized that the same volume percent of ethanol may lead to different weight percents of oxygen in the gasoline-ethanol blend, based on the density of the gasoline. The Complex Model is designed to allow a valid emissions projection for purposes of the Reformulated Gasoline program for the full range of ethanol and other blends of fuels that lawfully could be produced. It did not change any of the requirements that fuels otherwise had to meet to be a lawful fuel. Specifically, it did not change the requirement that gasoline-ethanol blends could only be lawfully produced at no higher than 10 vol% ethanol. The range of the Complex Model would then potentially cover the range of wt% oxygen that could occur for a finished gasoline-ethanol blend that had no more than 10 vol% ethanol.

D. Fourth Argument: ADM's Argument for an E12 Waiver

1. ADM Argument

ADM reiterated its support of the Growth Energy request and argued that E12 should be considered under the Growth Energy waiver application and that a waiver should be granted for E12. The primary basis of ADM's argument relied on studies and materials that had already been submitted under the Growth Energy waiver request application.

ADM provided reference to a number of engineering papers which noted the similarity in effects on elastomers and plastics for E12 when compared to E10. ADM also made many arguments which were essentially the same as the arguments made for the Growth Energy application regarding exhaust and evaporative emissions effects, materials compatibility and driveability/operability on motor vehicles and small engines. These studies, and the arguments, essentially mirrored arguments already considered in the context of the Growth Energy application discussed above.

ADM also utilized the survey data it had presented to attempt to make conclusions regarding the emissions effects of E12. For example, ADM tried using the Complex Model to predict emissions for E12 based upon changes in properties if 12 vol% ethanol was added to gasoline.

2. API, AllSAFE and Alliance Comments

API rejected the ADM arguments. API stated that ADM's arguments were erroneous because the studies cited were misinterpreted, already presented in the Growth Energy application, or based upon flawed survey data. API also pointed out that the Complex Model, used for predicting emissions, is based only upon 1990 technology motor vehicles and that ADM's emissions predictions made assumptions about fuel composition after the addition of 12 vol% ethanol that were not supported by any analysis. AllSAFE also pointed out that the ADM TSD attempted to extrapolate the effects of E12 based on the effects of lower levels of ethanol content found in gasoline-ethanol blends, and argued that this is not an adequate substitute for the actual testing of E12.

3. EPA response

To address ADM's arguments, we refer to our discussion of immediate and long-term (durability) exhaust and evaporative emissions impacts, materials compatibility and driveability found in Section IV regarding the Growth Energy waiver application. EPA's analysis above regarding the Growth Energy waiver request application covers the range of gasoline-ethanol blends that include blends above 10 vol% and no more than 15 vol% ethanol. Additionally, we note that ADM's analysis of survey data is flawed in that EPA's analysis indicates that there is no evidence of E12 in the marketplace today. ADM also does not present any process by which any effects of E12 in the marketplace could be evaluated. EPA agrees with API's comments regarding the use of the Complex Model to evaluate projected emissions changes; such use is inappropriate for a waiver decision. ADM's arguments are based upon flawed use of the survey data, inappropriately used models, issues and data already discussed within the context of the Growth Energy application, interpolation of data and effects from studies that did not specifically investigate the effects of E12, or studies that included insufficient data to make the conclusions ADM stated. Furthermore, many of ADM's arguments involving interpolation or comparison of data compared E12 to E10 where the appropriate comparison for meeting the criteria of a waiver would be appropriately made between E12 and E0. Most importantly, the data presented by ADM did not present any data on which a conclusion regarding the long-term emissions effects of E12 could be based. ADM provides no additional information on E12 that would change our evaluation regarding a waiver for gasoline-ethanol blends over 10 vol%.

Thus, EPA concludes, after review of the information provided by ADM, and based on the data received regarding the E15 waiver request, that there is insufficient basis to support the introduction into commerce of E12 for use in all motor vehicles and nonroad products. Specifically, our analysis for gasoline-ethanol blends up to 15 vol% ethanol has concluded that there is insufficient data or evidence to grant a waiver beyond MY2007 and newer light-duty motor vehicles. ADM did not provide any data regarding motor vehicle exhaust or evaporative emissions using a 12 vol% gasoline-ethanol blended fuel. Also, EPA is not aware of any test data using 12 vol% gasoline-ethanol blends that would support this request beyond MY2007 and newer light-duty motor vehicles. EPA has determined that there is an inadequate demonstration for an E12 waiver application for MY2000 and older motor vehicles, heavy-duty gasoline engines and vehicles, highway and off-highway motorcycles and for all nonroad products. EPA is deferring a decision for MY2001–2006 motor vehicles.

E. Fifth Argument: E12 is "Substantially Similar" to Certification Fuel

1. ADM Argument

ADM's final argument is that since E10 is used as an aging fuel for evaporative emissions service accumulation purposes in EPA's emissions certification regulations, E10 is a "certification fuel" for purposes of the CAA section 211(f)(1) "substantially similar" determination. ADM further asserts that E12 is "substantially similar" to E10 based on its chemical and physical properties, so EPA should revise its "substantially similar" interpretive rule and increase the "substantially similar" oxygen limit from 2.7% by weight to 4.25% by weight.

2. API, AllSAFE and Alliance Comments

The Alliance commented that E10 is only used for certification purposes

regarding the aging of motor vehicles for evaporative emissions certification; E10 is not used in any of the actual emissions certification tests. The Alliance points out that "ADM bases this argument on the fact that EPA requires manufacturers to use the highest gasoline-ethanol blend for evaporative system durability aging in the certification process. Unfortunately, ADM either misunderstands or has misrepresented the vehicle certification process. Importantly, this particular requirement applies only to evaporative emissions system aging; it has no connection to exhaust emission testing." The Alliance concludes that "ADM's assertion that this fuel qualifies as a certification fuel for the entire fleet is simply untrue."[133] AllSAFE's comments essentially agree with this interpretation, noting that "consistent with the focus of [section] 211(f)(4) on emissions control devices, Congress must necessarily have intended certification fuels to refer to emissions certification fuels, not mileage accumulation fuels." API also agreed that the ADM submission did not support a conclusion that E12 is substantially similar to certification fuel and pointed out that ADM presents no emissions data on E12.

3. EPA Response

In evaluating ADM's request to revise the definition of "substantially similar," EPA considered all certification fuels used for the broad range of motor vehicle model years, not just the current model years, and considered both the exhaust and the evaporative emissions certification procedures. This is because the "substantially similar" definition affects roughly 300 million motor vehicles which represent thousands of different designs by a wide range of manufacturers from around the world. These motor vehicles are in a transportation system and marketplace that affects the entire country. Based on these considerations, EPA does not believe that E10 qualifies as a "certification fuel" in the manner asserted by ADM such that it would be appropriate to compare E12 to E10 in determining whether E12 is "substantially similar" for a CAA section 211(f)(1) determination. E10 is only used in one part of the certification process for certain newer motor vehicles. Specifically, E10 is only used in the mileage-accumulation or aging portion of certification for evaporative emissions for Tier 2 vehicles. However, all exhaust and evaporative emissions testing for certification purposes is conducted using an E0 fuel. Thus, E10 plays a limited role in the certification process for a limited subset of motor vehicles. In contrast, E0 has been and remains the primary fuel used in certification since it is the actual test fuel for all of the actual emissions standards testing required for certification. Thus, it would be inappropriate to consider E10 a "certification fuel" for comparison with E12 in making a "substantially similar" determination as requested by ADM. The proper comparison is between E12 and E0.

In making a "substantially similar" determination, EPA generally evaluates the physical and chemical composition of the new fuel or fuel additive against our certification fuels to determine the emissions effects of that new fuel or fuel additive. Here, we find that E12 is not "substantially similar" physically or chemically to E0. As is noted in today's Decision, E12 has a substantially higher oxygen content than E0, and the polarity of the ethanol molecule results in various properties different from those of E0, such as differences in polarity and volatility. Such differences may affect emissions and the durability of motor vehicle components. Consistent with our prior revisions to the "substantially similar" definition, and prior "substantially similar" determinations, we would also consider test data on the emissions effects of E12, as with a waiver request, in making this determination.[134] For E12, we would evaluate whether the higher oxygen content would produce similar emission results as E0 under the certification process. ADM provided no such data and we are not aware of any test data using 12 vol% ethanol blends. Based on the physical and chemical differences between E12 and E0, and the absence of a showing of the emissions impacts when using E12 versus using E0, EPA finds no basis for revising the "substantially similar" definition to include E12.

F. EPA Conclusion

For MY2007 and newer light-duty motor vehicles, EPA has concluded that there is an adequate demonstration for an E12 partial and conditional waiver, within the context of the Growth Energy E15 waiver request application, as discussed above in Section IV. For MY2000 and older motor vehicles, heavy-duty gasoline engines and vehicles, highway and off-highway motorcycles, and all nonroad products, EPA has concluded that there is insufficient evidence to grant a waiver. EPA is deferring a decision for MY2001–2006 light-duty motor vehicles.

EPA has also concluded that ADM has not made a demonstration that E12 is "substantially similar" to certification fuels, and EPA declines to amend its "substantially similar" interpretive rule to include E12.

IX. Legal Issues Arising in This Partial Waiver Decision

A. Partial Waiver and Conditions of E15 Use

As stated in EPA's notice for comment on the E15 waiver request, a possible outcome after the Agency reviewed the record of scientific and technical information may be an indication that a fuel up to E15 could meet the criteria for a waiver for some vehicles and engines but not for others. In this context, the Agency noted that one interpretation of section 211(f)(4) is that the waiver request could only be approved for that subset of vehicles or engines for which testing supports its use. We also stated that such a partial waiver for use of E15 may be appropriate if adequate measures or conditions could be implemented to ensure its proper use. EPA invited comment on the legal aspects regarding a waiver that restricted the use of E15 to a subset of vehicles or engines, and the potential ability to impose conditions on such a waiver.

We received a number of comments expressing opposition to a partial waiver based on a lack of legal authority under section 211(f)(4). Some of those same commenters, as well as others, also stated that EPA should *first* conduct and finalize a rulemaking under section 211(c) to mitigate the potential for misfueling and limit the types of mobile sources for which E15 may be used.

Many commenters pointed to the language in section 211(f)(4) and argued that the use of the word "any" in the phrase "will not cause or contribute to a failure of any emission control device or system (over the useful life of the motor vehicle, motor vehicle engine, nonroad engine or nonroad vehicle in which such device or system is used) to achieve compliance by the vehicle or engine," means that if the waiver applicant has not established that the

[133] *See* Alliance Comments Docket #EPA–HQ–OAR–2009–0211–14004.1, 9–10.

[134] For example, when EPA revised its substantially similar definition in 1991 under which the allowable oxygen content was raised to 2.7% by weight for certain alcohol and ether oxygenates (56 FR 5352, February 11, 1991), there was a long history of use and a large database to draw from regarding the use of oxygenates at these levels. As discussed above, EPA does not believe the data shows that E12 has, in fact, been routinely used in the marketplace and independent testing on E12 is not available.

use of E15 meets the waiver criteria for *any* type of motor vehicle or nonroad product, then the waiver must be denied. Noting the statutory provision's use of the word "any," commenters asserted that should E15 cause or contribute to a failure of *any* emission control device to achieve compliance under *any* single circumstance, then the waiver applicant has not met the waiver criteria and the waiver must be denied in its entirety. Another commenter suggested that the word "any" modifies "emission control device" and that if an emission control device for *any* of the types of vehicles in the parenthetical language in section 211(f)(4) is implicated, then the waiver must be denied. Still another commenter suggested that "In amending section 211(f)(4) in 2007 with enactment of the Energy Independence and Security Act, Congress expanded the types of devices for which an applicant must establish that a fuel or fuel additive will not cause or contribute to a failure while retaining the prohibition of causing or contributing to the failure of 'any' device. With the expansion of section 211(f)(4), EPA is directed to only approve a waiver if all nonroad and on-road vehicles and engines would not be adversely affected." Commenters asserted that the provision effectively required that there should be a "general purpose" fuel. The commenters noted that EPA would contradict this direction if it failed to address impacts on any portion of the vehicles or engines. Essentially, the implication of all of these assertions is that EPA can only grant a waiver if *all* emission control devices in *all* types of mobile sources listed in the statute will not be adversely impacted by E15.

We also received several comments suggesting that if EPA desires to grant a partial waiver, it must first proceed under section 211(c) with a separate and full rulemaking to analyze the costs, benefits, necessary lead time, and the technological feasibility of a partial waiver. The commenters stated that this rulemaking should also include an analysis of the partial prohibition and controls on the use of E15 and include detailed regulatory requirements to ensure adequate control measures and to mitigate misfueling with E15. Commenters stated that the inclusion in section 211(f)(4) of 270 days by which EPA must act does not allow enough time to address all the necessary marketing and other issues and thus Congress could not have envisioned a partial waiver.

Growth Energy and ACE stated that the Agency has the authority to grant a partial waiver or that EPA's authority for a partial waiver is a permissible interpretation of CAA authority, but that the evidence suggests a waiver for all vehicles and engines on the road today is appropriate.

We also received comment noting that the prohibition in section 211(f)(1) only applies to the use of any fuel or fuel additive in light-duty motor vehicles, indicating that the grant of the waiver of this prohibition under section 211(f)(4) is not dependent on findings with respect to nonroad products. The commenter further noted that although EPA has the authority and discretion to look at the effect of a fuel or fuel additive on nonroad products (in the context of examining impacts on motor vehicles), nothing in the statute or legislative history indicates that the amendment to section 211(f)(4) sought to limit EPA's discretion for issuing a waiver for motor vehicles. In light of Congress' decision in the Energy Independence and Security Act of 2007 to substantially increase the Renewable Fuel Standard Program's volume mandates, this commenter suggests that reading the word "any" in section 211(f)(4) as amended by the 2007 Energy Act to apply to anything more than any emission control systems on the subset of motor vehicles would be at odds with congressional intent.

Regarding EPA's authority to impose conditions on a waiver, we received comment stating that EPA has the authority to grant waivers subject to a broad range of conditions that ensure that the fuel or fuel additive will not cause or contribute to the failure of any emission control device or system. One commenter pointed to four of the eleven waivers EPA has issued since 1977 that have placed conditions on a waiver.[135] In EPA's first waiver decision in 1978, the Agency discussed its authority to grant conditional waivers, noting that it may grant a waiver "conditioned on time or other limitations," so long as "the requirements of section 211(f)(4) are met."[136] This commenter also points to the legislative history of section 211(f)(4) which makes clear that EPA has authority to grant conditional waivers. The 1977 Senate Report regarding section 211(f)(4) states: "The Administrator's waiver may be under such conditions, or in regard to such concentrations, as he deems appropriate consistent with the intent of this section." Senate Report No. 95–125, 95th Congress, 1st Session 91 (1977), pg 91.

The issue before EPA is whether it is reasonable to interpret section 211(f)(4) as authorizing EPA to grant a partial waiver under appropriate conditions, as in today's decision. If Congress spoke directly to the issue and clearly intended to not allow such a partial waiver, then EPA could not do so. However, if Congress did not indicate a precise intention on this issue, and we believe that section 211(f)(4) is ambiguous in this regard, then a partial waiver with appropriate conditions would be authorized if it is a reasonable interpretation. EPA has considered the text and structure of this provision, as well as the companion prohibition in section 211(f)(1), and believes it is a reasonable to interpret section 211(f)(4) as providing EPA with discretion to issue this partial waiver with appropriate conditions.

It is important to put section 211(f)(4) in its statutory context. The prohibition in section 211(f)(1) and the waiver provision in section 211(f)(4) should be seen as parallel and complementary provisions. Together they provide two alternative paths for entry into commerce of fuels and fuels additives. The section 211(f)(1) prohibition allows fuels or fuel additives to be introduced into commerce as long as they are substantially similar to fuel used to certify compliance with emissions standards, and the section 211(f)(4) waiver provision allows fuels or additives to be introduced into commerce if they will not cause or contribute to motor vehicles and nonroad products to fail to meet their applicable emissions standards. EPA's authority to issue a waiver is coextensive with the scope of the prohibition—whatever is prohibited can also be the subject of a waiver if the criteria for granting a waiver are met. In addition, the criteria for each provision have similar goals. They are aimed at providing flexibility to the fuel and fuel additive industry by allowing a variety

[135] *See* Sun Petroleum Products Co.; Conditional Grant of Application for Fuel Waiver for 0–5.5% methanol/TBA, 44 FR 37,074 (June 25, 1979); E.I.DuPont de Nemours & Co.; Conditional Grant of Application for Fuel Waiver for 5% methanol/2% cosolvent alcohols, specified corrosion inhibitor, Decision Document, 51 FR 39,800 (Oct. 31, 1986); Texas Methanol Corp.; Conditional Grant of Application for Fuel Waiver for Octamix (5% methanol, 2.5% cosolvent alcohols, specified corrosion inhibitor), Decision Document, 53 FR 33,846 (Sept. 1, 1988); Sun Refining and Marketing Co.; Conditional Grant of Application for Fuel Waiver for 15% MTBE, Decision Document, 53 FR 33,846 (Sept. 1, 1988). These conditions have taken various forms, from restrictions on the chemical composition and additive concentration of the waiver fuel and requirements to meet ASTM and seasonal volatility standards, to specific testing protocols and mandates that a fuel manufacturer take "all reasonable precautions" to guard against unauthorized uses of the waiver fuel.

[136] *See* Ethyl *Corp.,* Denial of Application for Fuel Waiver for MMT (1/16 and 1/32 gpg Mn), 43 FR 41,424 (Sept. 18, 1978).

of fuels and fuel additives into commerce, without limiting fuels and additives to those products that are identical to those used in the emissions certification process. This flexibility is balanced by the goal of limiting the potential reduction in emissions benefits from the emissions standards, even if some may occur because a fuel or fuel additive is not identical to certification fuel or it leads to some emissions increase but not a violation of the standards. Together, these are indications that these provisions are intended to be parallel and complementary provisions.

The section 211(f)(1) prohibition has evolved over time. Initially it was adopted in the 1977 amendments of the Act, and was much more limited in nature. It applied only to fuels or fuel additives for general use, and was also limited to fuels or fuel additives for use in light-duty motor vehicles. EPA interpreted this as applying to bulk fuels or fuel additives for use in unleaded gasoline. The prohibition did not apply to other gasoline, or to diesel fuels or alternative fuels, or to fuel additives that were not for bulk use. It was thus relevant only to the subset of motor vehicles designed to be operated on unleaded gasoline.

In 1990 Congress amended the prohibition and broadened it. It now applies to "any fuel or fuel additive for use by any person in motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine." This extended the scope of the prohibition to apply to all gasoline, to diesel fuel, and to other fuels such as E85. However, the concept of applying this prohibition based on the relevant subset of vehicles continues. For example, a diesel fuel that is introduced into commerce for diesel vehicles does not need to be substantially similar to gasoline fuel or other fuels intended for non-diesel vehicles. This is so even though Congress used the phrase "substantially similar to *any* fuel or fuel additive utilized in the certification of *any* * * * vehicles or engine" (emphasis supplied). Clearly Congress did not intend the use of the term "any" in the prohibition to always mean all motor vehicles or 100% of the motor vehicle fleet. Diesel fuel does not need to be substantially similar to the fuel used in the certification of gasoline vehicles, and E85 does not need to be substantially similar to fuel used in the certification of diesel vehicles. For example, manufacturers who want to introduce E85 fuel or fuel additives for E85 look to the certification fuel that was used for the subset of vehicles that were certified for use on E85.

In some limited cases, EPA has approved a fuel additive as substantially similar even when it is introduced into commerce for use in just one part of a single vehicle manufacturer's product line. For example, where a fuel additive is considered part of the emissions control system for a vehicle model, and is certified that way by the vehicle manufacturer, then it is not a violation of the substantially similar prohibition for manufacturers of the fuel additive to introduce it into commerce for use in just that very small subset of vehicles as long as it is substantially similar to the fuel additive used in the certification of that vehicle model.[137] In all of these cases, broad to narrow subsets of motor vehicles can be considered when deciding whether the introduction of a fuel or fuel additive for use by that subset of motor vehicles is in compliance with the prohibition.

EPA has in fact applied this construct of this provision in all of its past waiver decisions. EPA has previously said that it is virtually impossible for an applicant to demonstrate that a new fuel or fuel additive does not cause or contribute to *any* vehicle or engine failing to meet its emissions standards. Instead, EPA and the courts allow applicants to satisfy this statutory provision through technical conclusions based on appropriately designed test programs and properly reasoned engineering judgment.[138] For example, the sample size in these test programs does not include *all* motor vehicles in the current fleet; the sample size is comprised of a statistically significant sample of motor vehicles that, once tested, will enable the applicant to extrapolate its findings and make its demonstration. EPA believes that this practice of focusing on a relatively small but representative subset of motor vehicles does not violate the statutory use of the word "any" in this provision.

Since the waiver and the substantially similar provisions are parallel and complementary provisions, this clearly raises the question of whether a waiver can also be based on a subset of motor vehicles meeting the criteria for a waiver. EPA believes the text and construction of section 211(f)(4) supports this interpretation.

First, the term "waive" as used in section 211(f)(4) is not modified in any way. Normally one would read this provision as a general grant of waiver authority, encompassing both partial and total waivers, as long as the waiver criteria are met. Second, the waiver criteria, like section 211(f)(1), have evolved over time. In 1977, the criteria were phrased as providing for a waiver when the fuel or fuel additive "will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emission standards to which it has been certified." This was not modified in the 1990 amendments. In EISA 2007, Congress amended the waiver criteria, providing for a waiver when the fuel or fuel additive will not "cause or contribute to a failure of any emission control device or system (over the useful life of the motor vehicle, motor vehicle engine, nonroad engine or nonroad vehicle in which such device or system is used) to achieve compliance by the vehicle or engine with the emission standards to which it has been certified." Congress uses the term "any" in section 211(f)(4), as it does in several places in section 211(f)(1). One use of the term "any" was deleted in the 2007 amendments, when the parenthetical was broadened to include consideration of nonroad engines and nonroad vehicles as well as motor vehicles. The term "any," however, has always been paired with the consistent use of the singular when referring to vehicles and emissions control systems—"the vehicle" and the emissions standards to which "it" is certified, and the "vehicle in which such device or system is used." Certainly Congress did not state that the applicant has to demonstrate that the fuel or fuel additive would not cause *any* devices or control systems, over the useful lives of the motor vehicles or nonroad products in which they are used, to fail to achieve the emissions standards to which they are certified. If Congress had stated that, then it would be clear, as one commenter suggests, that EPA should only grant a waiver if *all* emission control devices in *all* the types of mobile sources listed would not be impacted by the fuel. But Congress did not state that.[139]

[137] *See* 54 FR 4834 (November 22, 1989).

[138] *See* 44 FR 10530 (February 21, 1979); *Motor Vehicle Mfrs. Ass'n. et. al.* v. *EPA,* 768 F.2d 385 (DC Cir. 1985).

[139] *New York* v. *EPA,* 443 F.3d 880, (DC Cir. 2006) concerned the use of the word "any" in a different provision in the Clean Air Act and does not lead to any different conclusion here. The Court found that the statutory language, context, and legislative intent of that provision required an expansive meaning of the phrase "any physical change" in the definition of "modification" in CAA section 111(a)(4). EPA is also applying the term "any" in an expansive manner, but in the context of a subset of motor vehicles. This takes into account the context, text, and purposes of both section 211(f)(1) and

Continued

Several aspects of section 211(f) thus support the reasonableness of EPA's interpretation. The prohibition and the waiver provisions are properly seen as parallel and complementary, and the prohibition properly can be evaluated in terms of appropriate subsets of motor vehicles, notwithstanding the use of the term "any" to modify several parts of the prohibition. This clearly raises the concept of also applying the waiver criteria to appropriate subsets of motor vehicles. "Waive" is reasonably seen as a broad term that generally encompasses a total and a partial waiver, as well as the discretion to impose appropriate conditions. The criteria for a waiver also refer to "any" but the entire provision does not provide a clear indication that Congress intended to preclude consideration of subsets of motor vehicles when considering an application for a waiver. Finally, a partial waiver gives full meaning to all of the provisions at issue.

For example, in this case, granting a partial waiver means that E15 can be introduced into commerce for use in a subset of motor vehicles, MY2007 and newer light-duty motor vehicles, and only for use in those motor vehicles. For those motor vehicles, EPA is not making a finding of it being substantially similar, but E15 has been demonstrated to not cause or contribute to these motor vehicles exceeding their applicable emissions standards. It will also not cause any other motor vehicles or any other on or off-road vehicles or engines to exceed their emissions standards since it may not be introduced into commerce for use in any other motor vehicles or any other vehicles or engines. Thus, under a partial waiver, as the commenter suggested, all emission control devices in all the types of mobile sources listed will not be adversely impacted by the fuel. It can only be introduced into commerce for those vehicles and engines where it has been shown not to cause emissions problems; for other types of mobile sources, it cannot be introduced into commerce for use in such vehicles and engines. In concept, therefore, the combination of this partial waiver, with appropriate conditions, and partial retention of the substantially similar prohibition, has the same effect as when the criteria for a total waiver has been met—the fuel or fuel additive will only be introduced into commerce for use in a manner that will not cause violations across the fleet of motor vehicles and nonroad products. It can only be introduced into commerce for use in vehicles and engines where it has been shown not to cause violations of the emissions standards, and may not be introduced into commerce for use in other vehicles or engines.

EPA recognizes that a partial waiver raises implementation issues regarding how to ensure that a fuel or fuel additive is only introduced into commerce for use in the specified subset of motor vehicles. The discretion to grant a partial waiver includes the authority and responsibility for determining and imposing reasonable conditions that will allow for effective implementation of a partial waiver. In this case, EPA has conditioned the waiver on various actions that the fuel or fuel additive manufacturer must take. The actions are all designed to help ensure that E15 is only used by the MY2007 and later motor vehicles specified by the waiver. If a fuel or fuel additive manufacturer does not comply with the conditions, then EPA will consider their fuel or fuel additive as having been introduced into commerce for use by a broader group of vehicles and engines than is allowed under the waiver, constituting a violation of the section 211(f)(1) prohibition.

EPA recognizes, as several commenters have suggested, that EPA can impose waiver conditions only on those parties who are subject to the section 211(f)(1) prohibition and the waiver of that prohibition. These parties are the fuel and fuel additive manufacturers. Waiver conditions can apply to them, but cannot apply directly to various downstream parties, such as a retailer who is not also a fuel or fuel additive manufacturer. This is one reason EPA is also proposing specific misfueling mitigation measures in a separate rulemaking under section 211(c), to minimize any risk of misfueling. This will also facilitate compliance with certain of the waiver conditions.

Many commenters suggested that before EPA can grant a waiver of any type under section 211(f)(4), the Agency must first issue a rule under section 211(c) that addresses the proper prohibition and control of a new fuel or fuel additive to the extent necessary before such fuel or fuel additive is permitted under section 211(f)(4). However, there is no mention of timing in these two statutory provisions and EPA believes it appropriate to consider the merits of a section 211(f)(4) waiver request on its face.

B. Notice and Comment Procedures

Section 211(f)(4) requires that EPA grant or deny an application for a waiver "after public notice and comment." As discussed in detail in Section II.B., EPA published notice of receipt of the waiver application on April 21, 2009 and provided the public with an extended public comment period of 90 days to submit comments on the waiver application. EPA received approximately 78,000 comments during the public comment period.

Commenters have asked the Agency for a second public comment period so that they may review and comment on the testing data generated by the DOE Catalyst Study. An additional comment period is neither necessary nor required by law. EPA has continued to accept comments on the waiver application even after closure of the formal comment period, and has considered comments received even as late as early October. All of these comments have been included in the public docket and thus made available to all members of the public for review and comment. Many commenters have taken the opportunity to submit additional comments in light of other comments and information included in the docket.

Data from ongoing vehicle testing programs, including DOE's data, have been included in the public docket shortly after EPA has received the information, making it available for the public's review and comment as soon as practicable. Many commenters providing substantive feedback on the waiver application have been involved in one or more of the various testing programs, including DOE's, and consequently have had immediate access to the data. Comments submitted to the docket reflect that commenters have had access to and an opportunity to consider the various testing information cited by EPA in the waiver decision.

EPA has also held numerous meetings with stakeholders in which stakeholders have shared their comments, concerns and additional data regarding the waiver request. Information received at these meetings has been made available in the public docket.

In view of the access that has been made available to the relevant information in the public docket, EPA believes no need exists for a second public comment period. Moreover, EPA has already satisfied its notice and comment requirements for this Decision and has no legal obligation to provide an additional notice and comment period. EPA satisfied its procedural requirements through the public notice and comment period EPA already provided (*see* Section II.B) and nothing

(f)(4), which, as discussed above, envisions use of such subsets of vehicles.

in section 211(f)(4) mandates a second comment period.[140]

C. "Useful Life" Language in Section 211(f)(4)

In making any waiver decision, section 211(f)(4) indicates that EPA should ensure that any new fuel or fuel additive will not cause or contribute to a vehicle or engine failing to meet its emissions standards over its useful life. The Clean Air Act authorizes EPA to define "useful life" for the vehicles and engines EPA regulates, *see* CAA sections 202(d) and 213(d), and EPA includes those definitions in the same regulations that contain the emission standards for those vehicles and engines.

As discussed above, the construction of section 211(f) indicates that the meaning of section 211(f)(4) is best determined by reading it in context with the substantially similar prohibition in section 211(f)(1). Section 211(f)(1) contains the general prohibition against introducing fuels and fuel additives that are not "substantially similar" to the certification fuels used for certifying 1975 and subsequent model year motor vehicles with EPA's emissions standards. The prohibition is expansive, effectively protecting MY1975 and newer motor vehicles from using fuels or fuel additives that could detrimentally impact their ability to meet their emissions standards. In enacting this provision, Congress stated that "the intention of this new subsection [(f)] is to prevent the use of any new or recently introduced additive in those unleaded grades of gasoline required to be used in 1975 and subsequent model year automobiles which may impair emission performance of vehicles * * *." *Senate Report* (Environment and Public Works Committee) No. 95–127 (To accompany S. 252), May 10, 1977, pg 90. This general prohibition equally protects all MY1975 and newer motor vehicles from the use of new fuels and fuel additives that the motor vehicles may not have been designed to use and could degrade their emissions control systems.

The section 211(f)(1) prohibition is designed to protect the emissions control systems for the breadth of motor vehicles in the fleet, whether they are within or outside the regulatory useful life of an applicable emissions standard. This broad scope recognizes that the emissions control system of a motor vehicle continues to operate and provide important emissions benefits throughout the actual life of the motor vehicle, including the many miles or years that it may be operated past its regulatory useful life. Thus, it is important that the motor vehicle continue to use fuels that do not interfere with the continued normal operation of the emissions control system after its regulatory useful life. That normal operation may not ensure that the motor vehicle stills meets the applicable emissions standards, but it is typically such that it provides significant emissions control benefits for the country. Congress recognized this and prohibited entry into commence of fuels or fuel additives that could interfere with this result, no matter how old the motor vehicle. Congress also recognized this goal by prohibiting tampering anytime during the actual life of the motor vehicle, not just during its regulatory useful life. *See* CAA section 203(a)(3).[141]

In promulgating CAA section 211(f)(4), Congress provided EPA with the authority to waive the prohibition for particular fuels or fuel additives, but only when the fuel or fuel additive manufacturer demonstrated that motor vehicles could still meet their emissions standards while using the particular fuel or fuel additive. *See Senate Report* (Environment and Public Works Committee) No. 95–127, May 10, 1977, pg 91 ("The waiver process * * * was established * * * so that the prohibition could be waived, or conditionally waived, rapidly if the manufacturer of the additive or the fuel establishes to the satisfaction of the Administrator that the additive, whether in certain amounts or under certain conditions, will not be harmful to the performance of emission control devices or systems."). While section 211(f)(4) refers to the "useful life" of the motor vehicle, that is part of the reference to causing or contributing to the noncompliance of the motor vehicle with its emission standards, as the emissions standards are defined in part by the useful life provision. *See House Conference Report* No. 95–564 (To accompany H.R. 6161), Aug. 3, 1977, pp 160–162 ("The conferees also intend that the words 'cause or contribute to the failure of an emission control device or system to meet emission standards over its useful life to which it has been certified pursuant to section 206' mean the noncompliance of an engine or device with emission levels to which it was certified, taking into account the deterioration factors employed in certifying the engine.") This indicates that Congress was not trying to limit the scope of the waiver provision, but instead was using language normally used when referring to the emission standards. Congress wanted to ensure that new fuels or fuel additives allowed into the marketplace through a waiver would be the kinds of fuels or fuel additives that are consistent with motor vehicles meeting their applicable emissions standards.

In that context, EPA looks at whether the fuel or fuel additive would lead to an exceedance of the emissions standards if it was used during the motor vehicle's regulatory useful life. If that is the case, then the fuel should not be entered into commerce for use by that motor vehicle anytime during its actual life—just as the section 211(f)(1) prohibition ensures that motor vehicles will not use fuel or fuel additives anytime during their actual lives that are not substantially similar to the fuel or fuel additives used to certify their compliance with the emissions standards over their regulatory useful lives. This gives a reasonable meaning to the waiver provision and keeps it parallel and complementary to the section 211(f)(1) provision to which it is tied. EPA believes this reflects Congress' intention and avoids an unintended consequence that would be far at odds with the apparent purpose of sections 211(f)(1) and (4). If EPA were limited to only considering motor vehicles within their regulatory useful lives, this could require the Agency to approve waiver requests for new fuels and fuel additives even if they were clearly known to seriously degrade emission control devices or systems and cause large emissions increases in older motor vehicles, which comprise a significant percentage of the entire fleet. Allowing such a detrimental fuel or fuel additive into the marketplace is clearly contrary to the purposes of section 211(f) which is designed as a whole to protect the benefits of the emissions control

[140] This Decision is distinguishable from the outcome in *Air Transport Ass'n of America* v. *FAA,* 169 F.3d 1 (DC Cir. 1999). In *ATA* v. *FAA,* the DC Circuit found that the FAA's reliance on *ex parte* information submitted after closure of the public comment period violated the applicable notice and comment period requirements. The Court's holding was primarily based on the private nature of the information. *ATA,* 169 F.3d at 8 ("The important point is that because the transmission of this information * * * was never public, petitioner did not have a fair opportunity to comment on it."). In contrast, the data relied upon by the Agency in this waiver decision were included in the pubic docket for the decision prior to its issuance.

[141] Additionally, Congress authorized EPA to set separate in-use standards (section 202(g)) and to order recall of motor vehicles not meeting those standards (section 207(c)(1)), further illustrating its intent that emissions reductions continue at all times during the actual life of motor vehicles. Also *see General Motors Corp.* v. *Ruckelshaus,* 742 F.2d 1561 (DC Cir. 1984) (finding that section 207(c)(1) enables EPA to order a recall of all motor vehicles in a class—even those beyond their statutory useful life—as long as EPA can demonstrate that those motor vehicles were not meeting their emissions standards while within their useful life.)

standards over the actual life of the motor vehicles.

X. Waiver Conditions

The conditions placed upon the partial waiver EPA is granting today fall into two categories. The first category concerns properties of the ethanol used to manufacture E15 and the properties of the final E15 blend. The second category of conditions concerns mitigation of potential misfueling with E15. Any party wishing to utilize this partial waiver for E15 must satisfy all of these conditions to be able to lawfully register and introduce E15, or ethanol used to make E15, into commerce.

A. Fuel Quality Conditions

As requested by Growth Energy in their waiver request application, and as is industry practice, the partial waiver for E15 contains a condition that requires use of ethanol which meets industry specifications as outlined in ASTM International D4806.[142] Additionally, as discussed above in our evaluation of the potential effect of E15 on evaporative emissions, the partial waiver for E15 contains a condition that E15 must meet a maximum RVP of 9.0 psi during the summertime volatility season, May 1 through September 15.

B. Misfueling Mitigation Conditions and Strategies

EPA believes that minimizing the possibility of misfueling of E15 into vehicles or engines for which it is not approved would best be achieved through implementation of misfueling mitigation requirements as proposed by EPA today in a separate action. Nevertheless, EPA is allowing the use of the partial waiver prior to the finalization of such requirements provided the fuel or fuel additive manufacturer using the partial waiver can implement the conditions described below prior to introducing E15 into commerce. Any fuel or fuel manufacturer wishing to utilize this partial waiver must submit a plan for EPA approval for implementing these misfueling mitigation conditions. EPA will determine if the plan is sufficient to address these conditions.

We believe that there are four important components to an effective misfueling mitigation strategy for reducing the potential for misfueling with E15. First, effective labeling is a key factor. Labeling is needed to inform consumers of the potential impacts of using E15 in vehicles and engines not approved for its use, to mitigate the potential for intentional and unintentional misfueling of these vehicles and engines. Labeling is also done at the point of sale where the consumer most likely will be choosing which fuel to use. Second, retail stations and wholesale purchaser-consumers need assurance regarding the ethanol content of the fuel that they purchase so they can direct the fuel to the appropriate storage tank and properly label their fuel pumps. The use of proper documentation in the form of PTDs has proven to be an effective means of both ensuring that retail stations know what fuel they are purchasing and as a possible defense for retail stations in cases of liability in the event of a violation of EPA standards. Third, labeling and fuel sampling surveys are necessary to ensure that retail stations are complying with labeling requirements, ethanol blenders are not blending more than the stated amount of ethanol on PTDs, and assuring downstream compliance for fuel refiners. The Agency has used this general strategy to implement several fuel programs over the past thirty years, including the unleaded gasoline program, the RFG program, and the diesel sulfur program. These strategies are conditions of use associated with today's waiver decision and are described below.

While not a condition of today's waiver decision, the fourth component of an effective misfueling mitigation strategy is effective public outreach and consumer education. Outreach to consumers and stakeholders is critical to mitigate misfueling incidents that can result in increased emissions and vehicle damage. Consumers need to be engaged through a variety of media to ensure that accurate information is conveyed to the owners and operators of vehicles and engines.

EPA recognizes that it may be difficult to fully implement all of these misfueling mitigation strategies prior to finalization of today's proposed rule. However, any fuel or fuel additive manufacturer wishing to introduce E15 into commerce before EPA finalizes its misfueling mitigation measures rule will need to demonstrate to EPA its ability to meet the following misfueling mitigation conditions of the partial waiver:

1. Fuel Pump Dispenser Labeling

Any fuel or fuel additive manufacturer using this partial waiver must ensure the labeling of any dispensers of this gasoline-ethanol blend. The label would have to indicate that the fuel contains up to 15 vol% ethanol—that is, the fuel is gasoline containing greater than 10 vol% ethanol and up to 15 vol% ethanol.

Based on the Agency's experience with fuel pump labeling for Ultra-Low Sulfur Diesel (ULSD) and Low Sulfur Diesel (LSD) (*see* 40 CFR 80.570), there are four important elements to an effective label for misfueling. The language of the E15 label must contain four components: (1) An information component; (2) a legal approval component; (3) a technical warning component; and (4) a legal warning component. Together, these four components highlight the critical information necessary to inform consumers about the impacts of using E15.

The labeling requirements EPA is proposing today in a separate proposed rule concurrent with today's partial waiver decision would place labeling requirements on retail stations that dispense E15. Compliance with these labeling requirements, when finalized, will satisfy this fuel pump dispenser labeling condition. If a fuel or fuel additive manufacturer chooses to utilize this partial waiver prior to finalization of today's proposed rule, a label designed to meet the components described in today's proposed rule and approved by EPA can satisfy this fuel pump dispenser labeling condition of this partial waiver decision.

2. Fuel Pump Labeling and Fuel Sample Survey

Any fuel or fuel additive manufacturer using this partial waiver must participate in a survey, approved by EPA, of compliance at fuel retail facilities conducted by an independent surveyor. An EPA-approved survey plan is to be in place prior to introduction of E15 into the marketplace and the results of the survey must be provided to EPA for use in its enforcement and compliance assurance activities.

One of two options may be utilized to meet this condition of this partial waiver decision:

For Survey Option 1, a fuel or fuel additive manufacturer may individually survey labels and ethanol content at retail stations wherever its gasoline, ethanol, or ethanol blend may be distributed if it may be blended as E15. EPA must approve this survey plan before it is conducted by the fuel or fuel additive manufacturer.

For Survey Option 2, a fuel or fuel additive manufacturer may choose to conduct the survey through a nationwide program of sampling and testing designed to provide oversight of all retail stations that sell gasoline. Details of the survey requirements are

[142] ASTM International D4806–10, Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel.

similar to those included in the ULSD and RFG programs. A fuel or fuel additive manufacturer may conduct this survey as part of a consortium, as discussed in the proposed rule.

EPA is proposing more formal requirements for a national E15 labeling and ethanol content survey in today's notice of proposed rulemaking. If a fuel or fuel additive manufacturer chooses to utilize this partial waiver prior to finalization of today's proposed rule, a survey designed to satisfy the components described in today's proposed rule and approved by EPA will be deemed to be sufficient to satisfy this fuel pump labeling and fuel sample survey condition of this partial waiver decision.

3. Proper Documentation of Ethanol Content on Product Transfer Documents

Today's proposed rule would require that parties that transfer blendstocks, base gasoline for oxygenate blending, and/or finished gasoline that contains ethanol content greater than 10 vol% and no more than 15 vol% include the ethanol concentration of the fuel in volume percent. Product transfer documents (PTDs) are customarily generated and used in the course of business and are familiar to parties who transfer or receive blendstocks or base gasoline for oxygenate blending and oxygenated gasoline. Since we are approving a partial waiver for the introduction into commerce of E15 for use in only MY2007 and newer motor vehicles, the PTDs that accompany the transfer of base gasoline/gasoline blendstocks used for oxygenate blending and for oxygenated gasoline must include the ethanol content of the fuel to help avoid misfueling. Downstream of the terminal where ethanol blending takes place, information on the maximum ethanol concentration in the ethanol blend is needed to help ensure that fuel shipments are delivered into the appropriate storage tanks at retail and fleet gasoline dispensing facilities.[143] A gasoline retail station and fleet dispensing facility must know the ethanol content of a fuel shipment so that fuel pumps may be correctly labeled.

In the event that there is a period of time when this partial waiver is utilized prior to finalization of today's proposal, a PTD program designed to satisfy the elements of today's proposed rule will be sufficient to satisfy the PTD condition of this partial waiver decision.

4. Public Outreach

While not a formal condition of this partial waiver, EPA recognizes the importance of outreach to consumers and stakeholders to misfueling mitigation. The potential for E15 misfueling incidents may exist for several reasons. For example, consumers may be inclined to misfuel when E15 costs less than E10 or E0. Additionally, in some situations, it may be more difficult to find fuels other than E15. EPA thus encourages fuel and fuel additive manufacturers to conduct a public outreach and education program prior to any introduction of E15 into commerce.

A recent example of outreach to consumers and stakeholders that may be applicable is coordinated work done in support of the ULSD program. ULSD was a new fuel with the possibility of consumer misfueling that could result in engine damage. With ULSD, the fuel industry trade association API took the lead in working with stakeholders to establish the Clean Diesel Fuel Alliance (CDFA), a collaboration of public and private organizations designed to ensure a smooth program transition by providing comprehensive information and technical coordination. The organizations represented in the CDFA include engine manufacturers, fuel retailers, trucking fleets, DOE and EPA. CDFA efforts to educate ULSD users include developing technical guidance and educational information, including a Web site (*http://www.clean-diesel.org*), as well as serving as a central point of contact to address ULSD-related questions.

The CDFA outreach model could prove beneficial in this case. EPA anticipates that all parties involved in bringing higher gasoline-ethanol blends to market will participate in a coordinated industry-led consumer education and outreach effort. In the context of this program, potential key participants include ethanol producers, fuel and fuel additive manufacturers, automobile, engine and equipment manufacturers, States, non-governmental organizations, parties in the fuel distribution system, EPA, DOE, and USDA. Potential education and outreach activities a public/private group could undertake include serving as a central clearinghouse for technical questions about E15 and its use, promoting best practices to educate consumers or mitigate misfueling instances, and developing education materials and making them available to the public.

XI. Reid Vapor Pressure

Commenters questioned whether E15 would qualify for the 1.0 psi RVP waiver permitted for E10 under CAA section 211(h). As explained in the misfueling mitigation measures proposed rule, EPA interprets the 1.0 psi waiver in CAA section 211(h) as being limited to gasoline-ethanol blends that contain 10 vol% ethanol. Please see the preamble of that proposed rule for more discussion of this issue and for an opportunity to submit comments on this issue.

XII. Partial Waiver Decision and Conditions

Based on all the data and information described above, EPA has determined that, subject to compliance with all of the conditions below, a gasoline produced with greater than 10 vol% and no more than 15 vol% ethanol (E15) will not cause or contribute to a failure of certain motor vehicles to achieve compliance with their emission standards to which they have been certified over their useful lives.

Therefore, the waiver request application submitted by Growth Energy for its gasoline-ethanol blend with up to 15 vol% ethanol is partially and conditionally granted as follows:

(1) The partial waiver applies only to fuels or fuel additives introduced into commerce for use in MY2007 and newer light-duty motor vehicles, light-duty trucks, and medium duty passenger vehicles (hereafter "MY2007 and newer light-duty motor vehicles") as certified under Section 206 of the Act. The waiver does not apply to fuels or fuel additives introduced into commerce for use in pre-MY2007 motor vehicles, heavy-duty gasoline engines or vehicles, or motorcycles certified under section 206 of the Act, or any nonroad engines, nonroad vehicles, or motorcycles certified under section 213(a) of the Act.

(2) The waiver applies to the blending of greater than 10 vol% and no more than 15 vol% anhydrous ethanol into gasoline,[144] and the ethanol must meet the specifications for fuel ethanol found in the ASTM International specification D4806–10.[145]

(3) The final fuel must have a Reid Vapor Pressure not in excess of 9.0 psi during the time period from May 1 to September 15.

[143] Evaluations are underway which may facilitate the shipment of gasoline-ethanol blends by pipeline to terminals. Hence, parties upstream of the terminal may need to include information on maximum ethanol concentration on product PTDs in the future.

[144] Gasoline in this case may be gasoline blendstocks that produce gasoline upon the addition of the specified amount of ethanol covered by the waiver.

[145] ASTM D4806–10, Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel.

(4) Fuel and fuel additive manufacturers subject to this partial waiver must submit to EPA a plan, for EPA's approval, and must fully implement that EPA-approved plan, prior to introduction of the fuel or fuel additive into commerce as appropriate. The plan must include provisions that will implement all reasonable precautions for ensuring that the fuel or fuel additive (*i.e.,* gasoline intended for use in E15, ethanol intended for use in E15, or final E15 blend) is only introduced into commerce for use in MY2007 and newer motor vehicles. The plan must be sent to the following address: Director, Compliance and Innovative Strategies Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW. Mail Code 6405J, Washington, DC 20460. Reasonable precautions in a plan must include, but are not limited to, the following conditions on this partial waiver:

(a)(i) Reasonable measures for ensuring that any retail fuel pump dispensers that are dispensing a gasoline produced with greater than 10 vol% ethanol and no more than 15 vol% ethanol are clearly labeled for ensuring that consumers do not misfuel the waivered gasoline-ethanol blend into vehicles or engines not covered by the waiver. The label shall convey the following information:

(A) The fuel being dispensed contains 15% ethanol maximum;

(B) The fuel is for use in only MY2007 and newer gasoline cars, MY2007 and newer light-duty trucks and all flex-fuel vehicles;

(C) Federal law prohibits the use of the fuel in other vehicles and engines; and

(D) Using E15 in vehicles and engines not approved for use might damage those vehicles and engines.

(ii) The fuel or fuel additive manufacturer must submit the label it intends to use for EPA approval prior to its use on any fuel pump dispenser.

(b) Reasonable measures for ensuring that product transfer documents accompanying the shipment of a gasoline produced with greater than 10 vol% ethanol and no more than 15 vol% ethanol properly document the volume of ethanol.

(c)(i) Participation in a survey of compliance at fuel retail dispensing facilities. The fuel or fuel additive manufacturer must submit a statistically sound survey plan to EPA for its approval and begin implementing the survey plan prior to the introduction of E15 into the marketplace. The results of the survey must be provided to EPA.[146] The fuel or fuel additive manufacturer conducting a survey may choose from either of the following two options:

(ii) *Individual survey option:* Conduct a survey of labels and ethanol content at retail stations wherever your gasoline, ethanol, or ethanol blend may be distributed if it may be blended as E15. The survey plan must be approved by EPA prior to conducting the survey plan.

(iii) *Nationwide survey option:* Contract with an individual survey organization to perform a nationwide survey program of sampling and testing designed to provide oversight of all retail stations that sell gasoline. The survey plan must be approved by EPA prior to conducting the survey plan.

(d) Any other reasonable measures EPA determines are appropriate.

(5) Failure to fully implement any condition of this partial waiver means the fuel or fuel additive introduced into commerce is not covered by this partial waiver.

This partial waiver decision is final agency action of national applicability for purposes of section 307(b)(1) of the Act. Pursuant to CAA section 307(b)(1), judicial review of this final agency action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by January 3, 2011. Judicial review of this final agency action may not be obtained in subsequent proceedings, pursuant to CAA section 307(b)(2). This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

Dated: October 13, 2010.

Lisa P. Jackson,

Administrator.

[FR Doc. 2010–27432 Filed 11–3–10; 8:45 am]

BILLING CODE 6560–50–P

[146] In a Notice of Proposed Rulemaking published in today's **Federal Register**, EPA is proposing a more detailed labeling, product transfer documents, and survey plan.

Federal Register

Thursday,
November 4, 2010

Part IV

The President

Proclamation 8596—To Adjust the Rules of Origin Under the United States-Bahrain Free Trade Agreement, Implement Modifications to the Caribbean Basin Economic Recovery Act, and for Other Purposes

Proclamation 8597—National Adoption Month, 2010

Federal Register
Vol. 75, No. 213
Thursday, November 4, 2010

Presidential Documents

Title 3—

The President

Proclamation 8596 of November 1, 2010

To Adjust the Rules of Origin Under the United States-Bahrain Free Trade Agreement, Implement Modifications to the Caribbean Basin Economic Recovery Act, and for Other Purposes

By the President of the United States of America

A Proclamation

1. In Presidential Proclamation 8097 of December 29, 2006, pursuant to the authority provided in section 1206(a) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3006(a)) (the "1988 Act"), the President modified the Harmonized Tariff Schedule of the United States (HTS) to reflect amendments to the International Convention on the Harmonized Commodity Description and Coding System (the "Convention").

2. Presidential Proclamation 8039 of July 27, 2006, implemented the United States-Bahrain Free Trade Agreement (USBFTA) with respect to the United States and, pursuant to section 101(a) of the United States-Bahrain Free Trade Agreement Implementation Act (the "USBFTA Implementation Act") (Public Law 109–169, 119 Stat. 3581) (19 U.S.C. 3805 note), incorporated in the HTS the schedule of duty reductions and rules of origin necessary or appropriate to carry out the USBFTA.

3. In order to ensure the continuation of the staged reductions in rates of duty for originating goods from Bahrain in categories that were modified to conform to the Convention, the President proclaimed in Presidential Proclamation 8097 modifications to the HTS that he determined were necessary or appropriate to carry out the duty reductions proclaimed in Proclamation 8039.

4. Bahrain is a party to the Convention. Because the substance of changes to the Convention are reflected in slightly differing form in the national tariff schedules of the parties to the USBFTA, the rules of origin set out in Annexes 3–A and 4–A of that Agreement must be changed to ensure that the tariff and certain other treatment accorded under the USBFTA to originating goods will continue to be provided under the tariff categories that were modified in Proclamation 8097. The USBFTA parties have agreed to make these changes in a protocol to the USBFTA, which will go into effect on November 1, 2010.

5. Section 202 of the USBFTA Implementation Act provides certain rules for determining whether a good is an originating good for purposes of implementing tariff treatment under the USBFTA. Section 202(j)(1)(A) of the USBFTA Implementation Act authorizes the President to proclaim the rules of origin set out in the USBFTA and any subordinate categories necessary to carry out the USBFTA, subject to certain exceptions set out in section 202(j)(2)(A).

6. I have determined that modifications to the HTS proclaimed pursuant to section 202 of the USBFTA Implementation Act and section 1206(a) of the 1988 Act are necessary or appropriate to ensure the continuation of tariff and certain other treatment accorded originating goods under tariff categories modified in Proclamation 8097 and to carry out the duty reductions proclaimed in Proclamation 8039.

7. Section 213A of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703a) (CBERA), as amended by the Haiti Economic Lift Program Act of 2010 (Public Law 111–171, 124 Stat. 1194) (19 U.S.C. 2701 note) (the "HELP Act"), provides that preferential tariff treatment may be provided for apparel and other articles originating in Haiti that are imported directly from Haiti or the Dominican Republic into the customs territory of the United States.

8. In order to implement the tariff treatment provided for under the CBERA, as amended, it is necessary to modify the HTS.

9. Proclamation 7987 of February 28, 2006, implemented the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA–DR). There was a technical error in the form of an inadvertent omission from Annex I of Publication 3829 of the United States International Trade Commission (USITC) entitled "Modifications to the Harmonized Tariff Schedule of the United States to Implement the Dominican Republic-Central America-United States Free Trade Agreement With Respect to El Salvador," which was incorporated by reference into Proclamation 7987.

10. I have determined that a technical correction to general note 29 to the HTS is necessary to provide the tariff and certain other treatment accorded under the CAFTA–DR to originating goods.

11. In Proclamation 8097 two technical errors were made in U.S. note 2 to subchapter XVII of chapter 98 of the HTS as set forth in Annex I of Publication 3898 of the USITC entitled "Modifications to the Harmonized Tariff Schedule of the United States Under Section 1206 of the Omnibus Trade and Competitiveness Act of 1988," which was incorporated by reference into Proclamation 8097.

12. I have determined that technical corrections to U.S. note 2 to subchapter XVII of chapter 98 of the HTS are necessary to provide the intended tariff treatment.

13. Proclamation 8405 of August 31, 2009, modified certain rules of origin of the North American Free Trade Agreement (NAFTA). Technical errors, including an inadvertent omission, were made in the modifications to general note 12 to the HTS as provided in Annex I of Publication 4095 of the USITC entitled "Modifications to the Harmonized Tariff Schedule of the United States to Adjust Rules of Origin Under the North American Free Trade Agreement," which was incorporated by reference into Proclamation 8405.

14. I have determined that technical corrections to general note 12 to the HTS are necessary to provide the tariff and certain other treatment accorded under the NAFTA to originating goods.

15. Section 604 of the Trade Act of 1974, as amended (the "1974 Act") (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the provisions of that Act, and of other Acts, affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction. Section 1206(c) of the 1988 Act, as amended (19 U.S.C. 3006(c)), provides that any modifications proclaimed by the President under section 1206(a) of that Act may not take effect before the thirtieth day after the date on which the text of the proclamation is published in the *Federal Register*.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to section 1206(a) of the 1988 Act, section 202 of the USBFTA Implementation Act, section 213A of CBERA, as amended, and section 604 of the 1974 Act, do proclaim that: (1) In order to reflect in the HTS the modifications to the rules of origin under the USBFTA once those modifications go into effect, general note 30 to the HTS is modified as provided in Annex I to this proclamation.

(2) In order to implement the tariff treatment provided for in section 213A of CBERA, as amended, the HTS is modified as set forth in Annex II to this proclamation.

(3) In order to make the technical corrections to general note 29 to the HTS, the HTS is modified as set forth in paragraph 1 of Annex III to this proclamation.

(4) In order to make the technical corrections to U.S. note 2 to subchapter XVII of chapter 98 of the HTS, the HTS is modified as set forth in paragraph 2 of Annex III to this proclamation.

(5) In order to make technical corrections to general note 12 to the HTS, the HTS is modified as set forth in paragraph 3 of Annex III to this proclamation.

(6) The modifications and technical rectifications to the HTS set forth in Annex I to this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the later of (i) November 1, 2010, or (ii) the thirtieth day after the date of publication of this proclamation in the *Federal Register*.

(7) The modifications to the HTS set forth in Annexes II and III to this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates provided in those Annexes.

(8) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of November, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fifth.

Billing code 3195–W1–P

ANNEX I

Effective with respect to goods of Bahrain, under the terms of general note 30 to the Harmonized Tariff Schedule of the United States, that are entered, or withdrawn from warehouse for consumption, on or after the later of November 1, 2010, or the thirtieth day after the date of publication of this proclamation in the Federal Register, subdivision (h) of such general note 30 is hereby modified as follows:

1. TCRs 2 and 3 for chapter 54 are deleted and the following new TCRs are inserted:

"2. A change to tariff items 5407.61.11, 5407.61.21 or 5407.61.91 from tariff items 5402.47.10 or 5402.52.10, or from any other chapter, except from headings 5106 through 5110, 5205 through 5206 or 5509 through 5510.

3. A change to heading 5407 from any other chapter, except from headings 5106 through 5110, 5205 through 5206 or 5509 through 5510."

2. TCRs 1 and 2 for chapter 61 are deleted and the following new TCRs are inserted:

"1. A change to subheadings 6101.20 through 6101.30 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54 or headings 5508 through 5516 or 6001 through 6006, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of Bahrain or of the United States, or both, and

(b) any visible lining material contained in the apparel article satisfies the requirements of chapter rule 1 for chapter 61.

2. (A) A change to goods of wool or fine animal hair of subheading 6101.90 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54 or headings 5508 through 5516 or 6001 through 6006, provided that:

(i) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of Bahrain or of the United States, or both, and

(ii) any visible lining material contained in the apparel article satisfies the requirements of chapter rule 1 for chapter 61.

(B) A change to any other good of subheading 6101.90 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54 or headings 5508 through 5516 or 6001 through 6006, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of Bahrain or of the United States, or both."

3. TCR 5 for chapter 61 is deleted and the following new TCR is inserted:

"5. (A) A change to tariff items 6103.10.70 or 6103.10.90 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54 or headings 5508 through 5516 or 6001 through 6006, provided that the good is cut or knit to shape, or both, and sewn and otherwise assembled in the territory of Bahrain or of the United States, or both.

(B) A change to subheading 6103.10 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54 or headings 5508 through 5516 or 6001 through 6006, provided that:

(i) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of Bahrain or of the United States, or both, and

(ii) any visible lining material contained in the apparel article satisfies the requirements of chapter rule 1 for chapter 61."

4. TCRs 6 and 7 for chapter 61 are deleted.

5. TCR 8 for chapter 61 is deleted and the following new TCR is inserted:

"8. A change to subheadings 6103.22 through 6103.29 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54 or headings 5508 through 5516 or 6001 through 6006, provided that:

(A) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of Bahrain or of the United States, or both, and

(B) with respect to a garment described in heading 6101 or a jacket or a blazer described in heading 6103, of wool, fine animal hair, cotton or man-made fibers, imported as part of an ensemble of these subheadings, any visible

lining material contained in the apparel article satisfies the requirements of chapter rule 1 for chapter 61."

6. TCR 13 for chapter 61 is deleted and the following new TCR is inserted:

"13. A change to subheading 6104.13 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54 or headings 5508 through 5516 or 6001 through 6006, provided that:

(A) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of Bahrain or of the United States, or both, and

(B) any visible lining material contained in the apparel article satisfies the requirements of chapter rule 1 for chapter 61."

7. TCRs 14 and 15 for chapter 61 are deleted and the following new TCRs are inserted:

"14. A change in tariff items 6104.19.40 or 6104.19.80 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54 or headings 5508 through 5516 or 6001 through 6006, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of Bahrain or of the United States, or both.

15. A change to any other good of subheading 6104.19 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54 or headings 5508 through 5516 or 6001 through 6006, provided that:

(A) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of Bahrain or of the United States, or both, and

(B) any visible lining material contained in the apparel article satisfies the requirements of chapter rule 1 for chapter 61."

8. TCR 16 for chapter 61 is modified by deleting "6104.21" and by inserting in lieu thereof "6104.22".

9. TCR 12 for chapter 62 is modified by deleting "6203.21" and by inserting in lieu thereof "6203.22".

10. TCR 29 for chapter 62 is deleted.

11. TCR 30 and the associated subheading rule for chapter 62 are deleted and the following new

TCR and subheading rule are inserted:

"**Subheading Rule**: Men's or boys' shirts of cotton or man-made fibers shall be considered to originate if they are both cut and assembled in the territory of Bahrain or of the United States, or both, and if the fabric of the outer shell, exclusive of collars or cuffs, is wholly of one or more of the following:

(A) Fabrics of subheadings 5208.21, 5208.22, 5208.29, 5208.31, 5208.32, 5208.39, 5208.41, 5208.42, 5208.49, 5208.51 or 5208.52 or tariff items 5208.59.20, 5208.59.40, 5208.59.60 or 5208.59.80, of average yarn number exceeding 135 metric;

(B) Fabrics of subheadings 5513.11 or 5513.21, not of square construction, containing more than 70 warp ends and filling picks per square centimeter, of average yarn number exceeding 70 metric;

(C) Fabrics of subheadings 5210.21 or 5210.31, not of square construction, containing more than 70 warp ends and filling picks per square centimeter, of average yarn number exceeding 70 metric;

(D) Fabrics of subheadings 5208.22 or 5208.32, not of square construction, containing more than 75 warp ends and filling picks per square centimeter, of average yarn number exceeding 65 metric;

(E) Fabrics of subheadings 5407.81, 5407.82 or 5407.83, weighing less than 170 grams per square meter, having a dobby weave created by a dobby attachment;

(F) Fabrics of subheadings 5208.42 or 5208.49, not of square construction, containing more than 85 warp ends and filling picks per square centimeter, of average yarn number exceeding 85 metric;

(G) Fabrics of subheading 5208.51, of square construction, containing more than 75 warp ends and filling picks per square centimeter, made with single yarns, of average yarn number 95 or greater metric;

(H) Fabrics of subheading 5208.41, of square construction, with a gingham pattern, containing more than 85 warp ends and filling picks per square centimeter, made with single yarns, of average yarn number 95 or greater metric and characterized by a check effect produced by the variation in color of the yarns in the warp and filling; or

(I) Fabrics of subheading 5208.41, with the warp colored with vegetable dyes, and the filling yarns white or colored with vegetable dyes, of average yarn number greater than 65 metric.

30. A change to subheadings 6205.20 through 6205.30 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54 or headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of Bahrain or of the United States, or both."

12. TCR 35 for chapter 62 is deleted and the following new TCR is inserted:

"62. A change to subheadings 6211.32 through 6211.49 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54 or headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is both cut and sewn or otherwise assembled in the territory of Bahrain or of the United States, or both."

ANNEX II

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after November 1, 2010, subchapter XX of chapter 98 of the Harmonized Tariff Schedule of the United States (HTS) is hereby modified as follows:

1. U.S. note 6 to such subchapter is modified as set forth below:

(a) subdivision (a) of such note is modified by striking "2011" and by inserting in lieu thereof "2020";

(b) the text of subdivision (b)(i) of such note is modified by adding after "Dominican Republic" the phrase ", Costa Rica, Peru, Oman";

(c) the text of subdivision (b)(ii) of such note is modified to read as follows:

"For purposes of this note, an applicable 1-year period shall comprise the time period starting on December 20 of a calendar year from 2006 through 2017, inclusive, and ending on December 19 in the subsequent calendar year.";

(d) the initial text of subdivision (c) of such note is modified by deleting "(c)(ii)" and by inserting in lieu thereof "(b)(ii)";

(e) in subdivision (e)(ii) of such note, the phrase starting with the words "In each" and ending with "2010" is deleted and the following phrase is inserted in lieu thereof:

"In each 1-year period specified in subdivision (b)(ii) of such note after the initial applicable 1-year period";

(f) the text of subdivision (f)(i)(A) of such note is modified to read as follows:

"50 percent or more during the 1-year periods beginning on December 20 in 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013 or 2014";

(g) the text of subdivision (f)(i)(B) of such note is modified to read as follows:

"55 percent or more during the 1-year periods beginning on December 20 in 2015 or 2016";

(h) the text of subdivision (f)(i)(C) of such note is modified to read as follows:

"60 percent or more during the 1-year period beginning on December 20, 2017";

(i) subdivision (f)(iii)(B)(3) is modified by striking "or"; subdivision (f)(iii)(B)(4) is modified by adding at the end thereof "or" and the following new subdivision is inserted in numerical sequence:

"(5) heading 9822.06.20,"

(j) subdivision (g)(i) of such note is modified by deleting the last four lines of the table and by inserting in lieu thereof the following, under the designations "Applicable 1-year period" and "Percentage", the following:

"December 20, 2007-December 19, 2008, and
each succeeding 1-year period through
December 20, 2017-December 19, 2018.....1.25 percent",

and the sentence below the table is modified by deleting "2011" and by inserting in lieu thereof "2018";

(k) in subdivision (h)(ii), the word "The" is deleted and the phrase "Except as provided in subdivision (h)(iv) of this note, the" is inserted in lieu thereof;

(l) in such subdivision (h)(ii), the word "9" is deleted and the word "eleven" is inserted in lieu thereof;

(m) by inserting in alphabetical sequence in subdivision (h) of such note the following new paragraphs:

"(iv) (A) Except as provided in subdivisions (h)(iv)(B) and (h)(iv)(C) of this note and subject to subdivision (h)(iv)(D), if 52,000,000 square meter equivalents of apparel articles described in subdivision (h)(i) or (j)(i) of this note enter the United States during the 1-year period beginning October 1, 2009, or any of the succeeding 1-year periods, the preferential treatment described in such subdivision (h)(i) or (j)(i) of this note(as the case may be) to not more than 200,000,000 square meter equivalents of apparel articles described in such subdivision (h)(i) or (j)(i) of this note (as the case may be) during that 1-year period in a notice of the extension published in the Federal Register.

(B) (I) In the case of apparel articles described in subdivision (h)(iv)(B)(II) of this note, subdivision (h)(iv)(B)(I) shall be applied by substituting "70,000,000" for "200,000,000".

(II) Apparel articles described in this subdivision are apparel articles described below that fall within the statistical reporting numbers of the tariff schedule (as in effect on May 23, 2010), enumerated below:

6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.42.4003, 6203.42.4006, 6203.42.4011, 6203.42.4016, 6203.42.4026, 6203.42.4036, 6203.42.4046, 6203.42.4051, 6203.42.4061, 6203.43.2500, 6203.43.3510, 6203.43.3590, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2015, 6203.49.2030, 6203.49.2045, 6203.49.2060, 6203.49.8020, 6203.49.8030, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4034, 6204.29.4038, 6204.62.3000, 6204.62.4003, 6204.62.4006, 6204.62.4011, 6204.62.4021, 6204.62.4031, 6204.62.4041, 6204.62.4051, 6204.62.4056, 6204.62.4066, 6204.63.2000, 6204.63.3010, 6204.63.3090, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6010, 6204.69.6030, 6204.69.9010, 6204.69.9030, 6210.40.5031, 6210.40.5039, 6210.40.9033, 6210.50.5031, 6210.50.5039, 6210.50.9060, 6211.20.1520, 6211.20.1525, 6211.20.1550, 6211.20.1555, 6211.20.3810, 6211.20.3820, 6211.20.6810, 6211.20.6820, 6211.32.0040, 6211.33.0030, 6211.42.0030, 6211.43.0040, 6217.90.9050 or 6217.90.9060.

(C) (I) In the case of apparel articles described in subdivision (h)(iv)(C)(II) of this note, subdivision (h)(iv)(B)(I) shall be applied by substituting "85,000,000" for "200,000,000".

(II) Apparel articles described in this subdivision are apparel articles described below that fall within the statistical reporting numbers of the tariff schedule (as in effect on May 23, 2010), enumerated below:

6105.10.0010, 6209.10.0018, 6109.10.0027, 6109.10.0040, 6109.10.0045, 6110.20.2079, 6110.30.3053 or 6110.30.3059.

(D) (I) Not later than April 1, July 1, October 1 and January 1 of each year, the Commissioner responsible for United States Customs and Border Protection shall verify that apparel articles imported into the United States under subdivision (h)(iv) of this note are not being unlawfully transshipped (within the meaning of 19 U.S.C. 2703a(f)(2)) into the United States.

(II) If the Commissioner determines pursuant to subdivision (h)(iv)(D)(I) of this note that apparel articles imported into the United States under subdivision (h)(iv) of this note are being unlawfully transshipped into the United States, the Commissioner shall report that determination to the President.

(III) If, in any 1-year period with respect to which preferential treatment is available under subdivision (h)(iv) of this note, the Commissioner reports to the President pursuant to subdivision (I) regarding unlawful transshipments, the President–

(aa) may modify the quantitative limitation under subdivision (h)(iv) of this note as the President considers appropriate to account for such transshipments; and

(bb) if the President modifies the limitation as described in subdivision (aa) above, shall publish notice of the modification in the Federal Register."

(n) in subdivision (j)(iii), the word "The" is deleted and the phrase "Except as provided in subdivision (h)(iv) of this note, the" is inserted in lieu thereof; and

(o) in such subdivision (j)(iii), the word "9" is deleted and the word "eleven" is inserted in lieu thereof.

2. The following new subdivisions are added in alphabetical sequence at the end of U.S. note 6(p) to such subchapter:

"(q) (i) For purposes of heading 9820.61.45, any of the apparel articles described in subdivision (q)(ii) of this note that is wholly assembled, or knit-to-shape, in Haiti from any combination of fabrics, fabrics components, components knit-to-shape or yarns and is imported directly from Haiti or the Dominican Republic shall enter the United States free of duty, without regard to the source of the fabric, fabric components, components knit-to-shape or yarns from which the article is made.

(ii) The apparel articles that are eligible for the treatment provided under subdivision (q)(i) of this note are apparel articles that are described in the following statistical reporting numbers of the tariff schedule, as in effect on May 23, 2010:

6101.30.1000, 6101.30.1500, 6101.90.0500, 6101.90.9010, 6101.90.9020, 6101.90.9030, 6102.30.0500, 6102.30.1000, 6102.90.9010, 6102.90.9015, 6103.22.0010, 6103.22.0050, 6103.23.0005, 6103.23.0007, 6103.23.0025, 6103.23.0036, 6103.23.0037, 6103.23.0075, 6103.29.0500, 6103.29.0510, 6103.29.0520, 6103.29.1010, 6103.29.1015, 6103.29.1050, 6103.31.0000, 6103.33.1000, 6103.33.2000, 6103.39.1000, 6103.39.8020, 6103.39.8030,

6104.22.0010, 6104.22.0030, 6104.22.0060, 6104.23.0010, 6104.23.0020, 6104.23.0025, 6104.23.0036, 6104.29.0510, 6104.29.0560, 6104.29.1010, 6104.29.1050, 6104.29.2010, 6104.29.2012, 6104.29.2014, 6104.29.2022, 6104.29.2049, 6104.29.2051, 6104.29.2055, 6104.33.1000, 6104.39.2020, 6104.39.2030, 6104.44.2020, 6104.49.9010, 6104.49.9030, 6104.52.0010, 6104.52.0020, 6104.59.8010, 6105.90.1000, 6105.90.8010, 6105.90.8020, 6105.90.8030, 6106.20.1020, 6106.90.1010, 6106.90.1020, 6106.90.2510, 6106.90.2520, 6106.90.2530, 6106.90.3010, 6106.90.3020, 6106.90.3030, 6107.21.0010, 6107.21.0020, 6107.21.0030, 6107.22.0010, 6107.22.0015, 6107.22.0025, 6107.91.0030, 6107.91.0040, 6107.91.0090, 6107.99.1030, 6108.31.0010, 6108.31.0020, 6108.32.0015, 6110.11.0070, 6110.12.2070, 6110.12.2080, 6110.19.0070, 6110.19.0080, 6110.20.1031, 6110.20.1033, 6110.30.1050, 6110.30.1060, 6110.30.1550, 6110.30.1560, 6110.30.2051, 6110.30.2053, 6110.30.2061, 6110.30.2063, 6112.11.0010, 6112.11.0020, 6112.11.0030, 6112.11.0040, 6112.12.0010, 6112.12.0020, 6112.12.0030, 6112.12.0040, 6112.19.1010, 6112.19.1020, 6112.19.1030, 6112.19.1040, 6112.20.1010, 6112.20.1020, 6112.20.1030, 6112.20.1040, 6113.00.9015, 6113.00.9025 or 6113.00.9030.

(r) (i) For purposes of heading 9820.63.05, any made-up textile article described in subdivision (r)(ii) of this note that is wholly assembled, or knit-to-shape, in Haiti from any combination of fabrics, fabric components, components knit-to-shape or yarns and is imported directly from Haiti or the Dominican Republic shall enter the United States free of duty, without regard to the source of the fabric, fabric components, components knit-to-shape or yarns from which the article is made.

(ii) The made-up textile articles that are eligible for the treatment provided under subdivision (r)(i) of this note are the made-up textile articles that are described in the following statistical reporting numbers of the tariff schedule, as in effect on May 23, 2010:

5601.10.2000, 5601.22.0090, 5601.29.0010, 5601.29.0020, 5601.29.0090, 5701.10.9000, 5701.90.1030, 5701.90.2010, 5701.90.2020, 5701.90.2030, 5702.31.1000, 5702.31.2000, 5702.32.1000, 5702.32.2000, 5702.39.2010, 5702.42.2090, 5702.50.2000, 5702.50.4000, 5702.50.5200, 5702.50.5600, 5702.91.3000, 5702.91.4000, 5702.92.1000, 5702.92.9000, 5702.99.0500, 5702.99.1500, 5703.10.2000, 5703.10.8000, 5703.20.1000, 5703.20.2010, 5703.20.2090, 5703.30.2000, 5703.30.8030, 5703.30.8080, 5704.10.0010, 5704.10.0090, 5705.00.2005, 5705.00.2015, 5705.00.2030, 5807.10.0510, 5807.10.0520, 5807.90.0510, 5807.90.0520, 6301.30.0010, 6301.30.0020, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6301.90.0020, 6301.90.0030, 6302.39.0010, 6302.60.0010, 6302.60.0020, 6302.60.0030, 6302.91.0005, 6302.91.0015, 6302.91.0035, 6302.91.0045, 6302.91.0050, 6304.11.2000, 6304.11.3000, 6304.19.3040, 6304.19.3060, 6304.91.0020, 6304.91.0040, 6304.91.0050, 6304.91.0070, 6304.92.0000, 6304.93.0000, 6304.99.1500, 6304.99.3500, 6304.99.6010, 6304.99.6020, 6304.99.6040, 6305.20.0000, 6305.32.0010, 6305.32.0020, 6305.32.0050, 6305.32.0060, 6305.39.0000, 6305.90.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.3020, 6307.90.8910, 6307.90.8940, 6307.90.8945, 6308.00.0020, 6406.10.7700, 6406.10.9020, 6406.10.9040, 6406.10.9060, 6406.10.9090, 9404.90.1000 or 9404.90.9505."

3. The following new headings are inserted in numerical sequence in such subchapter:

"9820.61.45	Apparel articles described in U.S. note 6(q) to this subchapter and imported directly from Haiti or the Dominican Republic		Free
9820.63.05	Made-up textile articles described in U.S. note 6(r) to this subchapter and imported directly from Haiti or the Dominican Republic		Free"

ANNEX III

1. Effective with respect to goods of a party to the Dominican Republic-Central America-United States Free Trade Agreement as defined in general note 29(a) to the HTS that are entered, or withdrawn from warehouse for consumption, on or after March 1, 2006, general note 29(n) is modified by inserting, in tariff classification rule (TCR) 25 for chapter 84, the expression "to heading 8409" after the word "classification".

2. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after February 3, 2007, U.S. note 2(u) to subchapter XVII of chapter 98 of the HTS is modified by deleting "8543.11" and by inserting in lieu thereof "8543.10" and by deleting "8543.89.93,".

3. Effective with respect to goods of Canada or of Mexico under the terms of general note 12 to the HTS that are entered, or withdrawn from warehouse for consumption, on or after February 3, 2007, general note 12(t) is modified by--

(A) inserting the following new TCRs for chapter 86 in numerical sequence:

"3A. (A) A change to tariff item 8607.19.03 from any other heading; or

(B) A change to tariff item 8607.19.03 from tariff item 8607.19.06, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

3B. (A) A change to tariff item 8607.19.12 from any other heading; or

(B) A change to tariff item 8607.19.12 from tariff item 8607.19.15, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

3C. A change to subheading 8607.19 from any other heading."

(B) deleting from Chapter 85, rule 5, TCRs 85(C) and 85(D), the expression "tariff item 8540.12.aa" and by inserting in lieu thereof "tariff items 8540.12.10 or 8540.12.50" at each instance.

[FR Doc. 2010–28116
Filed 11–3–10; 11:15 am]
Billing code 7020–02–C

Presidential Documents

Proclamation 8597 of November 1, 2010

National Adoption Month, 2010

By the President of the United States of America

A Proclamation

Giving a child a strong foundation—a home, a family to love, and a safe place to grow—is one of life's greatest and most generous gifts. Through adoption, both domestic and international, Americans from across our country have provided secure environments for children who need them, and these families have benefited from the joy an adopted child can bring. Thanks to their nurturing and care, more young people have been able to realize their potential and lead full, happy lives. This year, we celebrate National Adoption Month to recognize adoption as a positive and powerful force in countless American lives, and to encourage the adoption of children from foster care.

Currently, thousands of children await adoption or are in foster care, looking forward to permanent homes. These children can thrive, reach their full potential, and spread their wings when given the loving and firm foundation of family. Adoptive families come in many forms, and choose to adopt for different reasons: a desire to grow their family when conceiving a child is not possible, an expression of compassion for a child who would otherwise not have a permanent family, or simply because adoption has personally touched their lives. For many Americans, adoption has brought boundless purpose and joy to their lives. We must do all we can to break down barriers to ensure that all qualified caregivers have the ability to serve as adoptive families.

This year, on November 20, families, adoption advocates, policymakers, judges, and volunteers will celebrate the 11th annual National Adoption Day in communities large and small. National Adoption Day is a day of hope and happiness when courthouses finalize the adoptions of children out of foster care. Last year, Health and Human Services Secretary Kathleen Sebelius was honored to preside over a ceremony celebrating two foster care adoptions as part of my Administration's support for this important day.

Adoptive families are shining examples of the care and concern that define our great Nation. To support adoption in our communities, my Administration is working with States to support families eager to provide for children in need of a place to call home. The landmark Affordable Care Act increases and improves the Adoption Tax Credit, enabling adoption to be more affordable and accessible. As part of the Adoption Incentives program, States can also receive awards for increasing adoptions and the number of children adopted from foster care. AdoptUsKids, a project of the Department of Health and Human Services, offers technical support to States, territories, and tribes to recruit and retain foster and adoptive families; provides information and assistance to families considering adoption; and supports parents already on that journey. I encourage all Americans to visit AdoptUsKids.org or ChildWelfare.gov/Adoption for information and resources on adoption, including adoption from foster care.

As we observe National Adoption Month, we honor the loving embrace of adoptive families and the affirming role of adoption in the lives of American families and our country. Let us all commit to supporting our

children in any way that we are able—whether opening our hearts and homes through adoption, becoming foster parents to provide quality temporary care to children in crisis, supporting foster and adoptive families in our communities and places of worship, mentoring young people in need of guidance, or donating time to helping children in need. Working together, we can shape a future of hope and promise for all of our Nation's children.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2010 as National Adoption Month. I call upon all Americans to observe this month by answering the call to find homes for every child in America in need of a permanent and caring family, as well as to support the families who care for them.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of November, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fifth.

[FR Doc. 2010–28117
Filed 11–3–10; 11:15 am]
Billing code 3195–W1–P

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