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Presidential Documents

Title 3—

The President

Executive Order 13582 of August 17, 2011

Blocking Property of the Government of Syria and Prohibiting Certain Transactions With Respect to Syria

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.*), and section 301 of title 3, United States Code,

I, BARACK OBAMA, President of the United States of America, in order to take additional steps with respect to the Government of Syria's continuing escalation of violence against the people of Syria and with respect to the national emergency declared in Executive Order 13338 of May 11, 2004, as modified in scope and relied upon for additional steps taken in Executive Order 13399 of April 25, 2006, Executive Order 13460 of February 13, 2008, Executive Order 13572 of April 29, 2011, and Executive Order 13573 of May 18, 2011, 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including any overseas branch, of the Government of Syria are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

(b) 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person, including any overseas branch, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(i) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, any person whose property and interests in property are blocked pursuant to this order; or

(ii) 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.

Sec. 2. The following are prohibited:

(a) new investment in Syria by a United States person, wherever located;

(b) the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any services to Syria;

(c) the importation into the United States of petroleum or petroleum products of Syrian origin;

(d) any transaction or dealing by a United States person, wherever located, including purchasing, selling, transporting, swapping, brokering, approving, financing, facilitating, or guaranteeing, in or related to petroleum or petroleum products of Syrian origin; and

(e) any approval, financing, facilitation, or guarantee by a United States person, wherever located, of a transaction by a foreign person where the

transaction by that foreign person would be prohibited by this section if performed by a United States person or within the United States.

Sec. 3. I hereby determine that the making of donations of the type of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to section 1 of this order would seriously impair my ability to deal with the national emergency declared in Executive Order 13338 and expanded in scope in Executive Order 13572, and I hereby prohibit such donations as provided by section 1 of this order.

Sec. 4. The prohibitions in section 1 of this order include but are not limited to:

(a) 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

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

Sec. 5. The prohibitions in sections 1 and 2 of this order 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. 6. (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. 7. Nothing in sections 1 or 2 of this order shall prohibit transactions for the conduct of the official business of the Federal Government by employees, grantees, or contractors thereof.

Sec. 8. 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; and

(d) the term ''Government of Syria'' means the Government of the Syrian Arab Republic, its agencies, instrumentalities, and controlled entities.

Sec. 9. 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 those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in Executive Order 13338 and expanded in scope in Executive Order 13572, there need be no prior notice of a listing or determination made pursuant to section 1 of this order.

Sec. 10. 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 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. 11. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 12. This order is effective at 12:01 a.m. eastern daylight time on August 18, 2011.

THE WHITE HOUSE,
August 17, 2011.

[FR Doc. 2011–21505
Filed 8–19–11; 8:45 am]
Billing code 3195–W1–P

Rules and Regulations

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0998; Directorate Identifier 2010–NE–29–AD; Amendment 39–16783; AD 2011–18–01]

RIN 2120–AA64

Airworthiness Directives; General Electric Company (GE) CF6–45 Series and CF6–50 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires performing a fluorescent penetrant inspection (FPI) of the low-pressure turbine (LPT) rotor stage 3 disk at every shop visit at which the LPT module is separated from the engine. This AD was prompted by seven reports of uncontained failures of LPT rotor stage 3 disks and eight reports of cracked LPT rotor stage 3 disks found during shop visit inspections. We are issuing this AD to prevent LPT rotor separation, which could result in an uncontained engine failure and damage to the airplane.

DATES: This AD is effective September 26, 2011.

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

FOR FURTHER INFORMATION CONTACT: Tomasz Rakowski, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: (781) 238–7735; fax: (781) 238–7199; e-mail: *tomasz.rakowski@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That NPRM published in the **Federal Register** on October 20, 2010, (75 FR 64681). That NPRM proposed to require performing a fluorescent penetrant inspection at every shop visit when the LPT module assembly is separated from the engine.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and the FAA's response to each comment.

Support for the NPRM as Written

Two commenters, the National Transportation Safety Board and The Boeing Company support the NPRM as written.

Request To Define LPT Module

Two commenters, GE and MTU Maintenance Canada, asked us to define ''LPT module.'' The commenters feel the term LPT module could be confused with the LPT rotor assembly.

We agree. We changed paragraph (e) of the proposed AD to clarify that the intent of this AD is to inspect the LPT rotor stage 3 disk when the LPT module assembly separates from the engine for maintenance, and added new paragraphs (i) and (i)(1) that define the LPT module assembly.

Request To Require Only Conditional Inspection

One commenter, MTU Maintenance Canada, asked us to change the compliance time for the inspection. MTU stated the proposed AD requires stage 3 disk FPI at piece-part level regardless of the part utilization (cycles-since-last inspection) or operational history since the last inspection. MTU asked us to change the inspection to the next time the LPT module assembly is disassembled to piece-part level for certain engine conditions only.

We don't agree with the request for conditional inspections only. The intent of this AD is to require an FPI of the LPT rotor stage 3 disk forward spacer arm at each shop visit where the LPT module assembly is separated in a cyclic manner, regardless of the reason for the separation. The requirements for conditional piece-part FPI are already mandated by AD 2011–02–07. We didn't change the AD.

Request To Add Conditional Inspection

One commenter, Evergreen International Airlines, asked us to additionally require the inspection if the engine encountered excessive core vibration, or HPT blade separation or excessive material loss, or unserviceable LPT blade interlock wear, in addition to the repetitive inspections proposed in the NPRM.

We don't agree. The requirements for conditional piece-part FPI are already mandated by AD 2011–02–07. We didn't change the AD.

Request To Change the Compliance Time for the Inspection

One commenter, Evergreen International Airlines, asked us to require inspections if the LPT rotor stage 3 disk hasn't been FPI inspected within the last 2,000 cycles or at all. Evergreen stated the separation of the LPT module is required when the maintenance of certain HPC, combustor, and HPT assemblies and parts need to be performed. Engines removed for maintenance of those components would require LPT rotor stage 3 disk cleaning and FPI regardless of the time interval since the last FPI per the proposed AD, which would be an unnecessary burden on the operators.

We partially agree. We agree with the request for a certain number of cycles since the last FPI to exclude the part from mandatory inspection. However, we do not find the number of 2,000 cycles since last inspection (CSLI) appropriate to ensure a desired level of safety. We find that an acceptable level of safety will be retained when the disk FPI inspection is skipped during the shop visit if the disk was inspected within the last 1,000 cycles. We changed paragraphs (f) and (g) to ''(f) At the next shop visit after the effective date of this AD, clean and fluorescent

penetrant inspect the LPT rotor stage 3 disk forward spacer arm, including the use of a wet abrasive blast to eliminate residual or background fluorescence before inspecting. You can find guidance on cleaning the disk and performing the FPI in the CF6–50 Engine Manual, GEK 50481 72–57–02.'' and ''(g) Thereafter, clean and inspect the LPT rotor stage 3 disk forward spacer arm, as specified in paragraph (f), at each engine shop visit that occurs after 1,000 cycles since the last FPI of the LPT rotor stage 3 disk forward spacer arm.'' We also added paragraphs (i) and (i)(2) that define an engine shop visit as follows: ''An engine shop visit is the induction of an engine into the shop for maintenance involving the separation of the turbine mid-frame forward flange from the compressor rear frame aft flange, except that the separation of these engine flanges solely for the purposes of transportation without subsequent engine maintenance does not constitute an engine shop visit.''

Request To Change the Type of Inspection

One commenter, GE, asked us to consider changing the type of inspection from FPI to ultrasonic inspection (USI). GE stated that they have developed a USI technique and tooling which allow inspecting the LPT rotor stage 3 disk forward spacer arm without piece part disassembly of the LPT. Implementing the USI will detect cracks in the forward spacer arm, which might propagate during operation and would be a suitable alternative to the piece-part disassembly, cleaning, and FPI of the forward spacer arm in many situations.

We don't agree. We don't believe USI technique specified in GE SB CF6–50 S/B 72–1309 is a sufficient means of detecting flaws or microcracks on the inner surface of the LPT rotor stage 3 disk forward spacer arm. Paragraph E.(5) of SB CF6–50 S/B 72–1309 states ''The new USI probe was specifically designed to detect flaws 0.030 inch (0.76 mm) deep or greater in the forward spacer arm of the stage 3 LPTR disk.'' We find that a 0.030-inch deep surface crack size is unacceptable in that location, as it would have already propagated in a high-cycle fatigue mode. The intent of this AD is to detect cracks before they propagate. We made no change to the proposed AD.

Request To Change the Costs of Compliance

Two commenters, MTU Canada and FedEx, asked us to re-evaluate the Costs of Compliance for the actions required by the proposed AD. The commenters state that cleaning the stage 3 disk and performing an FPI are done at the piece-part level, and that the costs of disassembling and reassembling the LPT module assembly, and of the inspections required by the engine manual for reinstalling the stage 3 blades must be added to the cost of cleaning and inspecting the disk.

We don't agree. Our estimated cost is the direct cost to comply with the AD, and doesn't include preparatory disassembly or reinstallation. We didn't change the AD.

Request To Change Paragraph (f) of the Proposed AD

One commenter, GE, asked us to change paragraph (f) of the proposed AD to use the words ''including the use of'' in place of the word ''using'', where cleaning the LPT rotor stage 3 disk with wet-abrasive blast to eliminate residual or background fluorescence is required. GE doesn't consider a wet-abrasive blast alone sufficient to clean the LPT rotor stage 3 disk to allow performance of the FPI of the inner diameter of the forward cone body of the LPT rotor stage 3 disk.

We agree. We changed paragraph (f) of the proposed AD from ''Clean the LPT rotor stage 3 disk, using a wet abrasive blast to eliminate residual or background fluorescence. You can find guidance on cleaning the disk in the cleaning procedure of CF6–50 Engine Manual, GEK 50481 72–57–02.'' to ''At the next engine shop visit after the effective date of this AD, clean and fluorescent-penetrant inspect the LPT rotor stage 3 disk forward spacer arm, including the use of a wet-abrasive blast to eliminate residual or background fluorescence before inspecting. You can find guidance on cleaning the disk and performing the FPI in the CF6–50 Engine Manual, GEK 50481 72–57–02.''

Request To Include Definitions for Cleaning and FPI of the LPT Rotor Stage 3 Disk

One commenter, Evergreen International Airlines, asked us to add definitions of ''cleaning the LPT rotor stage 3 disk'' and ''FPI of the LPT rotor stage 3 disk,'' with specific engine manual subtask references, to the proposed AD. The commenter states that the definitions will clarify the actions required by the proposed AD.

We don't agree. The reference provided in the proposed AD is sufficient to define the required actions. We made no changes to the proposed AD.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 387 engines installed on airplanes of U.S. registry. We also estimate that it will take about 7 work-hours per engine to clean and FPI the disk 387 engines. The average labor rate is $85 per work-hour. No parts will be required. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $230,265.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–18–01 General Electric Company: Amendment 39–16783; Docket No. FAA–2010–0998; Directorate Identifier 2010–NE–29–AD.

Effective Date

(a) This AD is effective September 26, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to General Electric Company (GE) CF6–45A, CF6–45A2, CF6–50A, CF6–50C, CF6–50CA, CF6–50C1, CF6–50C2, CF6–50C2B, CF6–50C2D, CF6–50E, CF6–50E1, and CF6–50E2 series turbofan engines, including engines marked on the engine data plate as CF6–50C2–F and CF6–50C2–R, with a low-pressure turbine (LPT) rotor stage 3 disk that has a part number (P/N) listed in Table 1 of this AD installed.

TABLE 1—LPT ROTOR STAGE 3 DISK P/NS

1473M90P01	1473M90P02	1473M90P03	1473M90P04
1479M75P01	1479M75P02	1479M75P03	1479M75P04
1479M75P05	1479M75P06	1479M75P07	1479M75P08
1479M75P09	1479M75P11	1479M75P13	1479M75P14
9061M23P06	9061M23P07	9061M23P08	9061M23P09
9061M23P10	9061M23P12	9061M23P14	9061M23P15
9061M23P16	9224M75P01		

Unsafe Condition

(d) This AD results from seven reports of uncontained failures of LPT rotor stage 3 disks and eight reports of cracked LPT rotor stage 3 disks found during shop visit inspections. We are issuing this AD to prevent LPT rotor separation, which could result in an uncontained engine failure and damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed at each shop visit after the effective date of this AD, at which the LPT module assembly is separated from the engine.

Initial Inspection

(f) At the next shop visit after the effective date of this AD, clean and fluorescent-penetrant inspect the LPT rotor stage 3 disk forward spacer arm, including the use of a wet-abrasive blast to eliminate residual or background fluorescence before inspecting. You can find guidance on cleaning the disk and performing the FPI in the CF6–50 Engine Manual, GEK 50481 72–57–02.

Repetitive Inspection

(g) Thereafter, clean and inspect the LPT rotor stage 3 disk forward spacer arm, as specified in paragraph (f) of this AD, at each engine shop visit that occurs after 1,000 cycles since the last FPI of the LPT rotor stage 3 disk forward spacer arm.

(h) If a crack or a band of fluorescence is present, remove the disk from service.

Definitions

(i) For the purpose of this AD:

(1) The LPT module assembly is defined as consisting of turbine mid-frame, LPT stage 1 nozzle, LPT stator cases and vanes, LPT rotor, and turbine rear frame.

(2) An engine shop visit is the induction of an engine into the shop for maintenance involving the separation of the turbine mid-frame forward flange from the compressor rear frame aft flange, except that the separation of these engine flanges solely for the purposes of transportation without subsequent engine maintenance does not constitute an engine shop visit.

Alternative Methods of Compliance

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

Related Information

(k) For more information about this AD, contact Tomasz Rakowski, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: (781) 238–7735; fax: (781) 238–7199; e-mail: *tomasz.rakowski@faa.gov.*

Material Incorporated by Reference

(l) None.

Issued in Burlington, Massachusetts on August 15, 2011.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–21312 Filed 8–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0187; Directorate Identifier 2011–NE–07–AD; Amendment 39–16784; AD 2011–18–02]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF34–10E2A1; CF34–10E5; CF34–10E5A1; CF34–10E6; CF34–10E6A1; CF34–10E7; and CF34–10E7–B Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above with certain part number (P/N) fan rotor spinners installed. This AD requires removing from service certain fan rotor blade retainers, and removing from service the fan rotor spinner support that was installed with those fan rotor blade retainers. This AD was prompted by a fan rotor spinner support found cracked at the attachment lugs. We are issuing this AD to prevent high-cycle fatigue cracking of the fan rotor spinner support attachment lugs, leading to separation of the fan rotor spinner assembly, uncontained failure of the engine, and damage to the airplane.

DATES: This AD is effective September 26, 2011.

ADDRESSES: For service information identified in this AD, contact GE–Aviation, M/D Rm. 285, One Neumann Way, Cincinnati, OH 45215, phone: 513–552–3272; e-mail: *geae.aoc@ge.com.* You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: John Frost, Aerospace Engineer, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7756; fax: 781–238–7199; e-mail: *john.frost@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on May 11, 2011 (76 FR 27282). Investigation of a General Electric Company CF34–10E turbofan engine experiencing high fan frame vibrations led to removal of the fan rotor spinner. Eight of the twelve attachment lugs on the fan rotor spinner support were found cracked. The cause of the vibration was determined to be a non-synchronous vibration induced by a spinner redesign that removed an interference between the fan blade retainers and the spinner. That NPRM proposed to require removing from service certain fan rotor blade retainers, and removing from service the fan rotor spinner support that was installed with those fan rotor blade retainers. We are issuing this AD to prevent high-cycle fatigue cracking of the fan rotor spinner support attachment lugs, leading to separation of the fan rotor spinner assembly, uncontained failure of the engine, and damage to the airplane.

Comments

We gave the public the opportunity to participate in developing this AD. We received one comment which is presented below.

Request for Compliance Clarification

One commenter, Regionla Compagnie Aerienne Europeene, requests that we clarify the AD as to what parts are allowed to be reinstalled when affected parts are removed for either scheduled or unscheduled maintenance before the AD compliance time is reached.

We do not agree. When the affected parts are removed from the engine, paragraphs (h) and (i) of this AD are clear that those parts are not to be reinstalled into the engine. Any FAA-approved part except those prohibited by paragraphs (h) and (i), is eligible for installation. We did not change the AD.

Conclusion

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

Costs of Compliance

We estimate that this AD will affect 164 engines installed on airplanes of U.S. registry. We also estimate that it will take about 2 work-hours per engine to perform the actions required by this AD, and that the average labor rate is $85 per work-hour. If all removed parts get replaced, required parts will cost about $10,458 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $1,742,992.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–18–02 General Electric Company: Amendment 39–16784 ; Docket No. FAA–2011–0187; Directorate Identifier 2011–NE–07–AD.

Effective Date

(a) This AD is effective September 26, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to General Electric Company (GE) CF34–10E2A1; CF34–10E5; CF34–10E5A1; CF34–10E6; CF34–10E6A1; CF34–10E7; and CF34–10E7–B turbofan engines, with a fan rotor spinner part number (P/N) 2050M34G03; 2050M34G04; 2050M34G05; 2050M34G06; 2437M60G01; or 2437M60G02, installed.

Unsafe Condition

(d) This AD was prompted by a fan rotor spinner support found cracked at the

attachment lugs. We are issuing this AD to prevent high-cycle fatigue cracking of the fan rotor spinner support attachment lugs, leading to separation of the fan rotor spinner assembly, uncontained failure of the engine, and damage to the airplane.

Compliance

(e) Comply with this AD within 1,800 hours-in-service after the effective date of this AD, unless already done.

Removal of Fan Rotor Blade Retainers

(f) Remove from service the 24 fan rotor blade retainers, P/N 2050M56P02.

Removal of Fan Rotor Spinner Support

(g) Remove from service the fan rotor spinner support that operated with the fan rotor blade retainers removed in paragraph (f) of this AD.

Installation Prohibition

(h) After the effective date of this AD, do not install any fan rotor blade retainer, P/N 2050M56P02, into any engine. Do not attempt to repair, make serviceable, or re-install, this part.

(i) After the effective date of this AD, do not install any fan rotor spinner support removed in paragraph (g) of this AD, into any engine. Do not attempt to repair, make serviceable, or re-install, this part.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(k) For more information about this AD, contact John Frost, Aerospace Engineer, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7756; fax: 781–238–7199; e-mail: *john.frost@faa.gov.*

(l) Refer to GE Service Bulletin No. CF34–10E S/B 72–0186, for related information. Contact GE–Aviation, M/D Rm. 285, One Neumann Way, Cincinnati, OH 45215, phone: 513–552–3272; e-mail: *geae.aoc@ge.com,* for a copy of this service information. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on August 15, 2011.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–21313 Filed 8–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0385; Directorate Identifier 2010–NM–256–AD; Amendment 39–16780; AD 2011–17–16]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200, A330–300, A340–300, A340–500, and A340–600 Series Airplanes

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

ACTION: Final rule.

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

During a Back-up Control Module (BCM) retrofit campaign * * *, some BCMs have been found with loose gyrometer screws.

* * * When the aeroplane is in control back up configuration (considered to be an extremely remote case), an oscillation of the BCM output order may cause degradation of the BCM piloting laws, potentially leading to erratic motion of the rudder and possible subsequent impact on the Dutch Roll, which constitutes an unsafe condition.

* * * * *

* * * [S]everal Pedal Feel Trim Units (PFTU) have been found with loose or broken screws during the accomplishment of maintenance tasks on A330 fitted with electrical rudder and A340–600. The loose or failed screws could lead to the loss of the coupling between the Rotary Variable Differential Transducer (RVDT) shaft and the PFTU shaft, and consequently to a potential rudder runaway when the BCM is activated.

* * * * *

The unsafe condition is loss of control of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective September 26, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 26, 2011.

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

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on April 26, 2011 (76 FR 23218). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During a Back-up Control Module (BCM) retrofit campaign in accordance with [European Aviation Safety Agency] (EASA) AD 2006–0313 requirements, some BCMs have been found with loose gyrometer screws.

The gyrometer is installed on the DELRIN plate by internal screws and the DELRIN plate is installed on BCM casing by external screws.

Investigations done by the BCM manufacturer SAGEM have shown that the root cause of these events is a lack of design robustness of the BCM[.] When the aeroplane is in control back up configuration (considered to be an extremely remote case), an oscillation of the BCM output order may cause degradation of the BCM piloting laws, potentially leading to erratic motion of the rudder and possible subsequent impact on the Dutch Roll, which constitutes an unsafe condition.

EASA AD 2008–0131 was issued to prohibit aeroplane dispatch with FCPC3 [flight control primary computer] inoperative (from GO IF to NO GO) as an interim solution, limited to A330 and A340–300 fitted with electrical rudder.

After EASA AD 2008–0131 issuance, several Pedal Feel Trim Units (PFTU) have been found with loose or broken screws during the accomplishment of maintenance tasks on A330 fitted with electrical rudder and A340–600. The loose or failed screws could lead to the loss of the coupling between the Rotary Variable Differential Transducer (RVDT) shaft and the PFTU shaft, and consequently to a potential rudder runaway when the BCM is activated.

EASA AD 2009–0153 retained the requirements of EASA AD 2008–0131 and extended the applicability to A340–500/600 aeroplanes.

This [EASA] AD, which supersedes EASA AD 2009–0153 retaining its requirements, requires the installation of:

—a new BCM on A330 and A340–200/–300 series aeroplanes fitted with electrical rudder, and

—an improved PFTU on A330 and A340–200/–300 series aeroplanes fitted with an electrical rudder and A340–500/&600 series aeroplanes,

which, once installed, eliminate the root cause of the unsafe condition and cancel the operational limitation.

* * * * *

The unsafe condition is loss of control of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 46 products of U.S. registry. We also estimate that it will take about 17 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $66,470, or $1,445 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–17–16 Airbus: Amendment 39–16780. Docket No. FAA–2011–0385; Directorate Identifier 2010–NM–256–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 26, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to airplanes specified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, certificated in any category.

(1) Airbus Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, -302, –303, –321, –322, –323, –341, –342, and –343 airplanes, all manufacturer serial numbers on which Airbus modification 49144 (install electrical rudder) has been embodied in production, except those on which Airbus modification 58118 and Airbus modification 200667 have been embodied in production.

(2) Airbus Model A340–311, –312, and –313 airplanes, all manufacturer serial numbers on which Airbus modification 49144 has been embodied in production, except those on which Airbus modification 58118 and Airbus modification 200667 have been embodied in production.

(3) Airbus Model A340–541 and –642 airplanes, all manufacturer serial numbers, except those on which Airbus modification 200667 has been embodied in production.

Subject

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

Reason

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

During a Back-up Control Module (BCM) retrofit campaign * * *, some BCMs have been found with loose gyrometer screws.

* * * When the aeroplane is in control back up configuration (considered to be an extremely remote case), an oscillation of the BCM output order may cause degradation of the BCM piloting laws, potentially leading to erratic motion of the rudder and possible subsequent impact on the Dutch Roll, which constitutes an unsafe condition.

* * * * *

* * * [S]everal Pedal Feel Trim Units (PFTU) have been found with loose or broken screws during the accomplishment of maintenance tasks on A330 fitted with electrical rudder and A340–600. The loose or failed screws could lead to the loss of the coupling between the Rotary Variable Differential Transducer (RVDT) shaft and the

PFTU shaft, and consequently to a potential rudder runaway when the BCM is activated.

* * * * *

The unsafe condition is loss of control of the airplane.

Compliance

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

Dispatch Prohibition

(g) As of the effective date of this AD, dispatch with the flight control primary computer (FCPC) 3 ''PRIM 3'' inoperative is prohibited unless the applicable modifications required by this AD have been done within the compliance time in this AD.

Airplane Flight Manual (AFM) Revision

(h) Within 30 days after the effective date of this AD, revise the Limitations section of the Airbus A330 or A340 AFM, as applicable, to include the following statement:''Dispatch with the flight control primary computer (FCPC) 3 ''PRIM 3'' inoperative is prohibited.'' This may be done by inserting a copy of this AD into the applicable AFM.

Note 1: When a statement identical to that in paragraph (h) of this AD has been included in the general revisions of the applicable AFM, the general revisions may be inserted into the applicable AFM, and the copy of this AD may be removed from the applicable AFM.

Modification

(i) For Airbus Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, –343, and A340–311, –312, and –313 series airplanes: Within 48 months after the effective date of this AD, do the actions specified in paragraphs (i)(1) and (i)(2) of this AD:

(1) Modify the BCM, in accordance with the Accomplishment Instruction of Airbus Service Bulletin A330–27–3161 (for Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –341, –343 airplanes) or A340–27–4160 (for Model A340–311, –312, and –313 airplanes), both dated November 6, 2009.

(2) Modify the PFTU, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–27–3169 or A340–27–4167, both dated May 3, 2010, as applicable.

(j) For Airbus Model 340–541 and –642 airplanes: Within 48 months after the effective date of this AD, modify the PFTU, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–27–5053, dated May 3, 2010.

Terminating Action

(k) Modifying both the BCM and PFTU as required by paragraphs (i)(1) and (i)(2) of this AD terminates the requirements of paragraphs (g) and (h) of this AD.

(l) Modifying the PFTU as required by paragraph (j) of this AD terminates the requirements in paragraphs (g) and (h) of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Information may be e-mailed to: *9–ANM–116–AMOC–REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

Related Information

(n) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2010–0191, dated September 27, 2010 [Corrected October 7, 2010], and the service bulletins listed in table 1 of this AD, for related information.

TABLE 1—AIRBUS SERVICE BULLETINS

Document	Date
Airbus Mandatory Service Bulletin A330–27–3169	May 3, 2010.
Airbus Mandatory Service Bulletin A340–27–4167	May 3, 2010.
Airbus Mandatory Service Bulletin A340–27–5053	May 3, 2010.
Airbus Service Bulletin A330–27–3161	November 6, 2009.
Airbus Service Bulletin A340–27–4160	November 6, 2009.

Material Incorporated by Reference

(o) You must use the service information contained in table 2 of this AD, as applicable, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; e-mail *airworthiness.A330–A340@airbus.com;* Internet *http://www.airbus.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

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

TABLE 2—MATERIAL INCORPORATED BY REFERENCE

Document	Date
Airbus Mandatory Service Bulletin A330–27–3169	May 3, 2010.
Airbus Mandatory Service Bulletin A340–27–4167	May 3, 2010.
Airbus Mandatory Service Bulletin A340–27–5053	May 3, 2010.
Airbus Service Bulletin A330–27–3161	November 6, 2009.

TABLE 2—MATERIAL INCORPORATED BY REFERENCE—Continued

Document	Date
Airbus Service Bulletin A340–27–4160	November 6, 2009.

Issued in Renton, Washington on August 10, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–21152 Filed 8–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0088 Directorate Identifier 2010–CE–072–AD; Amendment 39–16779; AD 2011–17–15]

RIN 2120–AA64

Airworthiness Directives; Embraer—Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–500 Airplanes

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

ACTION: Final Rule.

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

It has been found that moisture may accumulate and freeze, under certain conditions, in the gap between the AOA vane base assembly and the stationary ring of the sensor's body. If freezing occurs both AOA sensors may get stuck and the Stall Warning Protection System (SWPS) will be no longer effective without alerting. This may result in inadvertent aerodynamic stall and loss of controllability of the airplane.

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

DATES: This AD becomes effective September 26, 2011.

On September 26, 2011, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

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

For service information identified in this AD, contact EMBRAER Empresa Brasileira de Aeronáutica S.A., Phenom Maintenance Support, Av. Brig. Farina Lima, 2170, Sao Jose dos Campos—SP, CEP: 12227–901—PO Box: 36/2, BRASIL; telephone: ++55 12 3927–5383; fax: ++55 12 3927–2619; e-mail: *phenom.reliability@ embraer.com.br;* Internet: *http://www.embraer.com.br.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; e-mail: *jim.rutherford@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on May 10, 2011 (76 FR 26959). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

It has been found that moisture may accumulate and freeze, under certain conditions, in the gap between the AOA vane base assembly and the stationary ring of the sensor's body. If freezing occurs both AOA sensors may get stuck and the Stall Warning Protection System (SWPS) will be no longer effective without alerting. This may result in inadvertent aerodynamic stall and loss of controllability of the airplane.

Since this condition may occur in other airplanes of the same type and affects flight safety, a corrective action is required. Thus, sufficient reason exists to request compliance with this AD in the indicated time limit.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 101 products of U.S. registry.

We estimate that 85 products of U.S. registry will require the modification and that it will take about 9.5 work-hours per product to comply with the modification requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $1,550 per product.

Based on these figures, we estimate the cost of the modification requirement of this AD on U.S. operators to be $200,387.50, or $2,357.50 per product.

We estimate that 101 products of U.S. registry will require an inspection for sealant application. We estimate it will take .5 hour to comply with the inspection requirements of this AD.

Based on these figures, we estimate the cost of the inspection for the sealant application requirement of this AD on U.S. operators to be $4,292.50, or $42.50 per product.

In addition, we estimate that any necessary follow-on actions will take about 1.5 work-hours and require parts costing $50, for a cost of $177.50 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–17–15 Embraer—Empresa Brasileira de Aeronautica S.A.: Amendment 39–16779; Docket No. FAA–2011–0088; Directorate Identifier 2010–CE–072–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 26, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following airplanes, certificated in any category:

(1) *Group I airplanes:*

Empresa Brasileira de Aeronautica S.A. (EMBRAER) EMB–500 airplanes, serial numbers 50000005 through 50000119, 50000121 through 50000130, 50000132 through 50000134, 50000136, 50000137, 50000139, 50000141 through 50000158, 50000160 through 50000162, 50000164, 50000165, 50000167 through 50000175, 50000177, and 50000178, that are equipped with Angle of Attack (AOA) sensors, part number (P/N) C–100117–2 and cover plates P/N 500–01702–401 and/or P/N 500–01702–402.

(2) *Group II airplanes:*

Empresa Brasileira de Aeronautica S.A. (EMBRAER) EMB–500 airplanes, serial numbers 50000005 through 50000217, 50000219 through 50000221, and 50000226.

Note 1: In-production effectivity—Empresa Brasileira de Aeronautica S.A. (EMBRAER) EMB–500 airplanes, serial numbers 500000218, 50000222 through 50000225, 50000227, and on, have incorporated the actions of this AD at the factory and are not included in the applicability of this AD.

Subject

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

Reason

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

It has been found that moisture may accumulate and freeze, under certain conditions, in the gap between the AOA vane base assembly and the stationary ring of the sensor's body. If freezing occurs both AOA sensors may get stuck and the Stall Warning Protection System (SWPS) will be no longer effective without alerting. This may result in inadvertent aerodynamic stall and loss of controllability of the airplane.

Since this condition may occur in other airplanes of the same type and affects flight safety, a corrective action is required. Thus, sufficient reason exists to request compliance with this AD in the indicated time limit.

The MCAI requires replacement of both Angle of Attack (AOA) sensors and cover plates, inspection of the sensor area, and, if needed, application of sealant between the AOA covers and the AOA sensors.

Actions and Compliance

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

(1) *For group I airplanes:* Within 300 hours time-in-service (TIS) after the effective date of this AD or within 12 months after the effective date of this AD, whichever comes first, do the following actions following part I of PHENOM Service Bulletin SB No.: 500–27–0006, Revision No.: 02, dated January 14, 2011:

(i) Replace the left hand (LH) and the right hand (RH) AOA sensors P/N C–100117–2 with LH and RH AOA sensors P/N C–100117–3.

(ii) Replace the LH cover plate P/N 500–01702–401 and the RH cover plate P/N 500–01702–402 with LH cover plate P/N 500–01702–403 and RH cover plate P/N 500–01702–404.

(iii) If, before the effective date of this AD, the replacement actions required in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD have already been done following PHENOM Service Bulletin SB No.: 500–27–0006, dated September 2, 2010, and/or PHENOM Service Bulletin SB No.: 500–27–0006, Revision No.: 01, dated November 29, 2010, we will allow ''unless already done'' credit for corrective actions already done.

(2) *For group I and group II airplanes:* Within 300 hours TIS after the effective date of this AD or within 12 months after the effective date of this AD, whichever comes first, inspect the interface between the AOA covers and the AOA sensors, and, if the sealant is missing, clean the areas and apply new sealant following part II of PHENOM Service Bulletin SB No.: 500–27–0006, Revision No.: 02, dated January 14, 2011.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–

4090; e-mail: *jim.rutherford@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, a Federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

Related Information

(h) Refer to AGÊNCIA NACIONAL DE AVIAÇÃO CIVIL—BRAZIL (ANAC), NPR/AD 2011–500–02, dated March 31, 2011; MCAI AGÊNCIA NACIONAL DE AVIAÇÃO CIVIL—BRAZIL (ANAC), AD No.: 2010–11–01, dated December 20, 2010; and PHENOM Service Bulletin SB No.: 500–27–0006, Revision No.: 02, dated January 14, 2011; for related information.

Material Incorporated by Reference

(i) You must use PHENOM Service Bulletin SB No.: 500–27–0006, Revision No.: 02, dated January 14, 2011, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact EMBRAER Empresa Brasileira de Aeronáutica S.A., Phenom Maintenance Support, Av. Brig. Farina Lima, 2170, Sao Jose dos Campos–SP, CEP: 12227–901—P.O. Box: 36/2, BRASIL; telephone: ++55 12 3927–5383; fax: ++55 12 3927–2619; e-mail: *phenom.reliability@embraer.com.br;* Internet: *http://www.embraer.com.br.*

(3) You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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

Issued in Kansas City, Missouri on August 9, 2011.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–20775 Filed 8–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0515; Directorate Identifier 2009–NM–196–AD; Amendment 39–16776; AD 2011–17–12]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701 & 702), Model CL–600–2D15 (Regional Jet Series 705), and Model CL–600–2D24 (Regional Jet Series 900) Airplanes

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

ACTION: Final rule.

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

Several cases have been reported of cracks in the joint extrusions securing the outer bondment to the acoustic panel of the nacelle transcowl assemblies. Although there is no effect on flight safety (thrust reverser stowed), thrust reverser deployment under rejected take-off or emergency landing load conditions could potentially result in acoustic panel failure and possible runway debris.

* * * * *

The loss of an acoustic panel during rejected take-off or emergency landing load conditions could leave debris on the runway. This debris, if not removed, creates an unsafe condition for other airplanes during take-off or landing, as those airplanes could impact debris on the runway and sustain damage. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective September 26, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 26, 2011.

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

FOR FURTHER INFORMATION CONTACT: Craig Yates, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7355; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That supplemental NPRM was published in the **Federal Register** on April 6, 2011 (76 FR 18957). That supplemental NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Several cases have been reported of cracks in the joint extrusions securing the outer bondment to the acoustic panel of the nacelle transcowl assemblies. Although there is no effect on flight safety (thrust reverser stowed), thrust reverser deployment under rejected take-off or emergency landing load conditions could potentially result in acoustic panel failure and possible runway debris.

This [Canadian] directive mandates inspection, repair (if necessary) and reinforcement of the transcowl assemblies.

The loss of an acoustic panel during rejected take-off or emergency landing load conditions could leave debris on the runway. This debris, if not removed, creates an unsafe condition for other airplanes during take-off or landing, as those airplanes could impact debris on the runway and sustain damage. The inspection is a detailed visual inspection of the outboard edge of the transcowl joint extrusion for evidence of cracking. The repair consists of doing an eddy current or liquid penetrant inspection for cracking, and depending on the results, either removing the affected joint extrusion area and replacing with packers, or contacting Bombardier for repair instructions and

doing the repair. The reinforcement of the transcowl assemblies includes installing new support channels. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Request To Allow for Records Review

American Eagle Airlines (AEA) requested that we revise the supplemental NPRM to allow operators to perform a records review in lieu of the inspection for part number, serial number, and repair status of each transcowl assembly, as required by paragraph (g) of the supplemental NPRM. AEA did not provide reasoning for this request.

We agree to allow operators to perform a records review in lieu of the inspection for part number, serial number, and repair status of each transcowl assembly. We have determined that a review of airplane maintenance records is acceptable in lieu of the inspection, if the part number, serial number, and repair status of each transcowl assembly can be conclusively determined from that review. We have revised paragraph (g) of the final rule accordingly.

Request To Revise Paragraph (g)(1) of the Supplemental NPRM

AEA requested that we revise paragraph (g)(1) of the supplemental NPRM to remove the reference to paragraph (h) of the supplemental NPRM. AEA explained that the transcowls specified in paragraph (g)(1) of the supplemental NPRM are post-modified transcowls and do not need the inspections required by paragraph (h) of the supplemental NPRM. AEA reasoned that paragraph (h) of the supplemental NPRM should not apply to airplanes that have met the conditions specified in paragraph (g)(1)(i), (g)(1)(ii), or (g)(1)(iii) of the supplemental NPRM.

We agree to revise paragraph (g)(1) of the final rule to remove reference to paragraph (h) of the final rule. We have determined that only paragraph (k) of the final rule applies to post-modification transcowls. We have revised paragraph (g)(1) of the final rule accordingly.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 361 products of U.S. registry. We also estimate that it will take about 8 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $245,480, or $680 per product.

In addition, we estimate that any necessary follow-on actions would take between 4 and 8 work-hours and require parts costing $0, for a cost between $340 and $680 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–17–12 Bombardier, Inc.: Amendment 39–16776. Docket No. FAA–2010–0515; Directorate Identifier 2009–NM–196–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 26, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, serial numbers 10003 through 10265 inclusive.

(2) Bombardier, Inc. Model CL–600–2D15 (Regional Jet Series 705) and Model CL–600–2D24 (Regional Jet Series 900) airplanes, serial numbers 15001 through 15192 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 78: Engine exhaust.

Reason

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

Several cases have been reported of cracks in the joint extrusions securing the outer bondment to the acoustic panel of the nacelle transcowl assemblies. Although there is no effect on flight safety (thrust reverser stowed), thrust reverser deployment under rejected take-off or emergency landing load conditions could potentially result in acoustic panel failure and possible runway debris.

* * * * *

The loss of an acoustic panel during rejected take-off or emergency landing load conditions could leave debris on the runway. This debris, if not removed, creates an unsafe condition for other airplanes during take-off or landing, as those airplanes could impact debris on the runway and sustain damage.

Compliance

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

Inspection, Repair, and Reinforcement

(g) Within 5,000 flight hours or 24 months after the effective date of this AD, whichever occurs first, inspect for the part number and serial number of each transcowl assembly, and, as applicable, the repair status of each transcowl assembly. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number and serial number of each transcowl assembly, and, as applicable, the repair status of each transcowl assembly can be conclusively determined from that review.

(1) If all transcowl assemblies installed on any airplane meet one of the conditions listed in paragraph (g)(1)(i), (g)(1)(ii), or (g)(1)(iii) of this AD, no further action is required by this AD, except paragraph (k) of this AD must be complied with.

(i) Having part number (P/N) KCN624–2003–3, –4, –5, –6, –7, or –8, as listed in Bombardier Service Bulletin 670SH–78–029, Revision C, dated November 10, 2010.

(ii) Having P/Ns CN624–2001–XXX or KCN624–2001–X (XXX and X mean various dash numbers), with serial number (S/N) SB0965 or higher.

(iii) Having P/Ns CN624–2001–XXX or KCN624–2001–X (XXX and X mean various dash numbers), and repaired in accordance with one of the Bombardier repair engineering orders (REOs) listed in paragraph 1.D. of Bombardier Service Bulletin 670BA–78–008, Revision B, dated December 22, 2010; or paragraph 1.A. of Bombardier Service Bulletin 670SH–78–029, Revision C, dated November 10, 2010.

(2) If one or more of the transcowl assemblies have P/N CN624–2001–XXX or KCN624–2001–X (XXX and X mean various dash numbers), with S/N SB0964 or lower, and have not been repaired in accordance with one of the Bombardier REOs listed in paragraph 1.D. of Bombardier Service Bulletin 670BA–78–008, Revision B, dated December 22, 2010; or paragraph 1.A. of Bombardier Service Bulletin 670SH–78–029, Revision C, dated November 10, 2010; do the actions specified in paragraph (i) of this AD.

(h) As of the effective date of this AD, if any high-energy stop occurs and the thrust reversers are deployed above 68% N1, or if a rejected take-off (RTO) occurs and the thrust reversers are deployed above 68% N1: Perform a detailed inspection for cracks of each transcowl assembly (left, right, upper, and lower) before further flight, by doing the actions specified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD. Doing the requirements of paragraph (i) of this AD terminates the requirements of paragraph (h) of this AD.

(1) Open the cowling on the left and right engines.

(2) Do a detailed inspection for cracks of the joint extrusion of the upper and lower transcowl assembly on the left and right engines at the location of the joint piece. If no cracks are found, close the cowlings on the left and right engines.

(3) If any crack is found on one or more transcowl assemblies during the inspection required by paragraph (h)(2) of this AD, before further flight, repair and reinforce the cracked part(s) in accordance with paragraph (i)(1) of this AD.

Note 1: Procedure—Part 3 of Task 05–51–27–210–801 of Chapter 05, Part 2, Volume 1, of the Bombardier CRJ Series Regional Jet Aircraft Maintenance Manual (AMM), CSP B–001, Revision 34, dated November 20, 2010, provides guidance for opening and closing the cowling on the left and right engines.

(i) For transcowl assemblies identified in paragraph (g)(2) of this AD: Except as required by paragraph (h) of this AD, within 5,000 flight hours or 24 months after the effective date of this AD, whichever comes first, do a detailed inspection for cracking on each transcowl assembly, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–78–008, Revision B, dated December 22, 2010; or Bombardier Service Bulletin 670SH–78–029, Revision C, dated November 10, 2010. Accomplishment of the actions specified in paragraph (i)(1) or (i)(2) of this AD for all transcowl assemblies identified in paragraph (g)(2) of this AD terminates the requirements of paragraph (h) of this AD.

(1) If any cracking of the joint extrusion is found, before further flight, repair and reinforce the joint extrusion on each transcowl assembly, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–78–008, Revision B, dated December 22, 2010; or Bombardier Service Bulletin 670SH–78–029, Revision C, dated November 10, 2010.

(2) If no cracking is found, before further flight, reinforce the joint extrusion on each transcowl assembly, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–78–008, Revision B, dated December 22, 2010; or Bombardier Service Bulletin 670SH–78–029, Revision C, dated November 10, 2010.

Credit for Actions Accomplished in Accordance With Previous Service Information

(j) Inspections, repairs, and reinforcement of the joint extrusion on each transcowl is also acceptable for compliance with the corresponding requirements of paragraph (i) of this AD if done before the effective date of this AD in accordance with the service information listed in table 1 of this AD.

TABLE 1—CREDIT SERVICE INFORMATION

Document	Revision	Date
Bombardier Service Bulletin 670BA–78–008	Original	September 19, 2008.
Bombardier Service Bulletin 670BA–78–008	A	July 10, 2009.
Bombardier Service Bulletin 670SH–78–029	Original	July 3, 2008.
Bombardier Service Bulletin 670SH–78–029	A	June 30, 2009.
Bombardier Service Bulletin 670SH–78–029	B	November 25, 2009.

Parts Installation

(k) As of the effective date of this AD, no replacement or spare transcowl assembly having P/N CN624–2001–XXX or KCN624–2001–X (XXX and X mean various dash numbers), with S/N SB0964 or lower, may be installed on any airplane, except for a transcowl assembly on which any repair listed in paragraph 1.D. of Bombardier Service Bulletin 670BA–78–008, Revision B, dated December 22, 2010, or paragraph 1.A. of Bombardier Service Bulletin 670SH–78–029, Revision C, dated November 10, 2010, has been done; and except for a transcowl that has been inspected as specified in paragraph (i) of this AD and all applicable actions specified in paragraph (i)(1) or (i)(2) of this AD, as applicable, have been done.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the NYACO, send it to ATTN: Program Manager, Continuing Operational Safety, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

Related Information

(m) Refer to MCAI Canadian Airworthiness Directive CF–2009–33, dated July 28, 2009; Bombardier Service Bulletin 670BA–78–008, Revision B, dated December 22, 2010; and Bombardier Service Bulletin 670SH–78–029, Revision C, dated November 10, 2010; for related information.

Material Incorporated by Reference

(n) You must use Bombardier Service Bulletin 670BA–78–008, Revision B, dated December 22, 2010; and Bombardier Service Bulletin 670SH–78–029, Revision C, dated November 10, 2010; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com*; Internet *http://www.bombardier.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on August 8, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–20673 Filed 8–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1213; Directorate Identifier 2009–NM–097–AD; Amendment 39–16775; AD 2011–17–11]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires repetitive inspections for cracking of the lower rear spar caps of the wings, and related investigative and corrective actions if necessary. This AD also requires repetitive inspections of certain repaired areas. This AD was prompted by reports of cracking of the wing rear spar lower cap at the outboard flap and inboard drive hinge at station Xrs=164.000; the cracking is due to material fatigue from normal flap operating loads. We are issuing this AD to detect and correct such fatigue cracking, which could result in fuel leaks, damage to the wing skin or other structure, and consequent reduced structural integrity of the wing.

DATES: This AD is effective September 26, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 26, 2011.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, *Attention:* Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; *phone:* (562) 627–5233; *fax:* (562) 627–5210; *e-mail: roger.durbin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That NPRM published in the **Federal Register** on February 8, 2010 (75 FR 6162). That NPRM proposed to require repetitive inspections for cracking of the lower rear spar caps of the wings, and related investigative and corrective actions if necessary. That NPRM also proposed to require repetitive inspections of certain repaired areas.

Actions Since Issuance of NPRM

The NPRM referred to Boeing Alert Service Bulletin MD80–57A242, dated May 8, 2009, as the appropriate source of service information for accomplishing the actions. Since issuance of the NPRM, Boeing has issued Alert Service Bulletin MD80–57A242, Revision 1, dated January 7, 2011. No more work is necessary for airplanes on which the original issue was used to accomplish the actions. Certain procedures specified in Revision 1 of this service bulletin have been clarified to provide additional instructions. Revision 1 of this service bulletin also added procedures for splice repair options and removed the instruction to contact Boeing for that repair. In addition, the term ''temporary repair,'' as specified in the original issue of this service bulletin, was changed to ''doubler repair'' in Revision 1 of this service bulletin. In addition, instead of contacting Boeing for repair instructions for Condition 3, Revision 1 of this service bulletin specifies three sub-conditions and provides corresponding doubler or splice repairs.

We have revised this AD to refer to Boeing Alert Service Bulletin MD80–57A242, Revision 1, dated January 7, 2011, as the appropriate source of service information for accomplishing the actions, and added a new paragraph (h) to this AD (and reidentified subsequent paragraphs) to give credit for using Boeing Alert Service Bulletin MD80–57A242, dated May 8, 2009, for accomplishing the actions. We also have replaced the word ''temporary'' in paragraphs (g)(2) and (j) of this AD with the word ''doubler.'' In addition, we have removed paragraph (i) of the NPRM, which specified contacting the FAA for the splice repair. Further, we have specified in paragraph (g)(1) of this AD that operators may still accomplish the required action in accordance with the procedures specified in paragraph (k) of this AD.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and the FAA's response to each comment.

Request To Include Inspections Required by Previous ADs

The Air Transport Association (ATA), on behalf of its member American Airlines (AAL), asked that applicable inspection requirements in AD 96–23–07 R1, Amendment 39–10110 (62 FR 44208, August 20, 1997); and AD 2004–11–07, Amendment 39–13653 (69 FR 13514, June 4, 2004); be included in the NPRM. ATA and AAL reiterated certain inspection/compliance requirements in those previous ADs, and stated that some of those requirements conflict with the requirements in this NPRM. ATA and AAL recommend incorporating those ADs into this NPRM to clarify, consolidate, and update the compliance requirements.

We do not agree to include the inspection requirements from previous ADs in this AD. Although the inspections in the previous ADs are similar, the root cause of the unsafe condition in this AD (*i.e.,* high-cycle fatigue in this AD versus manufacturing quality in the previous ADs) is different, which means the inspections and terminating actions are different as well, and do not conflict with the requirements specified in the existing ADs referenced by the commenter. Therefore, we have determined that the actions should be addressed in this ''stand-alone'' AD. We have not changed the AD in this regard.

Request To Clarify Repetitive Inspection Requirement

ATA and AAL stated that the Relevant Service Information section of the NPRM specifies that no action is necessary for Group 1, Configuration 1 airplanes. The commenters added that this statement conflicts with paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin MD80–57A242, Revision 1, dated January 7, 2011 (which also is related to AD 96–23–07 R1). That service bulletin also specifies the following in a note: ''Repeat inspections in accordance with Service Bulletin MD80–57–184, Paragraph 1.D.(5), ''Compliance,'' are still required.''

We agree that clarification is necessary. The NPRM clearly specifies that no action is necessary for Group 1, Configuration 1 airplanes. That statement is correct as it applies to this new AD. However, the note which appears in Boeing Alert Service Bulletin MD80–57A242, Revision 1, dated January 7, 2011, serves as a reminder that repetitive inspections are still required in accordance with AD 96–23–07 R1 for Group 1, Configuration 1 airplanes. For clarification purposes, we have revised paragraph (g) of this AD to exclude Group 1, Configuration 1 airplanes from the requirements of that paragraph.

Request To Clarify Certain Procedures in Differences Section

ATA and AAL also stated that the Differences section of the NPRM specifies FAA- or Boeing Organization Designation Authorization (ODA)-approved repairs for any crack found (less than or equal to 2.0 inches) in a temporary repair done during the repetitive inspections. The commenters noted that paragraph (j) of the NPRM specifies, ''[i]f any crack is found during any inspection of a temporary repair, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (k) of this AD.'' The commenters added that these requirements do not clearly detail the crack requirements and limitations; since the temporary repair is reinforcing an existing crack, a crack will always be found during subsequent inspections. The commenters also stated that the ''any crack'' statement conflicts with the requirements of paragraph (c)(3)(i) of AD 96–23–07 R1, which states, ''[i]f any crack progression is found during any repetitive eddy current inspection following accomplishment of the temporary repair, contact the ACO.'' Additionally, the commenters noted that the ''any crack'' statement conflicts with Boeing Drawing 3668B, Disposition A through D.

We disagree with the commenters. The requirement in this AD is to do repetitive eddy current inspections around the perimeter of the repair doublers; therefore, indications of the initially stop-drilled and repaired cracking would not be found during accomplishment of the repetitive inspections. We have not changed the AD in this regard.

Request To Clarify Certain Procedures in Referenced Service Information

In addition, ATA and AAL stated that the NPRM should further clarify the new requirements associated with Boeing Alert Service Bulletin MD80–57A242, dated May 8, 2009, and identified in two sections of the NPRM—the differences section in the preamble and the exceptions in paragraphs (h) and (i) of the NPRM.

Where the NPRM specifies that ''crack length is longer than 2.0 inches or is located in the rear spar cap forward horizontal leg radius,'' the commenters stated this could be further clarified by stating that this is Condition 3 in Boeing Alert Service Bulletin MD80–57A242, dated May 8, 2009, or by adding a table to the AD.

The commenters also stated that where paragraph (i) of the NPRM specifies that ''If any crack is found during any inspection required by this AD and Boeing Alert Service Bulletin MD80–57A242, dated May 8, 2009, specifies contacting Boeing for repair * * *,'' the phrase could be further

clarified by adding a table to the AD that identifies the three conditions specified in Boeing Alert Service Bulletin MD80–57A242, dated May 8, 2009, the three sub-conditions under Condition 2, the temporary repair condition, and the associated AD requirements.

We find that some clarification is necessary. Condition 3 in Boeing Alert Service Bulletin MD80–57A242, Revision 1, dated January 7, 2011, provides clarification with regard to the cracking, as follows: '' * * * lower spar cap has a crack longer than 2.0 inches in length or crack in the rear spar cap forward horizontal leg radius.'' No change to this AD is necessary in this regard because the differences section of the preamble of the NPRM is not restated in the final rule.

In addition, as explained previously we removed paragraph (i) of the NPRM from this final rule because Boeing Alert Service Bulletin MD80–57A242, Revision 1, dated January 7, 2011, now provides splice repair instructions. Therefore, it is no longer necessary to include an exception to this service bulletin. We have not changed the AD in this regard.

Request To Call Out Specific Service Bulletin Sections

Additionally, ATA and AAL noted concerns that the proposed requirements of the NPRM specify accomplishing what AAL interpreted to be all the requirements in the service information. The commenters stated that the proposed AD should be clarified and further highlighted to indicate that only specific sections of the service bulletin are required by the proposed AD. AAL reiterated certain open and close procedures and noted that accomplishing those procedures should not affect compliance with the proposed AD. AAL asked that we include the following in the AD: ''Only the SB procedures specified by the AD are affected by the FAA–AD. Other procedures such as preparation, open/close, and access procedures described by the SB are not affected by FAA–AD compliance requirements.'' AAL also asked that we consider including the procedures that are or are not affected by the proposed AD in its content.

We acknowledge the commenters' concerns, but disagree with the request to change this AD. In Section 3.A., ''General Information,'' paragraphs 8 through 10 of Boeing Alert Service Bulletin MD80–57A242, Revision 1, dated January 7, 2011, additional procedures are defined that can be used for accomplishing certain actions. In addition, paragraph 13 of that section specifies, in part, that when the words ''refer to'' are used, and the operator has an accepted alternative procedure, the accepted alternative procedure can be used. Therefore, we have not changed the AD in this regard.

Request To Clarify Crack Limitations in Referenced Service Information

ATA and AAL noted that the criteria for crack findings specified in Boeing Alert Service Bulletin MD80–57A242, dated May 9, 2009, do not provide clear guidance regarding crack limitations. The commenters added that the procedures in this service bulletin do not describe criteria for a crack with the stop-drill configuration. The commenters asked that the criteria for crack findings be further clarified.

We agree that clarification is necessary. The measurement of the crack length is intended to be the total curvilinear crack length, which is consistent with standard maintenance practice; therefore, no additional measurement criteria are necessary. The effect of stop drills on crack length is not relevant because Boeing Alert Service Bulletin MD80–57A242, Revision 1, dated January 7, 2011, specifies actions based on the length of the unrepaired cracks, and not on repaired or stop-drilled cracks. We have not changed the AD in this regard.

ATA and AAL also noted that the procedures in Boeing Alert Service Bulletin MD80–57A242, dated May 9, 2009, are inconsistent regarding acceptable crack configurations for the forward horizontal leg radius for the lower and upper spar caps. The commenters stated that the procedures specify that a crack cannot be in the forward horizontal leg radius for the lower cap, and those procedures refer to Drawing J060271, Note 29. The commenter stated that this drawing does have this limitation for the lower cap as well as the upper cap. However, that service bulletin does not refer to Note 29 for the upper cap procedures. The commenter requested that clarification of the crack criteria for doubler repairs on the upper spar cap be provided.

We agree that clarification is necessary. Boeing Alert Service Bulletin MD80–57A242, Revision 1, dated January 7, 2011, clarifies the crack criteria for the upper cap using Drawing J060271, Note 29, for the crack criteria when determining whether doubler repair of the upper spar cap is allowed. We have included Boeing Alert Service Bulletin MD80–57A242, Revision 1, dated January 7, 2011, as an appropriate source of service information for accomplishing the actions required by this AD.

Request for Validation of the Service Bulletin

ATA and AAL expressed concern that Boeing Alert Service Bulletin MD80–57A242, dated May 8, 2009, did not have a validation program performed to ensure that data, instructions, and processes specified in that service bulletin are correct, clear, appropriate, and understood by maintenance personnel performing the work.

From this statement, we infer the commenters are requesting that the procedures specified in Boeing Alert Service Bulletin MD80–57A242, dated May 8, 2009, be validated by the airplane manufacturer. We agree that certain procedures in Boeing Alert Service Bulletin MD80–57A242, dated May 8, 2009, need clarification. However, Boeing Alert Service Bulletin MD80–57A242, Revision 1, dated January 7, 2011, provides clarification for certain instructions provided in the original issue of that service bulletin so the procedures are clear and concise and to ensure they are understood by maintenance personnel performing the work.

In addition, it should be noted that the inspections and repairs in Boeing Alert Service Bulletin MD80–57A242, Revision 1, dated January 7, 2011, are identical to those in AD 96–23–07 R1, although the compliance times and applicability are different. (AD 96–23–07 R1 referred to McDonnell Douglas MD–80 Service Bulletin 57–184, Revision 1, dated December 22, 1994, as the appropriate source of service information for accomplishing the actions.) In light of this information, a formal evaluation of Boeing Alert Service Bulletin MD80–57A242 was not deemed necessary. We have not changed the AD in this regard.

Explanation of Changes Made to This AD

We have revised this AD to identify the name of the manufacturer as published in the most recent type certificate data sheet for the affected airplane models.

Conclusion

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

Explanation of Change to Costs of Compliance

Since issuance of the NPRM, we have increased the labor rate used in the Costs of Compliance from $80 per work-hour to $85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified labor rate.

Costs of Compliance

We estimate that this AD affects 670 airplanes of U.S. registry. We also estimate that it will take about 4 work-hours per product to comply with this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $227,800, or $340 per product, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–17–11 The Boeing Company: Amendment 39–16775; Docket No. FAA–2009–1213; Directorate Identifier 2009–NM–097–AD.

Effective Date

(a) This AD is effective September 26, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin MD80–57A242, Revision 1, dated January 7, 2011.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 57: Wings.

Unsafe Condition

(e) This AD was prompted by reports of cracking of the wing rear spar lower cap at the outboard flap and inboard drive hinge at station Xrs=164.000; the cracking is due to material fatigue from normal flap operating loads. We are issuing this AD to detect and correct fatigue cracking, which could result in fuel leaks, damage to the wing skin or other structure, and consequent reduced structural integrity of the wing.

Compliance

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

Repetitive Inspections and Related Investigative and Corrective Actions

(g) At the applicable times specified in paragraph 1.E. of Boeing Alert Service Bulletin MD80–57A242, Revision 1, dated January 7, 2011, do the actions required by paragraphs (g)(1) and (g)(2) of this AD, except as required by paragraph (i) of this AD. The actions specified in paragraphs (g)(1) and (g)(2) of this AD are not required for Group 1, Configuration 1 airplanes, as identified in Boeing Alert Service Bulletin MD80–57A242, Revision 1, dated January 7, 2011.

(1) Do initial and repetitive eddy current testing high frequency (ETHF) inspections for cracking of the lower rear spar caps of the wings, and do all applicable related investigative and corrective actions, by doing all the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–57A242, Revision 1, dated January 7, 2011; or in accordance with the procedures specified in paragraph (k) of this AD.

(2) Do initial and repetitive ETHF inspections for cracking of any doubler repairs, and do all applicable related investigative and corrective actions, by doing all the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–57A242, Revision 1, dated January 7, 2011; except as required by paragraph (j) of this AD.

Credit for Actions Accomplished in Accordance With Previous Service Information

(h) Actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin MD80–57A242, dated May 8, 2009, are acceptable for compliance with the corresponding requirements of this AD.

Exceptions to Service Bulletin Specifications

(i) Where Boeing Alert Service Bulletin MD80–57A242, Revision 1, dated January 7, 2011, specifies a compliance time after the date of that service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(j) If any crack is found during any inspection of a doubler repair, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane.

Related Information

(l) For more information about this AD, contact Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; *phone:* (562) 627–5233; *fax:* (562) 627–5210; *e-mail: roger.durbin@faa.gov.*

Material Incorporated by Reference

(m) You must use Boeing Alert Service Bulletin MD80–57A242, Revision 1, dated January 7, 2011; to do the actions required by this AD, unless the AD specifies otherwise.

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

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

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on August 8, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–20672 Filed 8–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0867; Airspace Docket No. 09–ASW–16]

RIN 2120–AA66

Establishment of Area Navigation Route Q–37; Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a high altitude area navigation (RNAV) route, designated Q–37, extending between the Pueblo, Colorado, VHF omnidirectional range/tactical air navigation (VORTAC) navigation aid and the Fort Stockton, Texas, VORTAC. The new route provides pilots and air traffic controllers with an efficient alternate route around potentially constrained airspace during convective weather events in west Texas.

DATES: Effective date 0901 UTC, October 20, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace, Regulations and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On Monday, October 26, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish area navigation route Q–37 (74 FR 54943). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

The Rule

This action amends Title 14, Code of Federal Regulations (14 CFR) part 71 by establishing high altitude area navigation route Q–37 between the Pueblo, CO, VORTAC, and the Fort Stockton, TX, VORTAC. The new route provides pilots and air traffic controllers with an efficient alternate route around potentially constrained airspace during convective weather events in west Texas. Additionally, the new route is being integrated into the existing severe weather national playbook routes to Houston, TX, terminal airports through Albuquerque Air Route Traffic Control Center's airspace, in lieu of the current process of coordinating tactical modifications to routings with the FAA Air Traffic Control Services Command Center.

In the NPRM, the points CAVRN and IMMAS were erroneously identified as a ''WP'' (waypoint). These points are being established and charted as navigation fixes; therefore, an editorial change is being made in this rule to replace ''WP'' with ''Fix'' in the description for CAVRN and IMMAS. With the exception of these changes, this amendment is the same as that proposed in the NPRM.

High altitude RNAV routes are published in paragraph 2006 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The RNAV route 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. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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 the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes an RNAV route to enhance the safe and efficient flow of traffic in the central United States.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraphs 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 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 FAA Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

Paragraph 2006 United States Area Navigation Routes

* * * * *

Q–37 FST, TX to PUB, CO [New]

FST VORTAC
(Lat. 30°57′08″ N., long. 102°58′33″ W.)
CAVRN Fix
(Lat. 31°49′31″ N., long. 104°00′42″ W.)
YORUB WP
(Lat. 32°55′52″ N., long. 104°14′01″ W.)
IMMAS Fix
(Lat. 34°54′18″ N., long. 104°18′53″ W.)
PUB VORTAC
(Lat. 38°17′39″ N., long. 104°25′46″ W.)

* * * * *

Issued in Washington, DC, on August 15, 2011.

Gary A. Norek,

Acting Manager, Airspace, Regulations and ATC Procedures Group.

[FR Doc. 2011–21290 Filed 8–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0378; Airspace Docket No. 11–AEA–11]

Establishment of Class E Airspace; Forest, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E Airspace at Forest, VA, to accommodate the new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures serving New London Airport. This action enhances the safety and airspace management of Instrument Flight Rules (IFR) operations within the National Airspace System.

DATES: Effective 0901 UTC, October 20, 2011. 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: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On June 13, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Class E airspace at Forest, VA (76 FR 34196) Docket No. FAA–2011–0378. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated 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 Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes the Class E airspace extending upward from 700 feet above the surface at Forest, VA, to provide the controlled airspace required to support the new RNAV GPS standard instrument approach procedures developed for New London Airport. This action is necessary for the safety and management of IFR operations at the airport.

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

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

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

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 VA E5 Forest, VA [New]

New London Airport, VA
(Lat. 37°16′18″ N., long. 79°20′9″ W.)

That airspace extending upward from 700 feet above the surface within a 8.4-mile radius of the New London Airport, and within 2 miles either side of the 347° bearing from the airport extending from the 8.4-mile radius to 12.1 miles northwest of the airport.

Issued in College Park, Georgia, on August 9, 2011.

Mark D. Ward,

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

[FR Doc. 2011–21284 Filed 8–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 119, 125, 133, 137, 141, 142, 145, and 147

[Docket No. FAA–2008–1154; Amendment Nos. 91–325, 119–5, 125–61, 133–14, 137–16, 141–16, 142–8, 145–29, and 147–7]

RIN 2120–AJ36

Restrictions on Operators Employing Former Flight Standards Service Aviation Safety Inspectors

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule will prohibit any person holding a certificate from knowingly employing, or making a contractual arrangement with, certain individuals to act as an agent or a representative of the certificate holder in any matter before the FAA under certain conditions. These restrictions will apply if the individual, in the preceding 2-year period directly served as, or was directly responsible for the oversight of, a Flight Standards Service Aviation Safety Inspector, and had direct responsibility to inspect, or oversee the inspection of, the operations of the certificate holder. This rule will also apply to persons who own or manage fractional ownership program aircraft that are used to conduct operations under specific regulations described in this document. This rule will establish these restrictions to prevent potential organizational conflicts of interest which could adversely affect aviation safety.

DATES: *Effective Date:* This amendment becomes effective October 21, 2011.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this final rule, contact Nancy Lauck Claussen, Federal Aviation Administration, Air Transportation Division, AFS–200, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8166; e-mail *Nancy.L.Claussen@faa.gov*. For legal questions concerning this final rule, contact Paul G. Greer, Federal Aviation Administration, Office of the Chief Counsel, 800 Independence Avenue, SW., Washington, DC 20591; telephone 202–267–3073; e-mail *Paul.G.Greer@faa.gov*.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator, to include the authority to issue, rescind, and revise regulations. 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, chapter 447, Safety Regulation. Under section 44701(a) the FAA is charged with promoting the safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security.

I. Background

On March 5, 2008, the FAA proposed a $10.2 million civil penalty against a major airline for operating 46 airplanes without performing mandatory inspections for fuselage fatigue cracking. The FAA alleged that the airline operated 46 Boeing 737 airplanes on almost 60,000 flights from June 2006 to March 2007 while failing to comply with an existing FAA Airworthiness Directive (AD) that required repetitive inspections of certain fuselage areas to detect fatigue cracking.

Based on this event, on June 30, 2008, the Department of Transportation (DOT) Office of Inspector General issued a report on its review of the FAA's oversight of airlines and use of regulatory partnership programs. The report concluded that the FAA Certificate Management Office (CMO) overseeing the airline that failed to perform the required inspections had developed an overly collaborative relationship with the airline. The report recommended that the FAA should enhance management controls by implementing post-employment guidance that includes a ''cooling-off'' period to prohibit an air carrier from hiring an FAA Flight Standards Service Aviation Safety Inspector (AFS ASI) who previously inspected that air carrier from acting in any type of liaison capacity between it and the FAA. A full copy of the report is contained in the docket for this rulemaking.

On September 2, 2008, an independent review team, appointed by former Secretary of Transportation Mary E. Peters on May 1, 2008 to examine the FAA's safety culture and its implementation of safety management systems, issued its report titled, ''Managing Risks in Civil Aviation: A Review of the FAA's Approach to Safety.'' The report stated that ''[t]he FAA, like all other regulators, faces the danger of regulatory capture. Capture occurs when a regulatory agency draws so close to those with whom it deals on a daily basis (*i.e.* the regulated) that the agency ends up elevating their concerns at the expense of the agency's core mission.'' A full copy of the report may be found in the docket for this rulemaking.

A. Summary of the NPRM

The NPRM was published in the **Federal Register** on November 20, 2009 (74 FR 60218) and the comment period closed on February 18, 2010. The NPRM proposed to prohibit any person holding a certificate to conduct operations under parts 121, 125, 133, 135, 137, 141, 142, 145 or 147 from knowingly employing, or making a contractual arrangement with, certain individuals to act as an agent or a representative of the certificate holder in any matter before the FAA under certain conditions. These restrictions would apply if the individual, in the preceding 2-year period: (1) Directly served as, or was directly responsible for the oversight of, an AFS ASI; and (2) had direct responsibility to inspect, or oversee the inspection of, the operations of the certificate holder. The NPRM also proposed to apply to persons who own or manage fractional ownership program aircraft that are used to conduct operations under subpart K of part 91. The FAA proposed to establish these restrictions to prevent potential organizational conflicts of interest which could adversely affect aviation safety.

B. Discussion of the Comments

The FAA received five comments on the proposed rule, all from individual commenters. The FAA did not receive comments from airlines, trade associations, or labor organizations. The three adverse comments addressed the applicability of the rule, and the potential burdens the rule could create. Two comments expressed support for the rule. Commenters also suggested changes, as discussed more fully in this section.

1. Applicability of Employment Prohibition to Additional FAA Employees

Two individual commenters stated that the provisions in the proposed rule should be expanded to include FAA

regional and headquarters personnel. They commented that individuals in regional and headquarters positions exert power and influence and should also be covered by the provisions in the rule. Another individual noted the challenge of trying to regulate integrity and that, using the same justification as stated in the NPRM, all former FAA employees should never be allowed to become FAA Designees, such as Designated Engineering Representatives, Designated Airworthiness Representatives, Designated Manufacturing Inspection Representatives, Organizational Designated Airworthiness Representatives.

In the final rule, the FAA has limited the scope of employment restrictions to certain types of operations. The restrictions will apply to those persons conducting operations under parts 121, 125, 133, 135, 137, 141, 142, 145, 147, and subpart K of part 91 employing former FAA personnel who had oversight responsibilities for the operator [*e.g.* Office Managers, Assistant Office Managers, Branch Managers, Unit Supervisors, and Aviation Safety Inspectors assigned to a Flight Standards District Office (FSDO) or a CMO]. AFS ASIs directly engaged in certificate management typically develop close working relationships with other AFS ASIs with whom they share direct oversight responsibilities for a particular operator. The FAA believes that aviation safety could be compromised if a former AFS ASI, acting on behalf of the operator, is able to exert undue influence on current FAA employees with whom he or she had established close working relationships while working at a FSDO or a CMO.

In the final rule the FAA has not extended the restrictions to the employment of all former FAA regional and headquarters personnel. However, these individuals are not without restrictions regarding post-FAA employment, as there are currently restrictions that apply to FAA managers and executives. Section 207(a)(1) of Title 18, United States Code (18 U.S.C.) generally places a permanent restriction on former executive branch employees (including FAA employees) regarding their ability to represent a person in connection with a particular matter in which the United States government has a direct and substantial interest and in which that person participated personally and substantially.

The FAA has determined that the scope of the restrictions in the final rule is appropriate. FAA employees not directly engaged in certificate management typically do not develop those close working relationships that the agency believes would necessitate the imposition of post-employment restrictions on certificate holders set forth in this final rule. Operators can still employ former AFS ASIs in numerous positions. However, these former AFS ASIs may not represent the operator in any matter before the FAA if in the preceding 2-year period that person (1) directly served as, or was directly responsible for the oversight of an AFS ASI, and (2) had direct responsibility to inspect, or oversee the inspection of that operator.

Although a commenter stated that the rule should impose restrictions that would prohibit former FAA employees from becoming designees, FAA designees do not represent the interest of certificate holders, but rather serve as representatives of the Administrator. Additionally, the NPRM did not propose the establishment of such restrictions and the agency considers the comments to be outside the scope of the notice.

2. Burden on Former AFS Employees

One commenter stated that the provisions in the proposed rule create a hardship for FAA employees who are leaving the agency, and suggested that the restriction on employment be reduced to 6 months, instead of the proposed 2 years. The same commenter also suggested that the restriction not be applied to anyone who was fired or has retired, and also suggested that the restriction be limited to part 121 operators since the FAA has no data indicating that this action is warranted for certificate holders engaged in activities under other parts.

The FAA selected a 2-year period for the duration of this restriction. This regulation will mirror a corresponding requirement found in current AFS policy which provides for a 2-year ''cooling off'' period for newly employed AFS ASIs. This AFS policy prohibits new ASIs from having certificate management responsibilities for their former aviation employer during this 2-year period. The final rule will not change this longstanding FAA policy. It will, however, create a corresponding requirement applicable to operators who seek to employ certain former FAA AFS ASIs and those responsible for their oversight.

In response to the comment that the restriction not be applied to anyone who was fired or has retired, the FAA notes that the method by which an AFS ASI's employment is terminated does not have any bearing on potential conflicts of interest. Therefore, the restrictions apply regardless of the manner by which the AFS ASI terminates his or her employment with the agency.

In response to the comment that the provisions in the rule should be limited to part 121 certificate holders the FAA notes that close working relationships leading to potential conflicts of interest can occur regardless of the type of operation being conducted. Therefore, the FAA has determined these restrictions should apply to those persons conducting operations under parts 121, 125, 133, 135, 137, 141, 142, 145, and subpart K of part 91.

3. Necessity for Proposed Restrictions

Two commenters stated that the proposed rule is necessary. One individual commented that a former AFS ASI should not be able to work directly for the companies that were under the AFS ASI's oversight for 2 years, but should be able to work for companies that were not under the AFS ASI's oversight. A second individual commented that airlines should not be allowed to hire aviation safety inspectors because it is clearly a conflict of interest and a danger to passengers.

The FAA recognizes the adverse safety effects of ''regulatory capture'' and conflict of interest when certain former FAA employees leave the FAA and are employed by an operation for which that person formerly had oversight duties. However, the FAA is also required to evaluate the safety benefits of the final rule against potential regulatory burdens. To achieve the safety benefits of this final rule, the FAA does not find it necessary to prohibit a former FAA employee from being hired for positions such as a pilot, flight attendant, mechanic, training instructor, *etc.* for an operation for which they formally had oversight, as long as the former FAA employee does not represent that operator to the FAA. In addition, the FAA does not find it necessary to permanently bar a former FAA employee from any job for any aviation employer after that former FAA employee has completed a 2-year ''cooling off'' period.

Therefore, in the final rule, these restrictions would only apply if the individual, in the preceding 2-year period: Directly served as, or was directly responsible for the oversight of, an AFS ASI; and had direct responsibility to inspect, or oversee the inspections of the operator and that individual acts as an agent or a representative of the operator in any matter before the FAA. The restrictions would not apply to operators for whose oversight the AFS ASI was not directly responsible.

C. Summary of the Final Rule

This final rule will prohibit any person holding a certificate to conduct operations under parts 121, 125, 133, 135, 137, 141, 142, 145, or 147 from knowingly employing, or making a contractual arrangement with, certain individuals to act as an agent or a representative of the certificate holder in any matter before the FAA under certain conditions. These restrictions will apply if the individual, in the preceding 2-year period: directly served as, or was directly responsible for the oversight of, an AFS ASI; and had direct responsibility to inspect, or oversee the inspection of, the operations of the certificate holder. This final rule will also apply to persons who own or manage fractional ownership program aircraft that are used to conduct operations under subpart K of part 91. This final rule will establish these restrictions to prevent potential organizational conflicts of interests which could adversely affect aviation safety. The final rule is identical to the proposal.

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this final rule.

III. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this rule. The reasoning for this determination follows:

Who Will Be Potentially Affected by This Final Rule

This final rule will affect current and future AFS ASIs and persons responsible for their oversight who would perform work after the effective date of the rule for an operator for which they had direct oversight responsibilities when employed by the FAA. It will also affect operators that would have hired former FAA employees who had direct oversight responsibilities for those operators. Finally, this rule will apply to fractional owners or fractional ownership program managers who conduct operations under subpart K of part 91.

Potential Benefits and Costs

The final rule's primary benefit will be to prevent potential organizational conflicts of interest. The non-quantifiable benefits resulting from this effect will be to minimize any potential public perception that: (1) An AFS ASI could compromise current aviation safety if that individual were to be promised post-FAA employment by an operator over which that individual has direct oversight responsibilities; and (2) a former FAA employee working for an operator were to attempt to exert undue influence on current FAA employees with whom that former employee had established close working relationships. This post-employment prohibition also applies to the more likely case of former AFS ASIs who would become consultants to the operator. By prohibiting such relationships, the public will have greater confidence in the FAA's independence from the aviation industry and in the integrity of the FAA inspection system. Such benefits from this increased public confidence in the integrity of the FAA inspection process cannot be quantified.

The final rule also creates some minor inefficiencies. An operator can benefit from employing a former AFS ASI who had direct oversight responsibilities for that operator because that AFS ASI not only knows more about FAA processes than someone who had not worked for the FAA, but also, would know more about the operator than other former AFS ASIs. Further, a former AFS ASI from a specific FSDO or CMO will have greater knowledge about that office (as well as be better acquainted with the people in that office) than would a former AFS ASI from a different office.

For example, some operators may believe that employing a former AFS ASI who recently had direct oversight responsibilities for their operations would reduce the time to obtain FAA approval for manual upgrades and revisions partially due to the personal relationships between the former AFS ASI and current FAA employees. In such a case, an operator would be more likely to employ this former AFS ASI than to employ a former AFS ASI who did not have direct oversight responsibilities for that operator. Due to the general similarities among the groups of operators, the potential inefficiencies from employing a former AFS ASI who did not have direct oversight responsibilities for that operator will not be significant. Thus, from the societal point of view, the overall losses to some individual former FAA inspectors will be largely offset by gains to other former FAA inspectors or other qualified personnel. Although the final rule will create income transfers among individuals, at this time, we cannot quantify this overall loss on an individual basis. From a societal basis, the safety differential paid for the incremental loss in knowledge will be very small. We received no public comments quantifying the amount of losses that any individual will face from this rule.

The number of former AFS ASIs who leave the FAA varies from year to year. We used fiscal year 2008 (October 1, 2008, through September 30, 2009), as a representative year-long period to evaluate the number of potentially

affected FAA employees. There were a total of 163 AFS ASIs who left FAA employment during this fiscal year. Fifteen of these were from FAA headquarters and not specifically assigned to a certificate holder. These AFS ASIs would not have been affected by the rule. As shown in Table 1, of the remaining 148 inspectors who left FAA employment, 103 voluntarily retired, 5 retired due to disability, 17 resigned, 1 was removed, 6 were terminated during their probation period, 2 had their appointments terminated, and 14 died. Thus, the maximum number of former inspectors who could have been affected had the rule been in effect are the 125 non-headquarters personnel who retired (voluntarily or with disability) or resigned.

TABLE 1—REASONS THAT THE 148 NON–HEADQUARTERS INSPECTORS LEFT FAA EMPLOYMENT BETWEEN 10/1/08 AND 9/30/09

Reason for separation	Number of inspectors
VOLUNTARY RETIREMENT	103
DISABILITY RETIREMENT	5
RESIGNATION	17
REMOVAL	1
TERMINATION DURING PROBATION PERIOD	6
TERMINATION OF APPOINTMENT	2
DEATH	14
TOTAL	148

As concluded in the NPRM, we stated that few of these former AFS ASIs will become involved in post-FAA retirement employment. We further stated that this overall economic impact will be minimal, with the potential benefits exceeding the costs. We requested comments on this economic analysis and received none.

Although the overall economic impact will be minimal, with the potential benefits exceeding the costs this rule is considered a ''significant regulatory action'' for other reasons as defined in section 3(f) of Executive Order 12866 and is ''significant'' as defined in DOT's Regulatory Policies and Procedures.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.

To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The final rule will only prevent an AFS ASI and persons responsible for their oversight from acting as an agent or representative of an operator before the FAA when those persons had direct oversight responsibilities for that operator in the preceding two years. The cost to an operator of being unable to employ a specific individual will be minimal because other individuals with similar professional qualifications as those possessed by the former AFS ASI will be available. Therefore the FAA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $140.8 million in lieu of $100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

V. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, will not have federalism implications.

VI. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this final rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

VII. Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a ''significant energy action'' under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

VIII. Availability of Rulemaking Documents

A. Rulemaking Documents

An electronic copy of a rulemaking document my be obtained by using the Internet—

1. Search the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visit the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/* or
3. Access the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680.

B. Comments Submitted to the Docket

Comments received may be viewed by going to *http://www.regulations.gov* and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's 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.*).

IX. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects

14 CFR Part 91

Aircraft, Airmen, Airports, Aviation safety.

14 CFR Part 119

Air carriers, Aircraft, Aviation safety.

14 CFR Part 125

Aircraft, Aviation safety.

14 CFR Part 133

Aircraft, Aviation safety.

14 CFR Part 137

Aircraft, Aviation safety.

14 CFR Part 141

Educational facilities, Schools.

14 CFR Part 142

Educational facilities, Schools.

14 CFR Part 145

Aircraft, Aviation safety.

14 CFR Part 147

Aircraft, Educational facilities, Schools.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations, as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180).

■ 2. Add § 91.1050 to read as follows:

§ 91.1050 Employment of former FAA employees.

(a) Except as specified in paragraph (c) of this section, no fractional owner or fractional ownership program manager may knowingly employ or make a contractual arrangement which permits an individual to act as an agent or representative of the fractional owner or fractional ownership program manager in any matter before the Federal Aviation Administration if the individual, in the preceding 2 years—

(1) Served as, or was directly responsible for the oversight of, a Flight Standards Service aviation safety inspector; and

(2) Had direct responsibility to inspect, or oversee the inspection of, the operations of the fractional owner or fractional ownership program manager.

(b) For the purpose of this section, an individual shall be considered to be acting as an agent or representative of a fractional owner or fractional ownership program manager in a matter before the agency if the individual makes any written or oral communication on behalf of the fractional owner or fractional ownership program manager to the agency (or any of its officers or employees) in connection with a particular matter, whether or not involving a specific party and without regard to whether the individual has participated in, or had responsibility for, the particular matter while serving as a Flight Standards Service aviation safety inspector.

(c) The provisions of this section do not prohibit a fractional owner or fractional ownership program manager from knowingly employing or making a contractual arrangement which permits an individual to act as an agent or representative of the fractional owner or fractional ownership program manager in any matter before the Federal Aviation Administration if the individual was employed by the fractional owner or fractional ownership program manager before October 21, 2011.

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

■ 3. The authority citation for part 119 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

■ 4. Add § 119.73 to read as follows:

§ 119.73 Employment of former FAA employees.

(a) Except as specified in paragraph (c) of this section, no certificate holder conducting operations under part 121 or 135 of this chapter may knowingly employ or make a contractual arrangement which permits an individual to act as an agent or representative of the certificate holder in any matter before the Federal Aviation Administration if the individual, in the preceding 2 years—

(1) Served as, or was directly responsible for the oversight of, a Flight Standards Service aviation safety inspector; and

(2) Had direct responsibility to inspect, or oversee the inspection of, the operations of the certificate holder.

(b) For the purpose of this section, an individual shall be considered to be acting as an agent or representative of a certificate holder in a matter before the agency if the individual makes any written or oral communication on behalf of the certificate holder to the agency (or any of its officers or employees) in connection with a particular matter, whether or not involving a specific party and without regard to whether the individual has participated in, or had responsibility for, the particular matter while serving as a Flight Standards Service aviation safety inspector.

(c) The provisions of this section do not prohibit a certificate holder from knowingly employing or making a contractual arrangement which permits an individual to act as an agent or representative of the certificate holder in any matter before the Federal Aviation Administration if the individual was employed by the certificate holder before October 21, 2011.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 5. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

■ 6. Add § 125.26 to read as follows:

§ 125.26 Employment of former FAA employees.

(a) Except as specified in paragraph (c) of this section, no certificate holder may knowingly employ or make a contractual arrangement which permits

an individual to act as an agent or representative of the certificate holder in any matter before the Federal Aviation Administration if the individual, in the preceding 2 years—

(1) Served as, or was directly responsible for the oversight of, a Flight Standards Service aviation safety inspector; and

(2) Had direct responsibility to inspect, or oversee the inspection of, the operations of the certificate holder.

(b) For the purpose of this section, an individual shall be considered to be acting as an agent or representative of a certificate holder in a matter before the agency if the individual makes any written or oral communication on behalf of the certificate holder to the agency (or any of its officers or employees) in connection with a particular matter, whether or not involving a specific party and without regard to whether the individual has participated in, or had responsibility for, the particular matter while serving as a Flight Standards Service aviation safety inspector.

(c) The provisions of this section do not prohibit a certificate holder from knowingly employing or making a contractual arrangement which permits an individual to act as an agent or representative of the certificate holder in any matter before the Federal Aviation Administration if the individual was employed by the certificate holder before October 21, 2011.

PART 133—ROTORCRAFT EXTERNAL-LOAD OPERATIONS

■ 7. The authority citation for part 133 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702.

■ 8. Add § 133.22 to read as follows:

§ 133.22 Employment of former FAA employees.

(a) Except as specified in paragraph (c) of this section, no certificate holder may knowingly employ or make a contractual arrangement which permits an individual to act as an agent or representative of the certificate holder in any matter before the Federal Aviation Administration if the individual, in the preceding 2 years—

(1) Served as, or was directly responsible for the oversight of, a Flight Standards Service aviation safety inspector; and

(2) Had direct responsibility to inspect, or oversee the inspection of, the operations of the certificate holder.

(b) For the purpose of this section, an individual shall be considered to be acting as an agent or representative of a certificate holder in a matter before the agency if the individual makes any written or oral communication on behalf of the certificate holder to the agency (or any of its officers or employees) in connection with a particular matter, whether or not involving a specific party and without regard to whether the individual has participated in, or had responsibility for, the particular matter while serving as a Flight Standards Service aviation safety inspector.

(c) The provisions of this section do not prohibit a certificate holder from knowingly employing or making a contractual arrangement which permits an individual to act as an agent or representative of the certificate holder in any matter before the Federal Aviation Administration if the individual was employed by the certificate holder before October 21, 2011.

PART 137—AGRICULTURAL AIRCRAFT OPERATIONS

■ 9. The authority citation for part 137 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 44701–44702.

■ 10. Add § 137.40 to read as follows:

§ 137.40 Employment of former FAA employees.

(a) Except as specified in paragraph (c) of this section, no certificate holder may knowingly employ or make a contractual arrangement which permits an individual to act as an agent or representative of the certificate holder in any matter before the Federal Aviation Administration if the individual, in the preceding 2 years—

(1) Served as, or was directly responsible for the oversight of, a Flight Standards Service aviation safety inspector; and

(2) Had direct responsibility to inspect, or oversee the inspection of, the operations of the certificate holder.

(b) For the purpose of this section, an individual shall be considered to be acting as an agent or representative of a certificate holder in a matter before the agency if the individual makes any written or oral communication on behalf of the certificate holder to the agency (or any of its officers or employees) in connection with a particular matter, whether or not involving a specific party and without regard to whether the individual has participated in, or had responsibility for, the particular matter while serving as a Flight Standards Service aviation safety inspector.

(c) The provisions of this section do not prohibit a certificate holder from knowingly employing or making a contractual arrangement which permits an individual to act as an agent or representative of the certificate holder in any matter before the Federal Aviation Administration if the individual was employed by the certificate holder before October 21, 2011.

PART 141—PILOT SCHOOLS

■ 11. The authority citation for part 141 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709, 44711, 45102–45103, 45301–45302.

■ 12. Add § 141.34 to read as follows:

§ 141.34 Employment of former FAA employees.

(a) Except as specified in paragraph (c) of this section, no holder of a pilot school certificate or a provisional pilot school certificate may knowingly employ or make a contractual arrangement which permits an individual to act as an agent or representative of the certificate holder in any matter before the Federal Aviation Administration if the individual, in the preceding 2 years—

(1) Served as, or was directly responsible for the oversight of, a Flight Standards Service aviation safety inspector; and

(2) Had direct responsibility to inspect, or oversee the inspection of, the operations of the certificate holder.

(b) For the purpose of this section, an individual shall be considered to be acting as an agent or representative of a certificate holder in a matter before the agency if the individual makes any written or oral communication on behalf of the certificate holder to the agency (or any of its officers or employees) in connection with a particular matter, whether or not involving a specific party and without regard to whether the individual has participated in, or had responsibility for, the particular matter while serving as a Flight Standards Service aviation safety inspector.

(c) The provisions of this section do not prohibit a holder of a pilot school certificate or a provisional pilot school certificate from knowingly employing or making a contractual arrangement which permits an individual to act as an agent or representative of the certificate holder in any matter before the Federal Aviation Administration if the individual was employed by the certificate holder before October 21, 2011.

PART 142—TRAINING CENTERS

■ 13. The authority citation for part 142 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44703, 44705, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 14. Add § 142.14 to read as follows:

§ 142.14 Employment of former FAA employees.

(a) Except as specified in paragraph (c) of this section, no holder of a training center certificate may knowingly employ or make a contractual arrangement which permits an individual to act as an agent or representative of the certificate holder in any matter before the Federal Aviation Administration if the individual, in the preceding 2 years—

(1) Served as, or was directly responsible for the oversight of, a Flight Standards Service aviation safety inspector; and

(2) Had direct responsibility to inspect, or oversee the inspection of, the operations of the certificate holder.

(b) For the purpose of this section, an individual shall be considered to be acting as an agent or representative of a certificate holder in a matter before the agency if the individual makes any written or oral communication on behalf of the certificate holder to the agency (or any of its officers or employees) in connection with a particular matter, whether or not involving a specific party and without regard to whether the individual has participated in, or had responsibility for, the particular matter while serving as a Flight Standards Service aviation safety inspector.

(c) The provisions of this section do not prohibit a holder of a training center certificate from knowingly employing or making a contractual arrangement which permits an individual to act as an agent or representative of the certificate holder in any matter before the Federal Aviation Administration if the individual was employed by the certificate holder before October 21, 2011.

PART 145—REPAIR STATIONS

■ 15. The authority citation for part 145 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44707, 44709, 44717.

■ 16. Add § 145.160 to read as follows:

§ 145.160 Employment of former FAA employees.

(a) Except as specified in paragraph (c) of this section, no holder of a repair station certificate may knowingly employ or make a contractual arrangement which permits an individual to act as an agent or representative of the certificate holder in any matter before the Federal Aviation Administration if the individual, in the preceding 2 years—

(1) Served as, or was directly responsible for the oversight of, a Flight Standards Service aviation safety inspector; and

(2) Had direct responsibility to inspect, or oversee the inspection of, the operations of the certificate holder.

(b) For the purpose of this section, an individual shall be considered to be acting as an agent or representative of a certificate holder in a matter before the agency if the individual makes any written or oral communication on behalf of the certificate holder to the agency (or any of its officers or employees) in connection with a particular matter, whether or not involving a specific party and without regard to whether the individual has participated in, or had responsibility for, the particular matter while serving as a Flight Standards Service aviation safety inspector.

(c) The provisions of this section do not prohibit a holder of a repair station certificate from knowingly employing or making a contractual arrangement which permits an individual to act as an agent or representative of the certificate holder in any matter before the Federal Aviation Administration if the individual was employed by the certificate holder before October 21, 2011.

PART 147—AVIATION MAINTENANCE TECHNICIAN SCHOOLS

■ 17. The authority citation for part 147 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44707–44709.

■ 18. Add § 147.8 to subpart A to read as follows:

§ 147.8 Employment of former FAA employees.

(a) Except as specified in paragraph (c) of this section, no holder of an aviation maintenance technician certificate may knowingly employ or make a contractual arrangement which permits an individual to act as an agent or representative of the certificate holder in any matter before the Federal Aviation Administration if the individual, in the preceding 2 years—

(1) Served as, or was directly responsible for the oversight of, a Flight Standards Service aviation safety inspector; and

(2) Had direct responsibility to inspect, or oversee the inspection of, the operations of the certificate holder.

(b) For the purpose of this section, an individual shall be considered to be acting as an agent or representative of a certificate holder in a matter before the agency if the individual makes any written or oral communication on behalf of the certificate holder to the agency (or any of its officers or employees) in connection with a particular matter, whether or not involving a specific party and without regard to whether the individual has participated in, or had responsibility for, the particular matter while serving as a Flight Standards Service aviation safety inspector.

(c) The provisions of this section do not prohibit a holder of an aviation maintenance technician school certificate from knowingly employing or making a contractual arrangement which permits an individual to act as an agent or representative of the certificate holder in any matter before the Federal Aviation Administration if the individual was employed by the certificate holder before October 21, 2011.

Issued in Washington, DC, on August 5, 2011.

J. Randolph Babbitt,

Administrator.

[FR Doc. 2011–21315 Filed 8–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30798; Amdt. No. 3439]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

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

DATES: This rule is effective August 22, 2011. The compliance date for each

SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 22, 2011.

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

For Examination

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

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

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

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

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

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

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

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

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

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

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

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

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

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore— (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on August 5, 2011.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

** * *Effective Upon Publication*

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
22–Sep–11 ...	MN	RED WING	RED WING RGNL	1/3885	7/21/11	RNAV (GPS) RWY 27, Amdt 2
22–Sep–11 ...	WA	RICHLAND	RICHLAND	1/4363	7/13/11	LOC RWY 19, Amdt 7

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
22–Sep–11 ...	NY	ISLIP	LONG ISLAND MAC ARTHUR	1/5760	7/21/11	ILS OR LOC RWY 24, Amdt 4
22–Sep–11 ...	NY	WHITE PLAINS	WESTCHESTER COUNTY	1/5895	7/28/11	RNAV (RNP) Z RWY 16, Orig-A
22–Sep–11 ...	IL	BELLEVILLE	SCOTT AFB/MID AMERICA	1/7157	7/28/11	ILS OR LOC/DME RWY 14L, Orig-C
22–Sep–11 ...	IL	BELLEVILLE	SCOTT AFB/MID AMERICA	1/7158	7/28/11	ILS OR LOC RWY 32R, Orig-C
22–Sep–11 ...	IL	BELLEVILLE	SCOTT AFB/MID AMERICA	1/7159	7/28/11	RNAV (GPS) RWY 32L, Orig-B
22–Sep–11 ...	IL	BELLEVILLE	SCOTT AFB/MID AMERICA	1/7160	7/28/11	ILS OR LOC RWY 14R, Orig-C
22–Sep–11 ...	IL	BELLEVILLE	SCOTT AFB/MID AMERICA	1/7161	7/28/11	RNAV (GPS) RWY 14R, Orig-B
22–Sep–11 ...	MI	ANN ARBOR	ANN ARBOR MUNI	1/7560	8/2/11	VOR RWY 24, Amdt 13B
22–Sep–11 ...	MI	ANN ARBOR	ANN ARBOR MUNI	1/7561	8/2/11	VOR RWY 6, Amdt 13B

[FR Doc. 2011–21053 Filed 8–19–11; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30797; Amdt. No. 3438]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

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

DATES: This rule is effective August 22, 2011. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 22, 2011.

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

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

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

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

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

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have

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

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

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule '' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on August 5, 2011.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 22 SEP 2011

Warren, AR, Warren Muni, Takeoff Minimums & Obstacle DP, Orig
Ottumwa, IA, Ottumwa Rgnl, ILS OR LOC RWY 31, Amdt 5B
Ottumwa, IA, Ottumwa Rgnl, RNAV (GPS) RWY 22, Orig-A, CANCELLED
Ottumwa, IA, Ottumwa Rgnl, Takeoff Minimums & Obstacle DP, Orig-A
Red Oak, IA, Red Oak Muni, Takeoff Minimums & Obstacle DP, Amdt 3
Storm Lake, IA, Storm Lake Muni, Takeoff Minimums & Obstacle DP, Orig
Dwight, IL, Dwight, Takeoff Minimums & Obstacle DP, Orig
Pinckneyville, IL, Pinckneyville-Du Quoin, Takeoff Minimums & Obstacle DP, Orig
Elkhart, IN, Elkhart Muni, Takeoff Minimums and Obstacle DP, Orig
Detroit, MI, Coleman A. Young Muni, ILS OR LOC RWY 15, Amdt 10
Slayton, MN, Slayton Muni, Takeoff Minimums & Obstacle DP, Orig
Florence, SC, Florence Rgnl, RNAV (GPS) RWY 9, Orig-A
Spearfish, SD, Black Hills-Clydes Ice Field, RNAV (GPS) RWY 13, Orig-A
Spearfish, SD, Black Hills-Clydes Ice Field, RNAV (GPS) RWY 31, Orig-A
Castroville, TX, Castroville Muni, Takeoff Minimums and Obstacle DP, Orig
Cleveland, TX, Cleveland Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Corsicana, TX, C David Campbell Fld-Corsicana Muni, Takeoff Minimums and Obstacle DP, Orig
Sherman, TX, Sherman Muni, Takeoff Minimums and Obstacle DP, Orig
Necedah, WI, Necedah, Takeoff Minimums and Obstacle DP, Orig

Effective 20 OCT 2011

El Dorado, AR, South Arkansas Rgnl at Goodwin Field, Takeoff Minimums and Obstacle DP, Amdt 2
Fort Pierce, FL, St Lucie County Intl, NDB–A, Orig-C
Lawrenceville, GA, Gwinnett County-Briscoe Field, Takeoff Minimums and Obstacle DP, Amdt 6
Livingston, MT, Mission Field, GPS RWY 22, Orig-B, CANCELLED
Livingston, MT, Mission Field, RNAV (GPS) RWY 22, Orig
Louisburg, NC, Triangle North Executive, ILS OR LOC RWY 5, Amdt 4
Louisburg, NC, Triangle North Executive, RNAV (GPS) RWY 5, Amdt 1
Louisburg, NC, Triangle North Executive, RNAV (GPS) RWY 23, Amdt 1
Louisburg, NC, Triangle North Executive, Takeoff Minimums and Obstacle DP, Orig
Louisburg, NC, Triangle North Executive, VOR/DME–A, Amdt 2B
Red Hook, NY, Sky Park, Takeoff Minimums and Obstacle DP, Orig, CANCELLED
Red Hook, NY, Sky Park, VOR OR GPS RWY 1, Amdt 5, CANCELLED
Gallipolis, OH, Gallia-Meigs Rgnl, VOR OR GPS–B, Amdt 1, CANCELLED
Lebanon, OH, Lebanon-Warren County, Takeoff Minimums and Obstacle DP, Orig
Piqua, OH, Piqua Airport-Hartzell Field, Takeoff Minimums and Obstacle DP, Orig
Holdenville, OK, Holdenville Muni, Takeoff Minimums and Obstacle DP, Orig
Providence, RI, Theodore Francis Green State, ILS OR LOC RWY 23, Amdt 6
Providence, RI, Theodore Francis Green State, ILS OR LOC/DME RWY 34, Amdt 11
Providence, RI, Theodore Francis Green State, RNAV (GPS) RWY 23, Amdt 1
Providence, RI, Theodore Francis Green State, RNAV (GPS) RWY 34, Amdt 1
Brownwood, TX, Brownwood Rgnl, Takeoff Minimums and Obstacle DP, Orig
Cleveland, TX, Cleveland Muni, GPS RWY 16, Orig-C, CANCELLED
Cleveland, TX, Cleveland Muni, RNAV (GPS) RWY 16, Orig
Dallas, TX, Dallas Love Field, RNAV (GPS) RWY 31R, Amdt 1
Dallas, TX, Dallas Love Field, RNAV (GPS) Z RWY 13L, Amdt 1
Gilmer, TX, Fox Stephens Field-Gilmer Muni, Takeoff Minimums and Obstacle DP, Orig
Gruver, TX, Gruver Muni, Takeoff Minimums and Obstacle DP, Orig
Hearne, TX, Hearne Muni, RNAV (GPS) RWY 18, Orig
Hearne, TX, Hearne Muni, RNAV (GPS) RWY 36, Orig
Hearne, TX, Hearne Muni, Takeoff Minimums and Obstacle DP, Orig
Houston, TX, George Bush Intercontinental/Houston, ILS OR LOC RWY 8R; ILS RWY 8R (SA CAT II), Amdt 23B
Moses Lake, WA, Grant Co Intl, ILS OR LOC RWY 32R, Amdt 20B
Toledo, WA, Ed Carlson Memorial Field-South Lewis Co, RNAV (GPS) RWY 24, Orig-A
Chetek, WI, Chetek Muni-Southworth, Takeoff Minimums and Obstacle DP, Orig
East Troy, WI, East Troy Muni, GPS RWY 8, Orig, CANCELLED
East Troy, WI, East Troy Muni, GPS RWY 26, Orig, CANCELLED
East Troy, WI, East Troy Muni, RNAV (GPS) RWY 8, Orig
East Troy, WI, East Troy Muni, RNAV (GPS) RWY 26, Orig
East Troy, WI, East Troy Muni, VOR/DME–A, Amdt 1
Solon Springs, WI, Solon Springs Muni, Takeoff Minimums and Obstacle DP, Orig
Laramie, WY, Laramie Rgnl, VOR/DME RWY 12, Amdt 6A

Laramie, WY, Laramie Rgnl, VOR/DME RWY 30, Amdt 7A

[FR Doc. 2011–21052 Filed 8–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No.: FAA–2009–0675; Amendment No. 121–356]

RIN 2120–AJ43

Activation of Ice Protection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the operating rules for flight in icing conditions. For certain airplanes certificated for flight in icing, the new standards require either installation of ice detection equipment or changes to the airplane flight manual to ensure timely activation of the airframe ice protection system. This action is the result of information gathered from icing accidents and incidents. It is intended to increase the level of safety when airplanes fly in icing conditions.

DATES: This amendment becomes effective October 21, 2011.

FOR FURTHER INFORMATION CONTACT: For operational questions contact Charles J. Enders, Air Carrier Operations Branch, AFS–220, Flight Standards Service, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 493–1422; facsimile (202) 267–5229; e-mail *Charles.J.Enders@faa.gov*.

For aircraft certification questions contact Robert Jones, Propulsion/Mechanical Systems Branch, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98057–3356; telephone (425) 227–1234; facsimile (425) 227–1149; e-mail *Robert.C.Jones@faa.gov*.

For legal questions contact Douglas Anderson, Office of Regional Counsel, ANM–7, Federal Aviation Administration, 1601 Lind Ave., SW., Renton, Washington 98057–3356; telephone (425) 227–2166; facsimile (425) 227–1007; e-mail *Douglas.Anderson@faa.gov*.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules on 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 III, Section 44701. Under that section, the FAA is charged with prescribing regulations promoting safe flight of civil aircraft in air commerce by prescribing minimum standards required in the interest of safety for the design and performance of aircraft; regulations and minimum standards of safety for inspecting, servicing, and overhauling aircraft; and regulations for other practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it prescribes new safety standards for the operation of certain airplanes used in air carrier service.

I. Summary of the Final Action

The FAA is creating new regulations in Title 14, Code of Federal Regulations (14 CFR) part 121 (Operating Requirements: Domestic, Flag, and Supplemental Operations) related to the operation of certain transport category airplanes in icing conditions. To improve the safety of these airplanes operating in icing conditions, the new regulations require either installation of ice detection equipment and procedures for its use, or changes to the airplane flight manual (AFM) to ensure timely activation of the airframe ice protection system.

The economic evaluation for the final rule shows that the benefits exceed the costs for the nominal, seven, and three percent present value rates. The estimated benefits are $27.2 million ($16.2 million present value). The total estimated costs are $12.7 million ($6.7 million present value). The following table shows these results.

Part 121 Activation of Ice Protection Adjusted Benefits and Costs ($M)			
		Present Value	
	Total	7%	3%
Benefits	$27.2	$16.2	$21.3
Costs	$12.7	$6.7	$9.4

II. Background

On October 31, 1994, an accident involving an Avions de Transport Regional ATR 72 series airplane occurred in icing conditions. This prompted the FAA to initiate a review of aircraft safety in icing conditions and determine what changes could be made to increase the level of safety. In May 1996, we sponsored the International Conference on Aircraft Inflight Icing, where icing specialists made recommendations for increasing safety. We reviewed these recommendations and developed a comprehensive, multi-year icing plan. The FAA Inflight Aircraft Icing Plan, dated April 1997,[1] described various activities we were considering for improving aircraft safety in icing conditions. In accordance with this plan, we tasked the Aviation Rulemaking Advisory Committee (ARAC) to consider the need for ice detectors or other means to give flightcrews early indication about action required for ice accumulating on critical surfaces of the airplane.[2] The work was carried out by ARAC's Ice Protection Harmonization Working Group (IPHWG). Its recommendations may be found in the docket for this rulemaking (FAA–2009–0675).

A. Summary of the NPRM

On November 23, 2009, the FAA published a notice of proposed rulemaking (NPRM) based on ARAC's recommendations to the FAA (74 FR

[1] FAA Inflight Aircraft Icing Plan, dated April 1997, is available in the Docket.

[2] Published in the **Federal Register** on December 8, 1997 (62 FR 64621).

61055). That NPRM proposed changes to the regulations for operators of certain airplanes certificated for flight in icing conditions that are operated under 14 CFR part 121. It proposed requirements for installation of ice detection equipment and/or changes to the AFM to ensure timely activation of the airframe ice protection system. The comment period for that NPRM closed on February 22, 2010.

B. Definitions

An appendix to the preamble of this rule gives definitions of the terms used here.

C. Related Activity

The FAA is currently engaged in rulemaking that would require operators of airplanes to exit icing conditions for which the airplane has not been certified. Supercooled large droplet icing conditions may be an example of such conditions.

D. Summary of Comments

The FAA received 56 comment documents in response to the NPRM. Some commenters submitted multiple comments.

- Twenty-two commenters (Boeing, Airbus, the Regional Airline Association (RAA), Air Line Pilots Association International (ALPA), and 16 private citizens) expressed support for the proposal in the NPRM.
- Twenty-nine private citizens offered general comments on icing and ice protection that did not specifically address the proposal in the NPRM. These commenters stated that the FAA had not done enough, early enough, to solve the safety problems of flight in icing conditions. Because these comments were beyond the scope of the NPRM's proposal, we are not responding to them in this preamble.
- BAE Systems, XCEL Jet Management, the National Transportation Safety Board (NTSB), and two private citizens provided critical or non-supportive comments to the proposal in the NPRM.

III. Discussion of the Final Rule

This final rule is identical to the rule proposed in the NPRM. Its goal is to ensure that ice protection systems are activated in a timely way. It does this by relieving the flightcrew of the need for judging when to activate the ice protection system. It gives the flightcrew—

- Primary ice detectors that will alert them to icing,
- Specific visual cues to indicate icing, supplemented by advisory ice detectors, or
- Specific air temperatures to check for which, in the presence of visible moisture, will indicate conditions conducive to icing and the need to follow icing procedures.

This rule applies to airplanes operating under part 121 rules with a certified maximum takeoff weight (MTOW) of less than 60,000 pounds. It requires—

a. A primary ice detection system and appropriate activation equipment and procedures to ensure timely activation of the ice protection system,

b. An advisory ice detection system plus substantiated visual cues and procedures to ensure timely activation and, if necessary, repeated operation of the ice protection system, or

c. If the airplane is not equipped to comply with either a or b above, that flightcrews activate and continuously or cyclically operate the ice protection system when in icing conditions during—

- The takeoff climb after second segment,
- En route climb,
- Holding,
- Maneuvering for approach and landing, and
- Any other operation at approach or holding airspeeds.

Icing conditions will be indicated by a specific air temperature and the presence of visible moisture. The flightcrew must operate the ice protection at the first sign of ice accumulation for any other phases of flight until after exiting the icing conditions. When the ice protection system is activated, the flightcrew must also initiate any additional procedures for operation in conditions conducive to icing specified in the AFM or the manual required by § 121.133. This third option of the rule permits compliance without additional equipment. It supports part 121 operations of existing airplanes that are not equipped with ice detectors and new airplanes designed in accordance with § 25.1419(e)(3). However, if the AFM prohibits these procedures, then compliance must be demonstrated with either of the first two options.

To eliminate any guesswork for the flightcrew in identifying icing conditions, this rule defines icing conditions as the presence of visible moisture in temperatures of 5° C or less static air temperature or 10° C or less total air temperature, unless the AFM defines it differently.

The rule requires that ice protection procedures be established in the AFM or the manual required by § 121.133, and that they address—

- Initial activation of the ice protection system,
- Operation of the ice protection system after initial activation, and
- Deactivation of the ice protection system.

These procedures must address whether, after initial activation, the ice protection system must be operated continuously or cycled automatically or manually. The rule also specifies that if an operator elects to install an ice detection system, it must be approved through an amended or supplemental type certificate in accordance with part 21.

The FAA considers this rule to be a necessary increase in the standard of safety because there have been accidents and incidents in which the flightcrew did not start the airframe ice protection system soon enough. In some cases, crews were completely unaware of ice accumulation on the airframe. In other cases, they knew that ice was accumulating, but thought it not significant enough to require activating the ice protection system. This rule is meant to prevent that from happening again by giving flightcrews a clear means of knowing when to activate the airframe ice protection system. Following are the comments requesting changes to the rule.

A. Training

XCEL Jet Management commented that poor training and airmanship in relation to operating in icing conditions were responsible for both the Colgan Air [3] and ATR accidents and that better pilot training was the solution. An individual commenter suggested that improved and more complete pilot training were the real solutions for reducing icing accidents and suggested that pilots should obtain a license endorsement for flight in icing. Neither of these commenters felt that this additional operating rule was warranted.

While icing conditions were present at the time of the Colgan accident, the NTSB did not find that these conditions either caused or contributed to the accident. Rather, the NTSB found that Colgan Air's inadequate procedures for airspeed selection and management during approaches in icing condition contributed to the accident. The Colgan Air flightcrew was operating the ice protection system properly, and the airplane stall occurred very close to the clean wing stall speed. The Bombardier

[3] The Colgan Air accident occurred on February 12, 2009, when a Bombardier Model DHC–8–400 series airplane flying in icing conditions crashed outside of Buffalo, NY, killing 50 people.

Model DHC–8–400 series airplane that those pilots were flying has an advisory ice detection system that helped them know when to activate the ice protection system. Pilots may fail to activate an ice protection system for any number of reasons that could include inattention, a heavy workload that causes ice monitoring vigilance to be reduced, or failure to detect the ice because of environmental conditions. Additional training may not effectively address any of those issues. Thus, we proposed a rule that will require either actively alerting the pilot to icing conditions or causing the pilot to activate the ice protection system when a certain temperature exists in conditions of visible moisture. The exception to this would be during the cruise phase, when activation of the ice protection system at the first sign of icing will be required. This will ensure safe flight in icing conditions independent of icing flight training. Therefore, the proposed rule is not changed based on these comments.

Note that many new training materials developed by National Aeronautics and Space Administration (NASA) have been released in order to ensure that pilots have access to information that will give them the knowledge and skills to safely and strategically fly in icing conditions.

B. Require Automatic Detection and Activation

An individual commenter indicated that the ice protection system should be turned on automatically but in a ''sequence that would allow the crew to turn it off both before it activated and after it completed a cycle.''

We understand from this that the commenter thinks automatic activation should be mandatory, but with features that allow the pilot to intercede. While automatic activation has advantages, we have not determined it should be mandatory. The FAA does not dictate design of aircraft systems. Instead we provide performance-based rules. We believe it should be up to the operator/applicant to choose the best design for its aircraft. Under this approach, an automatic activation design would be acceptable. Examples of other safe and acceptable options include—

- Primary ice detection with manual ice protection system activation,
- Advisory ice detection and pilot monitoring with manual ice protection system activation, and
- Manual ice protection system activation based on temperature and visible moisture for non-cruise flight phases, as well as manual ice protection system activation during cruise at the first sign of icing.

We have not changed the rule based on this comment.

C. Does the rule include withdrawn airworthiness directives (ADs)?

BAE stated that it is not clear whether the rule applies to airplanes for which previously proposed ADs were withdrawn. It is the FAA's intent that this new rule will apply to all airplanes with a certified MTOW less than 60,000 pounds, whether or not original ADs requiring ice protection system activation at the first sign of icing have been withdrawn. As discussed in the NPRM, the purpose of the ADs was to require that the ice protection system be activated at the first sign of icing. This assumes the flightcrew detects the icing. The fact that we concluded there was no need to prevent delayed activation on certain airplanes, and therefore withdrew those ADs, is irrelevant to the purpose of this rule. The purpose of this rulemaking is to ensure detection and activation or, if operating without an ice detection system, timely activation in non-cruise flight. The FAA also finds that, for airplanes not equipped with ice detectors, it is acceptable to activate the ice protection system at the first sign of icing for any phase not identified in § 121.321(a)(3)(i) (for example, cruise).

D. Existing Procedures Are Safe Enough

BAE stated that original certification of their airplanes for flight in icing was based on the most adverse accretions determined from Appendix C to part 25, and that the procedures established during this certification, including activation after accumulating one-half inch of ice on the airframe, do not result in an unsafe condition.

We agree that following the established procedures does not result in an unsafe condition, as long as the flightcrew detects the icing and activates the ice protection system in accordance with those procedures. But several accidents and incidents have occurred because of failure to activate the ice protection system in a timely fashion. In some of those cases, critical ice formed before the crew activated the ice protection system. Other cases have occurred when, for any number of reasons, there was a delay in activating the ice protection system. This rule is intended to ensure timely detection of icing on the airframe and activation of the ice protection system. It helps ensure that ice protection system activation procedures are followed. Therefore, the proposed rule is not changed based on this comment.

E. Residual and Intercycle Ice

BAE suggested that the larger ice accretions assessed during certification might be safer than ice accumulated when operating the ice protection system in conditions conducive to icing, at the first sign of icing, and at regular intervals thereafter. BAE also expressed concern that aircraft handling qualities and performance have not been demonstrated with these new procedures. BAE does not recommend acceptance of this rule in its current form unless we can provide further justification for its adoption.

We believe there is ample justification for this rule. In the initial stages of the IPHWG's examination of the problems of flight in icing, there was great concern about activating boot ice protection systems at the first sign of icing because of a phenomenon known as ice bridging.[4] We infer this is the reason BAE suggested larger ice accretions may be safer than those that would be formed under this rule. No one has reported ice bridging nor has it been seen during testing on modern deicing boots. Classical ice bridging was associated with older designs that had slow inflation and deflation rates; on the order of ten seconds. Modern systems, with their small-diameter inflation chambers and high inflation rates, ensure that bridging is not a concern. We also infer from this comment a concern that residual and intercycle ice might be more critical than allowing a certain depth of ice to accrete before ice protection system activation. This concern is limited to booted ice protection systems.

Persistent ice accretions occur in icing conditions even when pneumatic deicing boots are operating. Whether one-quarter or one-half inch of ice is allowed to accumulate before activation, or the icing boots are activated at the first sign of ice accumulation, or they are activated at annunciation by an ice detector system and periodically afterwards, residual and intercycle ice will exist. The procedure will minimize residual and intercycle ice accretions because the ice will shed when the minimum thickness or mass required for shedding is reached. Adverse airplane flying qualities resulting from ice accretions typically are affected by the thickness, shape, texture, and location of the ice. The thickness of the residual and intercycle ice resulting from this

[4] Ice bridging is a phenomenon that may have occurred on some obsolete de-icing boot systems. In theory, ice could form around the outside of a fully inflated boot, forming a ''bridge,'' which then could not be removed by subsequent inflation cycles of the boot.

procedure is less than what is typically allowed to accumulate before deicing boot operation when the manufacturer has recommended delayed activation.

The FAA has written many ADs requiring airplane operators to include in their AFM procedures to activate deicing boots at the first sign of ice accumulation. The airplane models to which these ADs were directed have many different wing and stabilizer design characteristics and different deicing boot configurations. In addition, they represent a large proportion of the airplane fleet that is equipped with pneumatic deicing boots. We have not received any reports of these airplanes suffering adverse effects of ice from early activation of the deicing boots.

In addition, a number of airplane models are equipped with deicing boot systems with automatic operating modes. These systems automatically cycle at specific time intervals after being initially activated. Such automatic cycling has certainly resulted in operation of the boots with less than the recommended thickness of ice accretion originally included in the AFMs. We have received no reports indicating any adverse effects from use of the automatic mode. Boot ice protection systems operated early and often to remove ice, including intercycle and residual ice, have performed safely and effectively. We have not changed the rule based on this comment.

F. Additional Certification Will Be Necessary

BAE noted that crews operating under § 121.321(a)(3) (without ice detectors) need to activate the ice protection system in conditions conducive to icing irrespective of whether ice is actually accreting. For aircraft that do not have an automatic mode to cycle the ice protection system, the continuous manual cycling of the system would result in an increased workload for the flightcrew. Section 121.321(d)(iv) requires that, for airplanes without automatic cycling modes, procedures will be needed for a specific time interval for repeated cycling of the ice protection system. BAE said that validation of this procedure could require further icing certification testing, and that this issue had not been raised in the NPRM.

With respect to increasing workload, currently pilots have to monitor for ice. Sometimes in these conditions it may be difficult to determine whether activation of the ice protection system is needed. This final rule requires that, after initial activation of the ice protection system, the pilot periodically activate the ice protection system. To do this, the pilot only has to monitor time, not ice accretion thickness. Therefore, we do not believe there will be any significant increase in workload, and that the workload may decrease in some circumstances.

With respect to BAE's comment that validating ice protection system cycling procedures and the potential for icing certification testing was not raised in the NPRM, every airplane that uses a manual deicing system has established procedures for its operation until the airplane has exited icing conditions. Models with periodic cycling procedures should require no incremental certification testing because they already have an approved periodic cycling procedure. For airplanes in which flightcrews have in the past activated boots based on ice accretion thickness, calculating a conservative cycling interval based on Appendix C to part 25 is a relatively straightforward process. It should not require flight testing. In addition, AC 121.321–X provides guidance recommending that intervals should not exceed three minutes. Thus, we do not believe that validation of this procedure should require additional certification testing.

G. Include All Airplanes

The NTSB expressed support for the proposed rule. However, the NTSB stated that the rule should apply to all deicing-boot-equipped airplanes currently in service. This would include airplanes weighing more than 60,000 pounds. The NTSB also suggested that the Bombardier Model DHC–8–400 series airplane (which has a MTOW of slightly more than 60,000 pounds and was involved in the Colgan Air accident) might have been better protected if this rule had been applied to it.

The FAA appreciates the NTSB's support for the proposed rule. We do not believe, however, that it is necessary to expand the rule to cover airplanes with higher weights. The IPHWG data and analysis showed that only airplanes falling below the weight level in the rule have had problems associated with delayed activation of the ice protection system.

As for the Bombardier Model DHC–8–400 series airplane, while icing conditions were present at the time of the Colgan accident, the NTSB did not find that these conditions either caused or contributed to the accident. Rather, the NTSB found that Colgan Air's inadequate procedures for airspeed selection and management during approaches in icing condition contributed to the accident. In fact, the accident airplane had an ice detector and would have been in compliance with this rule through the majority of its flight profile. Therefore, increasing the maximum applicable weight to capture the Bombardier Model DHC–8–400 series airplane would have very little, if any, safety benefit. Increasing the rule's weight applicability to encompass other airplanes of this size and larger is not justified by available data. We have not changed the rule as a result of this comment.

Another reason the NTSB suggested that the rule should encompass heavier airplanes is that it believes such procedures would also help protect these airplanes in conditions that fall outside of Appendix C to part 25. This rule does not address conditions outside of Appendix C. In supercooled large droplet (SLD) conditions (which are not included in Appendix C), ice may form aft of the ice protection system equipment. To suggest that this rule may help address the SLD issue is not correct. The most significant item to consider, however, is that data show that these heavier airplanes have not had any safety problems associated with delayed activation of the ice protection system. Therefore, the rule is not changed as a result of this comment.

H. Include Parts 91 and 135 Operations

The NTSB supported applying the proposed rule to airplanes operated under part 121, but stated that a similar rule should also be levied on all airplanes operated under 14 CFR parts 91 and 135. The NTSB stated that on parts 91 and 135 airplanes with ADs directing flightcrews to activate the ice protection system at the first sign of icing, it can be difficult for crews to identify icing on the airplanes. The NTSB noted that a Circuit City Citation Model 560 series airplane involved in an icing accident was operated under part 91 and had an AD for activation of deicing boots at the first sign of icing, which had been withdrawn. This left the flightcrew to observe a prescribed amount of ice before activation. The NTSB believed that similar accidents may occur if parts 91 and 135 airplanes are not included in this rule.

We considered including parts 91 and 135 operations during deliberations of the IPHWG and during drafting of the NPRM. We determined, however, that the increased flexibility afforded by unscheduled operations (the types of operations governed by parts 91 and 135), coupled with appropriate direction on when pilots should activate the ice protection systems (usually at the first sign of icing or in conditions of visible moisture and specific temperatures), provides an adequate

level of safety for ice protection system activation. Pilots flying scheduled operations, on the other hand, may not have the flexibility to avoid flying into weather that would otherwise be avoided. This rule ensures that part 121 operators of applicable airplanes will be directed to operate the ice protection systems appropriately.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

This final rule will impose the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted these proposed information collection amendments to OMB for its review.

This final rule requires—

a. A primary ice detection system and appropriate activation equipment and procedures to ensure timely activation of the ice protection system,

b. An advisory ice detection system plus substantiated visual cues and procedures to ensure timely activation and, if necessary, repeated operation of the ice protection system, or

c. If the airplane is not equipped to comply with either a or b above, that flightcrews activate and continuously or cyclically operate the ice protection system when in icing conditions during—

- The takeoff climb after second segment,
- En route climb,
- Holding,
- Maneuvering for approach and landing, and
- Any other operation at approach or holding airspeeds.

This rule may require operators to revise their airplane flight manuals or the manual required by § 121.133. Adding these new procedures may require the addition of a page or two to those manuals. This is classified as a record keeping item and no data will be collected.

We have received no comments about the recordkeeping burden of this rule. The OMB control number for this information collection will be published in the **Federal Register** after the Office of Management and Budget approves it.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

IV. Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Agreements Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule. Readers seeking greater detail should read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this final rule: (1) Has benefits that justify its costs; (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866; (3) has been designated as a ''significant regulatory action'' by the Office of Management and Budget, and is therefore ''significant'' under DOT's Regulatory Policies and Procedures; (4) will not have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on State, local, or Tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

Total Benefits and Costs of This Rule

The estimated cost of this final rule is about $12.7 million in nominal dollars ($6.7 million in seven percent present value terms). The estimated potential benefits of averting one accident and five fatalities are about $22.1 million in nominal dollars ($11.4 million in seven percent present value terms). Table 1 shows these results.

Table 1
Part 121 Activation of Ice Protection
Adjusted Benefits and Costs ($M)

	Total	Present Value	
		7%	3%
Benefits	$22.1	$11.4	$16.3
Costs	$12.7	$6.7	$9.4

Who is potentially affected by this rule?

Operators of transport category airplanes with a certified MTOW under 60,000 pounds operating under 14 CFR part 121.

Assumptions

(1) The base year is 2010.

(2) This final rule will be effective in 2011.

(3) The compliance date of the rule is 24 months from the effective date of the final rule.

(4) The analysis period extends for 20 years from 2013 through 2032. We believe this analysis period captures nearly all of the expected benefits and costs.

(5) All monetary values are expressed in constant 2010 dollars. The present value of the potential 10-year benefit stream was calculated by discounting the monetary values using three and seven percent present value rates over the 2013 to 2032 analysis period.

(6) The value of an averted fatality is $6.0 million.[5]

(7) The FAA used a $104.99 hourly rate for a mechanic/technician working for an airplane manufacturer or modifier and an $86.48 hourly rate for an engineer working for an airplane manufacturer or modifier. These hourly rates include overhead costs.[6]

Benefits of This Rule

The benefits of this final rule consist of the value of averted fatalities, airplane loss, and investigation cost from avoiding accidents involving transport category airplanes with a certified MTOW under 60,000 pounds operating under 14 CFR part 121. We estimate that one accident and five fatalities could potentially be avoided, over the analysis period, by adopting the final rule. The value of an averted fatality is assumed to be $6.0 million. A series of Airworthiness Directives (ADs) were issued for airplanes with pneumatic de-icing boots to activate the systems at the first sign of ice accretion. Due to the similarity of requirements between the ADs and this proposal, we accounted for the effects of the ADs by reducing the estimated benefits. Over the analysis period, the potential benefits of the final rule will be $22.1 million in nominal dollars ($11.4 million in seven percent present value terms).

Estimated Costs of This Rule

We estimate the total cost of the final rule, over the analysis period, to be about $12.7 million in nominal dollars using airplane compliance costs developed by the IPHWG. The seven percent present value cost of this final rule over the analysis period is about $6.7 million. We estimate the initial costs for a new certification program for operating the deicing boots based on visible moisture and temperature are about $400,000. We estimate the operating and training costs are about $12.3 million.

Alternatives Considered

Alternative One

Maintain the status quo: Simply maintaining the status quo for flight in icing procedures would not be a practice that is responsive to NTSB recommendations and the FAA Inflight Aircraft Icing Plan. The FAA has rejected this alternative because the final rule will enhance passenger safety and prevent ice-related accidents for airplanes with a certified MTOW less than 60,000 pounds. As it stands, the final rule is the reasoned result of the FAA Administrator carrying out the FAA Inflight Aircraft Icing Plan.

Alternative Two

Issue more ADs requiring a means to know when to activate the icing protection system: The FAA has already issued ADs to address activation of icing protection systems. An evaluation of accidents and incidents led to the conclusion that the ADs do not provide adequate assurance that the flightcrew will be made aware of when to activate the icing protection system. Because this problem is not unique to particular airplane designs, but exists for all airplanes susceptible to the icing hazards described previously, it is appropriate to address this problem through an operational rule, rather than by ADs.

Alternative Three

Issue new standards: The third alternative is this final rule. The FAA's judgment is that this is the most viable option because the final rule will increase the safety of the flying public by reducing icing-related accidents in the future in the least costly way.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

The FAA has determined that this final rule will not have a significant economic impact on a substantial number of small entities. The FAA made the same determination in the NPRM. There were no comments regarding small entities for the NPRM.

The following briefly describes the history leading up to this rulemaking and the methodology used to determine that this final rule will not have a significant economic impact on a substantial number of small entities.

On October 31, 1994, at 1559 Central Standard Time, an Avions de Transport Regional model ATR 72, operated by Simmons Airlines, Incorporated, and doing business as American Eagle flight 4184, crashed during a rapid descent after an uncommanded roll excursion. The FAA, Aerospatiale, the French Direction Générale de l'Aviation Civile, Bureau Enquete Accident, NASA, NTSB, and others conducted an extensive investigation of this accident.

This accident and the investigation prompted the FAA to initiate a review of aircraft inflight icing safety and determine changes that could be made to increase the level of safety. The final rule is responsive to NTSB recommendation A–07–14. The final rule is also one of the items listed in the FAA Inflight Aircraft Icing Plan, dated April 1997. The Inflight Aircraft Icing Plan details the FAA's plans for improving the safety of airplanes when they are operated in icing conditions.

This final rule specifically applies to part 121 operators of airplanes that have a certified MTOW of less than 60,000 pounds. We have determined which small entities could be affected by associating airplanes with a certified MTOW of less than 60,000 pounds with part 121 operators. For this section of the analysis, only those operators meeting the above criteria that have

[5] ''Treatment of the Economic Value of a Statistical Life in Departmental Analysis,'' March 18, 2009, U.S. Department of Transportation Memorandum.

[6] Department of Labor, Bureau of Labor Statistics. Occupational Employment and Wages.

1,500 or fewer employees are considered.

To estimate the number of affected airplanes, the FAA analyzed the current active fleet of airplanes, a forecast of airplanes affected by the final rule entering the fleet, and a forecast of the retired affected airplanes exiting the fleet during the analysis period.

A list of all U.S. operated civilian airplanes operating under part 121 was generated by the FAA Flight Standards Service. Each airplane group was matched with its current (as of May 2010) MTOW and average age through the use of the OAG FleetPC™ database. All airplanes with a MTOW greater than 60,000 pounds were eliminated.

Using industry sources, the FAA determined which airplanes currently had primary or advisory icing detection systems. Airplanes equipped with either a primary or advisory ice detection system are in compliance, and this final rule will impose no costs to operators of those airplanes. All turbojets affected by this proposal are in compliance because those airplanes are equipped with either a certificated primary or advisory ice detection systems.

The FAA used the OAG FleetPC™ database and determined that turboprops are retired from U.S. certificated service at an average age (mean) of 25.9 years. Thus, we assume that each of the small operators' airplanes is retired when their airplanes reach the average retirement age of 25.9 years.

Using information provided by the World Aviation Directory, SEC filings, and the Internet, scheduled and non-scheduled commercial operators that are subsidiary businesses of larger businesses were eliminated from the database. An example of a subsidiary business is Continental Express, Inc., which is a subsidiary of Continental Airlines. Using information provided by the U.S. Department of Transportation Form 41 filings, the World Aviation Directory Winter 2009, and the Internet, all businesses with more than 1,500 employees were eliminated. The FAA obtained company revenue from the remaining businesses. Following this approach, five small entities operate airplanes that will be affected by this proposal.

The FAA estimated the cost of compliance per airplane and multiplied this cost by the total fleet of affected airplanes per operator, over the analysis period, to obtain the total compliance cost for each small entity. The non-recurring costs, for updating the airplane flight manual for each major airplane group, were distributed equally among the airplanes in each major airplane group. These non-recurring costs occurred in year four of the analysis period. Note that the more airplanes in a major airplane group, the less expensive, per airplane, the non-recurring costs are to the operators of those airplanes. In addition to the airplane flight manual cost, the additional incremental recurring costs include boot maintenance, replacement and installation labor. These recurring costs started in 2013 and continued either until the airplane retired or through the end of the analysis period.

The degree to which small air operator entities can ''afford'' the cost of compliance is determined by the availability of financial resources. The initial implementation costs of the final rule may be financed, paid for using existing company assets, or borrowed. A proxy for the firm's ability to afford the cost of compliance is the ratio of the total annualized cost of the final rule as a percentage of annual revenue. No small business operator potentially affected by this final rule incurred costs greater than one percent of its annual revenue. On that basis, we believe firms can afford the compliance costs of this final rule. We used a similar metric for the initial regulatory flexibility analysis and received no comments. Table 2 shows the economic impact on the small entity air operators affected by this final rule.

TABLE 2

YEAR	SMALL OPERATOR A	SMALL OPERATOR B	SMALL OPERATOR C	SMALL OPERATOR D	SMALL OPERATOR E
2010	$0	$0	$0	$0	$0
2011	$0	$0	$0	$0	$0
2012	$0	$0	$0	$0	$0
2013	$61,730	$303,073	$194,993	$189,502	$32,873
2014	$55,690	$297,220	$189,140	$189,344	$27,020
2015	$55,690	$297,220	$189,140	$189,344	$0
2016	$55,690	$297,220	$189,140	$189,344	$0
2017	$55,690	$297,220	$189,140	$189,344	$0
2018	$55,690	$297,220	$189,140	$0	$0
2019	$0	$297,220	$189,140	$0	$0
2020	$0	$297,220	$189,140	$0	$0
2021	$0	$297,220	$189,140	$0	$0
2022	$0	$0	$0	$0	$0
2023	$0	$0	$0	$0	$0
2024	$0	$0	$0	$0	$0
2025	$0	$0	$0	$0	$0
2026	$0	$0	$0	$0	$0
2027	$0	$0	$0	$0	$0
2028	$0	$0	$0	$0	$0
2029	$0	$0	$0	$0	$0
2030	$0	$0	$0	$0	$0
2031	$0	$0	$0	$0	$0
2032	$0	$0	$0	$0	$0
Total	$340,178	$2,680,831	$1,708,112	$946,880	$59,893
Annualized Costs	$32,109	$253,044	$161,229	$89,376	$5,653
Annual Revenue	$50,000,000	$76,348,000	$100,000,000	$227,570,728	$1,000,000
Percentage	**0.06%**	**0.33%**	**0.16%**	**0.04%**	**0.57%**

Note: Some EXCEL Round-off error may occur

Therefore as the FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the

establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that the proposed standards are necessary for aviation safety and will not create unnecessary obstacles to the foreign commerce of the United States.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $143.1 million in lieu of $100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We have determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have federalism implications.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the FAA, when modifying its regulations in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. In the NPRM, we requested comments on whether the proposed rule should apply differently to intrastate operations in Alaska. We did not receive any comments, and we have determined, based on the administrative record of this rulemaking, that there is no need to make any regulatory distinctions applicable to intrastate aviation in Alaska.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because, while it is considered a ''significant regulatory action'' under DOT's Regulatory Policies and Procedures, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

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

2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/* or

3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html*.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the notice, amendment, or docket number of this rulemaking.

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) or you may visit *http://DocketsInfo.dot.gov*.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/*.

Appendix—Definition of Terms Used in This Rule

For purposes of this final rule, the following definitions are applicable. Note that some of these definitions are common to those used in the preamble to the final rule for § 25.1419 Ice protection, and that rule's accompanying guidance material.

a. Advisory ice detection system—A system that advises the flightcrew of the presence of ice accretion or icing conditions. Both primary ice detection systems and advisory ice detection systems can either direct the pilot to manually activate the ice protection system or provide a signal that automatically activates the ice protection system. However, because it has lower reliability than a primary system, an advisory ice detection system can only be used in conjunction with other means (most commonly, visual observation by the flightcrew) to determine the need for, or timing of, activating the anti-icing or deicing system. With an advisory ice detection system, the flightcrew is responsible for monitoring icing conditions or ice accretion as defined in the airplane flight manual (AFM), typically using total air temperature and visible moisture criteria or visible ice accretion. With an advisory ice detection system, the flightcrew is responsible for activating the anti-icing or deicing system(s).

b. Airframe icing—Ice accretion on the airplane, except for on the propulsion system.

c. Anti-icing—Prevention of ice accretions on a protected surface, either by:

- Evaporating the impinging water, or
- Allowing the impinging water to run back and off the protected surface or freeze on non-critical areas.

d. Automatic cycling mode—A mode of operation of the airframe de-icing system that provides repetitive cycles of the system without the need for the pilot to select each cycle. This is generally done with a timer, and there may be more than one timing mode.

e. Conditions conducive to airframe icing—Visible moisture at or below a static air temperature of 5°C or total air temperature of 10°C, unless otherwise substantiated.

f. Deicing—The removal or the process of removal of an ice accretion after it has formed on a surface.

g. Ice protection system (IPS)—A system that protects certain critical aircraft parts from ice accretion. To be an approved system, it must satisfy the requirements of § 23.1419 or § 25.1419 and other applicable requirements.

h. Primary ice detection system—A detection system used to determine when the IPS must be activated. This system announces the presence of ice accretion or icing conditions, and it may also provide information to other aircraft systems. A primary automatic system automatically activates the anti-icing or deicing IPS. A primary manual system requires the flightcrew to activate the anti-icing or deicing IPS upon indication from the primary ice detection system.

i. Reference surface—The observed surface used as a reference for the presence of ice on the monitored surface. The reference surface may be observed directly or indirectly. Ice must occur on the reference surface before—or at the same time as—it appears on the monitored surface. Examples of reference surfaces include windshield wiper blades or bolts, windshield posts, ice evidence probes, the propeller spinner, and the surface of ice detectors. The reference surface may also be the monitored surface.

j. Static air temperature—The air temperature that would be measured by a temperature sensor that is not in motion in relation to that air. This temperature is also referred to in other documents as ''outside air temperature,'' ''true outside temperature,'' or ''ambient temperature.''

k. Total air temperature—The static air temperature plus the rise in temperature due to the air being brought to rest relative to the airplane.

l. Visual cues—Ice accretion on a reference surface that the flightcrew observes. The visual cue is used to detect the first sign of airframe ice accretion.

List of Subjects in 14 CFR Part 121

Aircraft, Air carriers, Aviation safety, Safety, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 121 of title 14, Code of Federal Regulations as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

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

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

■ 2. Revise § 121.321 to read as follows:

§ 121.321 Operations in Icing.

After October 21, 2013 no person may operate an airplane with a certificated maximum takeoff weight less than 60,000 pounds in conditions conducive to airframe icing unless it complies with this section. As used in this section, the phrase ''conditions conducive to airframe icing'' means visible moisture at or below a static air temperature of 5°C or a total air temperature of 10°C, unless the approved Airplane Flight Manual provides another definition.

(a) When operating in conditions conducive to airframe icing, compliance must be shown with paragraph (a)(1), or (2), or (3) of this section.

(1) The airplane must be equipped with a certificated primary airframe ice detection system.

(i) The airframe ice protection system must be activated automatically, or manually by the flightcrew, when the primary ice detection system indicates activation is necessary.

(ii) When the airframe ice protection system is activated, any other procedures in the Airplane Flight Manual for operating in icing conditions must be initiated.

(2) Visual cues of the first sign of ice formation anywhere on the airplane and a certificated advisory airframe ice detection system must be provided.

(i) The airframe ice protection system must be activated when any of the visual cues are observed or when the advisory airframe ice detection system indicates activation is necessary; whichever occurs first.

(ii) When the airframe ice protection system is activated, any other procedures in the Airplane Flight Manual for operating in icing conditions must be initiated.

(3) If the airplane is not equipped to comply with the provisions of paragraph (a)(1) or (2) of this section, then the following apply:

(i) When operating in conditions conducive to airframe icing, the airframe ice protection system must be activated prior to, and operated during, the following phases of flight:

(A) Takeoff climb after second segment,

(B) En route climb,

(C) Go-around climb,

(D) Holding,

(E) Maneuvering for approach and landing, and

(F) Any other operation at approach or holding airspeeds.

(ii) During any other phase of flight, the airframe ice protection system must be activated and operated at the first sign of ice formation anywhere on the airplane, unless the Airplane Flight Manual specifies that the airframe ice protection system should not be used or provides other operational instructions.

(iii) Any additional procedures for operation in conditions conducive to icing specified in the Airplane Flight Manual or in the manual required by § 121.133 must be initiated.

(b) If the procedures specified in paragraph (a)(3)(i) of this section are specifically prohibited in the Airplane Flight Manual, compliance must be shown with the requirements of paragraph (a)(1) or (2) of this section.

(c) Procedures necessary for safe operation of the airframe ice protection system must be established and documented in:

(1) The Airplane Flight Manual for airplanes that comply with § 121.321(a)(1) or (2), or

(2) The Airplane Flight Manual or in the manual required by § 121.133 for airplanes that comply with § 121.321(a)(3).

(d) Procedures for operation of the airframe ice protection system must include initial activation, operation after initial activation, and deactivation. Procedures for operation after initial activation of the ice protection system must address—

(1) Continuous operation,

(2) Automatic cycling,

(3) Manual cycling if the airplane is equipped with an ice detection system that alerts the flightcrew each time the ice protection system must be cycled, or

(4) Manual cycling based on a time interval if the airplane type is not equipped with features necessary to implement (d)(i)–(iii) of this section.

(e) System installations used to comply with § 121.321(a)(1) or (2) must be approved through an amended or supplemental type certificate in accordance with part 21 of this chapter.

Issued in Washington, DC, on August 11, 2011.

J. Randolph Babbitt,

Administrator.

[FR Doc. 2011–21247 Filed 8–19–11; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Parts 3 and 4

Rules of Practice

AGENCY: Federal Trade Commission (''Commission'' or ''FTC'').

ACTION: Final rule amendments.

SUMMARY: The FTC is amending its Rules of Practice for its adjudicative process, including those regarding the initiation of discovery, limitations on discovery, the Standard Protective Order, the admission of certain hearsay evidence, the video recording of proceedings, the designation of confidentiality on documents, the timing for oral argument on appeal, and

a reference to the Equal Access to Justice Act.

DATES: These amendments are effective on August 22, 2011, and will govern all Commission adjudicatory proceedings that are commenced after that date. They will also govern all Commission adjudicatory proceedings that are pending on August 22, 2011, except to the extent that, in the opinion of the Commission, their application to a particular proceeding would not be feasible or would work an injustice.

FOR FURTHER INFORMATION CONTACT: Robert B. Mahini, Attorney, (202) 326–2642, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington DC 20580.

SUPPLEMENTARY INFORMATION: On May 1, 2009, the Commission implemented changes to Parts 3 and 4 of the agency's Rules of Practice.[1] After further review of these changes and other aspects of Parts 3 and 4, the Commission is making new changes to the Rules of Practice, which are discussed below. The immediate implementation of this rule without prior notice and the opportunity for public comment is appropriate because this rule is one of agency procedure and practice and therefore is exempt from notice and comment rulemaking requirements and from the 30-day publication requirement under the Administrative Procedure Act, 5 U.S.C. 553(b)(A)–(B) & (d).[2]

Section 3.31: General Discovery Provisions.

The Commission is amending Section 3.31(a) to clarify that discovery demands cannot commence before the procedure set forth in Section 3.21(c). Under Section 3.21(c), the Administrative Law Judge,

> [n]ot later than 2 days after the scheduling conference, [must] enter an order that sets forth the results of the conference and establishes a schedule of proceedings that will permit the evidentiary hearing to commence on the date set by the Commission, including a plan of discovery that addresses the deposition of fact witnesses, timing of expert discovery, and the production of documents and electronically stored information, dates for the submission and hearing of motions, the specific method by which exhibits shall be numbered or otherwise identified and marked for the record, and the time and place of a final prehearing conference.

To make clear that discovery shall not commence before the issuance of the prehearing scheduling order's plan of discovery absent an express agreement of the parties, the Commission is adding language to Section 3.31(a) stating that, not including the mandatory initial disclosures required under paragraph (b) of the same Section, discovery demands shall not commence before the issuance of the prehearing scheduling order, unless the parties expressly agree otherwise.

In addition, the Commission is amending Section 3.31(c) to make clear that the section's rules regarding the scope of discovery apply to all discovery under Part 3 of the Rules of Practice. The Commission also is amending language in this paragraph to make clear that the section's overall limitations on discovery in paragraph (c)(2) and the restriction on discovery of electronically stored information in paragraph (c)(3) apply to discovery aimed at third parties, in addition to the parties to the proceeding.

Section 3.31 App. A: Standard Protective Order.

The Commission is amending the Standard Protective Order at Section 3.31 App. A to make the following changes:

(1) Add the missing word ''information'' to the first sentence of the first paragraph;

(2) more clearly define in the second paragraph the scope of the confidentiality afforded to materials submitted by respondents or third parties during an investigation or administrative proceeding by referring, in addition to confidentiality protections provided by the Federal Trade Commission Act, to protections provided by ''any other federal statute or regulation'' and ''any federal court or Commission precedent interpreting such statute or regulation'' rather than referring to ''any regulation, interpretation, or precedent concerning documents in the possession of the Commission'';

(3) more clearly state in the second paragraph that the Order's confidentiality protection extends to any information that ''discloses the substance of the contents of any confidential materials derived from a document subject to this Order'' given that ''confidential materials'' is defined in the Order's first paragraph, replacing the current description of protection for ''information taken from any portion of such document[s]'';

(4) add to the fifth paragraph a missing reference to ''Paragraph 1''; and

(5) clarify and make consistent language in the sixth paragraph regarding documents with ''masked or otherwise redacted copies of documents [that] may be produced'' by replacing ''deleted'' where used with ''masked or redacted.''

Section 3.31A: Expert Discovery

The Commission is adding a new paragraph (e) to Section 3.31A regarding materials that the parties cannot discover. This new paragraph includes language from what was the last sentence of paragraph (d), which will now state that ''[a] party may not discover facts known or opinions held by an expert who has been retained or specifically employed by another party in anticipation of litigation or preparation for hearing and who is not listed as a witness for the evidentiary hearing,'' and new language that is nearly identical to language recently added to Federal Rule of Civil Procedure 26(b)(4)(B) and (C), which specifically prohibits discovery of expert report drafts and, with some exceptions, communications between a party's attorney and its experts. Adding to the limitation of what was the last sentence of paragraph (d), the new language taken largely from the Federal Rules specifically provides that parties may not discover drafts of any report required by Section 3.31A, regardless of the form in which the draft is recorded. In addition, the new language prohibits parties from discovering any communications, regardless of form, between another party's attorney and any of its testifying expert witnesses, unless the communication: (1) Relates to the expert's compensation for the study or testimony; (2) identifies facts or data provided by the party's attorney and considered by the expert in forming the opinions to be expressed; or (3) identifies assumptions provided by the party's attorney and relied on by the expert in forming the opinions to be expressed.

In addition, the Commission is adding a new paragraph (f) to Section 3.31A that allows the Administrative Law Judge, upon a finding of good cause, to alter the pre-hearing schedule for expert discovery set forth in Section 3.31A, but only if such an alteration would not affect the date of the evidentiary hearing noticed in the complaint. This change

[1] 74 FR 20205 (2009).

[2] The final rule amendments are not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601(2), 604(a). The rule revisions to part 3 are also not subject to the requirements of the Paperwork Reduction Act, which contains an exemption for information collected during the conduct of administrative proceedings or investigations. 44 U.S.C. 3518(c)(1)(B)(ii); 5 CFR 1320.4. To the extent that Rule 4.2 applies to filings that do not fall within this exception, the Office of Management and Budget has approved the collection of information, along with other applications and notices to the Commission, and has assigned control number 3084–0047. The revisions to Rule 4.2 do not substantially or materially modify this collection of information.

allows the Administrative Law Judge to extend the expert discovery time line if needed, including where the parties mutually seek such an alteration, but would not change the overall time line for the administrative adjudication itself.

Section 3.43: Evidence

The Commission is changing Section 3.43(b) to specifically include expert reports as admissible hearsay evidence. In addition, the Commission is adding a new requirement to this paragraph regarding the admission of ''prior testimony (including expert reports) from other proceedings where either the Commission or respondent did not participate,'' though this requirement would not apply to ''other proceedings where the Commission and at least one respondent did participate.'' Such prior testimony could often be voluminous, and in recent enforcement actions such evidence was admitted that resulted in the inclusion of excessive, unhelpful materials in the record that burdened the non-admitting party. As a result, for such material, unless the parties consent to its admission, the Administrative Law Judge must first make a finding upon the motion of the party seeking the admission of such evidence that the prior testimony would not be duplicative, would not present unnecessary hardship to a party or delay to the proceedings, and would aid in the determination of the matter. However, this requirement for ''prior testimony * * * from other proceedings'' does not include the Commission staff's investigational hearings involving respondent, which shall be admitted without being subject to this new limitation.[3]

Section 3.44: Record

The Commission is amending the general requirement that ''[t]he live oral testimony of each witness * * * be video recorded digitally.'' The Commission had added this requirement in its 2009 amendments to the Part 3 Rules ''to enable the Commission, which is tasked with reviewing the record *de novo,* to independently assess witness demeanor when necessary.''[4] However, recent experience and cost estimates have revealed that this video requirement is expensive, and the Commission has determined that the benefits of digital video recordings to its assessment of witness testimony do not outweigh these considerable costs.

Thus, the amendment allows for video recording of all witness testimony only by direction of the Administrative Law Judge upon a motion by a party. If the Administrative Law Judge issues an order finding good cause to permit video recording of all witness testimony, the moving party shall bear the costs for such recording. The rule contemplates that the reporter officially designated by the Commission to transcribe the proceeding shall also provide the video recording services, in order to minimize delay or disruption and ensure reliability. Where the moving party is not complaint counsel, the moving party shall independently contract with and reimburse the reporter directly for such additional recording services. The moving party may retain some other person or entity to make the recordings, such as when the designated reporter is unwilling or unable to perform these additional services, only where the Administrative Law Judge issues an order setting forth good cause for such substitution and prescribing standards and procedures to ensure that the video recording will serve as a complete and accurate record of the oral testimony being recorded. The Commission's contract with its reporter sets forth rates for obtaining copies of video recordings from the reporter. When the moving party is other than complaint counsel, that party must ensure that its contract with the reporter for video recording services requires that copies of such recordings be made available at no more than the maximum rates under the FTC's own contract, unless the Administrative Law Judge has authorized a person or entity other than the Commission's reporter to make the video recordings. In the case of such an authorization by the Administrative Law Judge, the maximum rates for copies shall be either the maximum rates that the Commission's reporter is authorized to charge for such copies under its Commission contract or the actual cost of duplication, whichever is higher.

Section 3.45: In Camera Orders and Section 4.2: Requirements as to Form, and Filing of Documents Other Than Correspondence

The Commission is amending the language in Sections 3.45 and 4.2 that requires parties to identify the confidential or public nature of a document filed with the Commission on the document's first page. The new language requires parties to provide this designation on every page of the document to avoid the inadvertent release of individual pages of confidential documents.

Section 3.52: Appeal From Initial Decision

The Commission is amending language in Sections 3.52(a)(1), (a)(2) and (b)(2) that provides a deadline for holding oral argument. In these paragraphs, the rule requires the Commission to ''schedule oral argument'' within a prescribed amount of days after the deadline for reply briefs or objections to the initial decision, depending on which paragraph applies. To clarify that these sentences require oral arguments to be held, and not merely scheduled for some later date, within the prescribed amount of days, the Commission is replacing ''schedule'' with ''hold'' in these sentences.

In addition, the Commission is amending the beginning of these sentences, which had set aside the deadlines for oral argument where ''the Commission determines there shall be no oral argument.'' Because the paragraph permits the Commission to ''order'' that no oral argument be held, the sentence now uses ''orders'' in place of ''determines'' to make these sentences more consistent with the previous language.

Section 3.83: Procedures for Considering Applications

The Commission is correcting the citation to the Equal Access to Justice Act in Section 3.83(i). That Section provided that ''[j]udicial review of final Commission decisions on awards may be sought as provided in 5 U.S.C. 503(c)(2).'' The paragraph now correctly cites to 5 U.S.C. 504(c)(2).

List of Subjects in 16 CFR Parts 3 and 4

Administrative practice and procedure.

For the reasons set forth in the preamble, the Federal Trade Commission amends Title 16, Chapter 1, Subchapter A of the Code of Federal Regulations, parts 3 and 4, as follows:

PART 3—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

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

Authority: 15 U.S.C. 46, unless otherwise noted.

■ 2. Amend § 3.31, by adding a new sentence at the end of paragraph (a) and revising the introductory text of paragraph (c) and paragraphs (c)(2)(i), (c)(2)(iii), and the first two sentences of paragraph (c)(3) to read as follows:

§ 3.31 General discovery provisions.

(a) * * * Unless all parties expressly agree otherwise, no discovery shall take

[3] *See* 16 CFR 2.8.

[4] 74 FR 1817.

place before the issuance of a prehearing scheduling order under § 3.21(c), except for the mandatory initial disclosures required by paragraph (b) of this section.

* * * * *

(c) *Scope of discovery.* Unless otherwise limited by order of the Administrative Law Judge or the Commission in accordance with these rules, the scope of discovery under all the rules in this part is as follows:

* * * * *

(2) * * *

(i) The discovery sought from a party or third party is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

* * * * *

(iii) The burden and expense of the proposed discovery on a party or third party outweigh its likely benefit.

(3) *Electronically stored information.* A party or third party need not provide discovery of electronically stored information from sources that the party or third party identifies as not reasonably accessible because of undue burden or cost. On a motion to compel discovery, the party or third party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. * * *

* * * * *

■ 3. In Appendix A to § 3.31 revise the first sentence of paragraph 1, the first sentence of paragraph 2, paragraph 5, and the last sentence of paragraph 6 to read as follows:

Appendix A to § 3.31: Standard Protective Order

* * * * *

1. As used in this Order, ''confidential material'' shall refer to any document or portion thereof that contains privileged information, competitively sensitive information, or sensitive personal information. * * *

2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any other federal statute or regulation, or under any federal court or Commission precedent interpreting such statute or regulation, as well as any information that discloses the substance of the contents of any confidential materials derived from a document subject to this Order, shall be treated as confidential material for purposes of this Order. * * *

* * * * *

5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. * * * Masked or otherwise redacted copies of documents may be produced where the portions masked or redacted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been masked or redacted and the reasons therefor.

* * * * *

■ 4. Amend § 3.31A, by revising paragraph (d) and adding paragraphs (e) and (f) to read as follows:

§ 3.31A Expert discovery.

* * * * *

(d) A party may depose any person who has been identified as an expert whose opinions may be presented at trial. Unless otherwise ordered by the Administrative Law Judge, a deposition of any expert witness shall be conducted after the disclosure of a report prepared by the witness in accordance with paragraph (a) of this section. Depositions of expert witnesses shall be completed not later than 65 days after the close of fact discovery. Upon motion, the Administrative Law Judge may order further discovery by other means, subject to such restrictions as to scope as the Administrative Law Judge may deem appropriate.

(e) A party may not discover facts known or opinions held by an expert who has been retained or specifically employed by another party in anticipation of litigation or preparation for hearing and who is not listed as a witness for the evidentiary hearing. A party may not discover drafts of any report required by this section, regardless of the form in which the draft is recorded, or any communications between another party's attorney and any of that other party's testifying experts, regardless of the form of the communications, except to the extent that the communications:

(1) Relate to compensation for the expert's study or testimony;

(2) Identify facts or data that the other party's attorney provided and that the expert considered in forming the opinions to be expressed; or

(3) Identify assumptions that the other party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(f) The Administrative Law Judge may, upon a finding of good cause, alter the pre-hearing schedule set forth in this section; provided, however, that no such alteration shall affect the date of the evidentiary hearing noticed in the complaint.

■ 5. Amend § 3.43 by removing the sixth sentence of paragraph (b) and adding, in its place, two sentences, to read as follows:

§ 3.43 Evidence.

* * * * *

(b) * * * If otherwise meeting the standards for admissibility described in this paragraph, depositions, investigational hearings, prior testimony in Commission or other proceedings, expert reports, and any other form of hearsay, shall be admissible and shall not be excluded solely on the ground that they are or contain hearsay. However, absent the consent of the parties, before admitting prior testimony (including expert reports) from other proceedings where either the Commission or respondent did not participate, except for other proceedings where the Commission and at least one respondent did participate, the Administrative Law Judge must make a finding upon the motion of a party seeking the admission of such evidence that the prior testimony would not be duplicative, would not present unnecessary hardship to a party or delay to the proceedings, and would aid in the determination of the matter. * * *

* * * * *

■ 6. Amend § 3.44, by removing the last two sentences of paragraph (a) and adding, in their place, five sentences, to read as follows:

§ 3.44 Record.

(a) * * * Upon a motion by any party, for good cause shown the Administrative Law Judge may order that the live oral testimony of all witnesses be video recorded digitally, at the expense of the moving party, and in such cases the video recording and the written transcript of the testimony shall be made part of the record. If a video recording is so ordered, the moving party shall not pay or retain any person or entity to perform such recording other than the reporter designated by the Commission to transcribe the proceeding, except by order of the Administrative Law Judge upon a finding of good cause. In any order allowing for video recording by a person or entity other than the Commission's designated reporter, the Administrative Law Judge shall prescribe standards and procedures for the video recording to ensure that it is a complete and accurate record of the witnesses' testimony. Copies of the written transcript and video recording are available from the reporter at rates not to exceed the maximum rates fixed by contract between the Commission and the reporter. Copies of a video recording

made by a person or entity other than the reporter shall be available at the same rates, or no more than the actual cost of duplication, whichever is higher.

* * * * *

■ 7. Amend § 3.45, by revising the second and seventh full sentences of paragraph (e) and the second and third full sentences of paragraph (f) to read as follows:

§ 3.45 In camera orders.

* * * * *

(e) * * * A complete version shall be marked *''In Camera''* or ''Subject to Protective Order,'' as appropriate, on every page and shall be filed with the Secretary and served by the party on the other parties in accordance with the rules in this part. * * * An expurgated version of the document, marked ''Public Record'' on every page and omitting the *in camera* and confidential information and attachment that appear in the complete version, shall be filed with the Secretary within 5 days after the filing of the complete version, unless the Administrative Law Judge or the Commission directs otherwise, and shall be served by the party on the other parties in accordance with the rules in this part. * * *

(f) * * * A complete version shall be marked *''In Camera''* or ''Subject to Protective Order,'' as appropriate, on every page and shall be served upon the parties. The complete version will be placed in the *in camera* record of the proceeding. An expurgated version, to be filed within 5 days after the filing of the complete version, shall omit the *in camera* and confidential information that appears in the complete version, shall be marked ''Public Record'' on every page, shall be served upon the parties, and shall be included in the public record of the proceeding.***

* * * * *

■ 8. Amend § 3.52, by revising the fourth sentence of paragraph (a)(1), the first sentence of paragraph (a)(2), and the fourth sentence of paragraph (b)(2) to read as follows:

§ 3.52 Appeal from initial decision.

(a) * * *

(1) * * * Unless the Commission orders that there shall be no oral argument, it will hold oral argument within 10 days after the deadline for the filing of any reply briefs. * * *

(2) If no objections to the initial decision are filed, the Commission may in its discretion hold oral argument within 10 days after the deadline for the filing of objection, * * *

(b) * * *

(2) * * * Unless the Commission orders that there shall be no oral argument, it will hold oral argument within 15 days after the deadline for the filing of any reply briefs. * * *

* * * * *

■ 9. Amend § 3.83, by revising paragraph (i) to read as follows:

§ 3.83 Procedures for considering applicants.

* * * * *

(i) *Judicial review.* Judicial review of final Commission decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

* * * * *

PART 4—MISCELLANEOUS RULES

■ 1. The authority for part 4 remains:

Authority: 15 U.S.C. 46, unless otherwise noted.

■ 2. Amend § 4.2(b), by revising the last sentence, to read as follows:

§ 4.2 Requirements as to form, and filing of documents other than correspondence.

* * * * *

(b) * * * Every page of each such document shall be clearly and accurately labeled ''Public'', *''In Camera''* or ''Confidential''.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2011–21019 Filed 8–19–11; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 260

[Docket No. RM07–9–004; Order No. 710–C]

Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order on Rehearing.

SUMMARY: In this Order, the Federal Energy Regulatory Commission (Commission) generally denies rehearing and reaffirms the findings made in Order No. 710–B. The Commission does, however, revise the burden estimate to more accurately account for initial start-up costs, grant rehearing on the issue of whether to include page 521d, and grant additional time to comply with Order No. 710–B.

FOR FURTHER INFORMATION CONTACT: Brian Holmes (Technical Information), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Telephone: (202) 502–6008, e-mail: *brian.holmes@ferc.gov.*

Robert Sheldon (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Telephone: (202) 502–8672, e-mail: *robert.sheldon@ferc.gov.*

Gary D. Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Telephone: (202) 502–8321, e-mail: *gary.cohen@ferc.gov.*

SUPPLEMENTARY INFORMATION:

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

Order on Rehearing

Issued August 16, 2011

1. Earlier in this proceeding, the Commission issued a Final Rule (Order No. 710–B) revising its financial forms, statements, and reports for natural gas companies, contained in FERC Form Nos. 2, 2–A, and 3–Q, to provide greater transparency on fuel data by requiring the reporting of functionalized fuel data on pages 521a through 521c of those forms, and to include on those forms the amount of fuel waived, discounted or reduced as part of a negotiated rate agreement.[1]

2. In response to the Final Rule, the Interstate Natural Gas Association of America (INGAA) filed a request for rehearing raising eleven separate objections to the Final Rule. In this order on rehearing, we generally deny rehearing and reaffirm the findings we made in Order No. 710–B. We do, however, revise the burden estimate to more accurately account for initial start-up costs, grant rehearing on the issue of whether to include page 521d and we grant filers additional time before they must begin filing Form Nos. 2, 2–A, and 3–Q in accordance with the requirements established in Order No. 710–B and this rehearing order.

I. Background

3. This matter began in 2008, when the Commission issued a Final Rule (Order No. 710) revising its financial forms, statements, and reports for natural gas companies, contained in

[1] *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines,* Order No. 710–B, 76 FR 4516 (Jan. 26, 2011), 134 FERC ¶ 61,033 (2011) (Order No. 710–B or Final Rule).

FERC Form Nos. 2, 2–A, and 3–Q, to make the information reported in these forms more useful by updating them to reflect current market and cost information relevant to interstate natural gas pipelines and their customers.[2] The information provided in these forms included data on fuel use, but did not require these data to be functionally disaggregated.

4. On rehearing, the American Gas Association (AGA) argued that the fuel data would be more useful if such data were broken out by different pipeline functions, including transportation, storage, gathering, and exploration/production, and should include, by function, the amount of fuel waived, discounted or reduced as part of a negotiated rate agreement. This argument was rejected in Order No. 710–A,[3] but was reconsidered in a Notice of Proposed Rulemaking issued on June 17, 2010.[4] AGA supported the Commission's proposal while INGAA opposed it. After considering all the comments and reply comments, the Commission issued a Final Rule adding additional transparency to the reporting of fuel data. Specifically, the Final Rule revised FERC Form Nos. 2, 2–A, and 3–Q, revising pages 521a, 521b, and page 520, and adding page 521c to FERC Form Nos. 2, 2–A, and 3–Q to include functionalized fuel data, including the amount of fuel waived, discounted or reduced as part of a negotiated rate agreement.[5]

5. In response to the Final Rule, INGAA filed a request for rehearing reiterating many of the concerns that it raised earlier in the proceeding (in its comments and reply comments on the June 2010 NOPR).

II. Discussion

A. Overview

6. INGAA raises eleven separate objections to the Final Rule. First, INGAA argues that Order No. 710–B erred by finding that reporting of functionalized fuel data by contract rate category does not require tracking of fuel by individual contracts. Second, INGAA argues that adding this level of detail increases the reporting burden. Third, INGAA argues that the Commission erred by not adopting its alternative proposal which it maintains would have met the Commission's needs with a lesser burden to filers. Fourth, INGAA claims that the requirement to allocate lost and unaccounted for gas (LAUF) among negotiated, discounted and recourse transportation customers ignores fundamental nature of LAUF, forcing an allocation that is meaningless. Fifth, INGAA argues that the requirement to disclose the disposition of excess gas or gas acquired to meet deficiencies by contract rate category also is meaningless. Sixth, INGAA reiterates its objection to reporting discounted rates as a separate category, claiming that disclosing this information does not serve any regulatory purpose because pipelines are prohibited from discounting. Seventh, INGAA argues that the Commission erred by not granting the clarification requested by MidAmerican[6] (that the rule should only cover (1) contracts with discounted and negotiated fuel rates and (2) headings should be changed to be ''discounted fuel rate'' and ''negotiated fuel rate''). INGAA argues this would be less burdensome but would accomplish the Commission's stated goals. Eighth, INGAA argues that the Commission erred by assuming that MidAmerican's proposal would have excluded many contracts that otherwise would be reported. Ninth, INGAA argues that the Final Rule orders the collection of data too soon and that data under the new categories should not be required to be collected until calendar year 2012. Tenth, INGAA requests clarification that ''backhaul service offered under tariff'' means that, if tariff does not include a ''backhaul'' rate schedule, then nothing need be reported for this. Finally, INGAA argues that the Commission should keep blank page 521d, which was included in the June 2010 NOPR and omitted in the Final Rule. We will now examine each of these arguments.

B. Does the Final Rule Require the Tracking of Individual Contracts?

7. INGAA argues that Order No. 710–B erred by finding that reporting of functionalized fuel data by contract rate category does not require the tracking of fuel by individual contracts.

8. INGAA states that, in Order No. 710–B, the Commission found that the reporting of functionalized fuel data by contract rate category does not require the tracking of fuel by individual contracts. INGAA disputes this finding and argues that such tracking would be necessitated, despite the Commission's finding to the contrary. We reject this interpretation. As we stated in Order No. 710–B, at paragraph 74:

> In this Final Rule, the Commission is not imposing any additional reporting requirements that change how those pipelines track fuel. Pipeline billings are provided on an integrated basis, accounting for sales based on whether the volumes are negotiated, recourse, or discounted. Moreover, contrary to INGAA's assertions, the Commission is not requiring pipelines to track fuel by individual contracts, but merely continuing the current practice of requiring the assignment of fuel based on an allocation of throughput or stated fuel rate. The revisions to page 521a through 521c require the same accounting mechanism for fuel, enabling parties to better understand how fuel use costs are assigned.

9. Thus, it can be seen that, if a pipeline has twelve gas service contracts, the Final Rule is not requiring the pipeline to report the details of each of those contracts. Instead, the Final Rule is requiring the pipeline to report the totals for fuel (for all twelve contracts) by function which can be determined on an allocation of throughput or stated fuel rate. To accomplish this, however, the pipelines would need to continue their current practice of assessing shippers for services provided to each customer.

C. Reporting Burden

10. INGAA argues that adding the level of detail required by the Final Rule increases the reporting burden. In light of INGAA's concerns, we have further reviewed the burden estimate contained in the Final Rule and have determined that we can improve the accuracy of our burden estimate if we distinguish between the initial start-up costs, which include all of the work needed to identify and create a mechanism to report the information required to be reported under the Final Rule, as compared to the ongoing costs of reporting the information required to be reported under the Final Rule once the reporting mechanism is in place. This revised burden estimate is shown below in the Information Collection Statement that begins at paragraph 28 of this order.

D. INGAA's Alternative Proposal

11. INGAA argues that the Commission erred by not adopting its alternative proposal which it maintains would have met the Commission's

[2] *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines, final rule,* Order No. 710, FERC Stats. & Regs. ¶ 31,267 (2008) (Order No. 710).

[3] *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines, order on reh'g and clarification,* Order No. 710–A, 123 FERC ¶ 61,278 (2008).

[4] *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines,* Notice of Proposed Rulemaking, 75 FR 35700 (June 23, 2010), FERC Stats. & Regs. ¶ 32,659 (June 17, 2010) (June 2010 NOPR).

[5] Order No. 710–B, 134 FERC ¶ 61,033, at P 1, 7, 37. The Final Rule has a more complete discussion of the procedural history of this case. We will not reiterate that complete history here.

[6] In this proceeding, we are referring to Northern Natural Gas Company and Kern River Gas Transmission Company, collectively, as MidAmerican.

needs with a lesser burden to filers. The Commission addressed this issue in Order No. 710–B, where we stated:

> We find that requiring the reporting of fuel costs and revenues by rate structure broken down by function will increase the ability of the Commission and interested parties to assess whether a pipeline's existing shippers are subsidizing the pipeline's negotiated rate program. Thus, we find that INGAA's proposal would effectively delete much of the valuable information sought in the June 2010 NOPR.[7]
>
> The revised forms also will now allow the user to better determine where on the pipeline system fuel costs are being incurred and how they are being allocated. This added transparency, which is supported by the majority of the commenters, will ensure that the Commission and pipeline customers have sufficient information to be able to assess the justness and reasonableness of pipeline rates. The collection and public availability of this information is consistent with our goal of having sufficient information to allow the Commission and pipeline customers to assess the impact on pipeline rates of changing fuel costs.[8]
>
> By contrast, if we adopted INGAA's suggestion to limit the revisions to FERC Form No. 2 to those originally proposed by AGA, then the benefits of increased transparency of rates, particularly within the negotiated rate program, which are described in the two preceding paragraphs, would not be fully realized.[9]

12. INGAA's rehearing reiterates arguments it advanced earlier in this proceeding that, for the reasons quoted above, the Commission rejected in Order No. 710–B. We reaffirm those findings and reject INGAA's proposal.

E. Allocations of Fuel Used in Compressor Stations, LAUF, and Fuel Used in Operations

13. INGAA argues that Order No. 710–B suggests that fuel consumed in compressor stations, LAUF and fuel used in operations, which are all drawn from a commingled and fungible gas stream, can be traced back to individual shipper contracts. INGAA further argues that the requirement to allocate LAUF among negotiated, discounted and recourse transportation customers ignores fundamental nature of LAUF, forcing an allocation that is meaningless. INGAA also argues that, except in some limited and unique circumstances, such tracing is impractical, if not impossible.[10]

14. The reporting requirements established in the Final Rule do not require fuel use to be traced back to individual shipper contracts.[11] The information reported on pages 521a and 521b—even before issuance of the Final Rule—already included a requirement for pipelines to report monthly fuel use by Dth. The Final Rule added the requirement for pipelines (on lines 1–65 on pages 521a and 521b) to allocate these totals among discounted rates, negotiated rates, and recourse rates. The Final Rule did not impose a requirement that these allocations be made based on a review of individual contracts. One reasonable approach would be to take the total volume of throughput and allocate it among the three contract categories (*i.e.,* contracts with discounted rates, contracts with negotiated rates, and contracts with recourse rates) based on the percentage of gas transported for each contract type, which is already known and available to a pipeline for invoicing shippers on a monthly basis. For example, if, hypothetically, a pipeline has a monthly transportation volume of 1000 Dth and 5 percent of its volume is associated with contracts with discounted rates, 10 percent is associated with negotiated rates contracts, and 85 percent associated with recourse rate contracts, then the pipeline could develop an allocation of fuel used at compressor stations, LAUF, and gas used in operations based on a ratio of the throughput. Such an allocation could be used for all the various allocations needed to complete pages 521a and 521b. Thus, it is evident that we are not *requiring* pipelines to assess individual contracts to make this allocation.

15. In addition, while admittedly imperfect, allocating costs by function is a standard practice for pipelines for numerous cost categories. The allocation of fuel consumed in compressor stations, LAUF and fuel used in operations, and among negotiated, discounted and recourse transportation customers are a few, among many, of such cost allocations. The allocation of costs is a standard practice for pipeline companies to bill their customers for services rendered. The fact that such allocations are not 100 percent precise does not negate the necessity for such allocations being made. Pipelines collect fuel (including LAUF) from customers and the Final Rule requires the reporting of how that fuel is assigned.

16. INGAA's position is that the allocation of fuel costs required by this rule is ''meaningless'' given the nature of LAUF as gas that is lost and unaccounted for.[12] We disagree. In our view, allowing customers to see exactly how fuel costs are assigned to various customers groups is important because it allows customers to assure themselves that the fuel costs being assigned to them are reasonable and do not cross-subsidize other customer groups. Thus, we find that making such allocations transparent is extremely meaningful.

F. Disclosure of Disposition of Excess Gas or Gas Acquired To Meet Deficiency by Contract Rate Category

17. INGAA raises the same objections to the reporting of the disposition of excess gas or the reporting of gas acquired to meet deficiencies that it raised regarding the reporting of the allocation of fuel used in compressor stations, LAUF, and fuel used in operations. Specifically, INGAA argues that,

> [t]he reporting of disposition of excess gas or the reporting of gas acquired to meet deficiencies on pages 521b and 521c (lines 38–65) by contract rate category would provide little benefit. A pipeline does not track disposition or acquisition of gas by categories of transportation contracts. Assignment to contract rate categories could be accomplished by utilizing an arbitrary allocation methodology. However, the allocation of a pipeline's system gas dispositions or acquisitions would not yield any meaningful information. Only the reporting of total dispositions or total acquisitions of system gas would produce a cogent result. Accordingly, INGAA requests rehearing and asks the Commission to allow pipelines to report total disposition or total acquisitions of system gas on pages 521b and 521c.[13]

18. As discussed above in paragraph 14, the allocations required by the Final Rule do not require an analysis of individual contracts. Moreover, while the allocations required by this rule may not be precise, few allocations are, and these allocations are routinely made for customer billing purposes.

19. The information reported in lines 38–65 would be useful in determining

[7] Order No. 710–B, 134 FERC ¶ 61,033 at P 37.

[8] *Id.* P 38.

[9] *Id.* P 39.

[10] INGAA states that ''[p]ipelines do track or allocate fuel consumed separately for incremental rate services in which the Commission in its orders has required the pipeline to keep the incremental rate customers' fuel costs and revenues separate. Other than for such very limited incremental rate purposes, however, pipelines are not required to allocate or track fuel used by individual contract even in general section 4 rate proceedings. In its orders approving pipelines' negotiated rate contracts, the Commission requires pipelines to separately account for the negotiated rate transaction's volumes, revenues, billing determinants, rate components and surcharges. But, the Commission does not require that fuel used, or any other cost for that matter, associated with negotiated rate transactions be separately accounted for.'' INGAA Rehearing at n.1. As discussed further in paragraph 21 below, this contention is incorrect because fuel use is a rate component.

[11] The Commission does not expect pipelines to develop and administer a process by which the fuel in each compressor, as it is burned, is assigned in some manner among individual shipper contracts.

[12] INGAA Rehearing at 3 & 8–9.

[13] INGAA Rehearing at 8.

among which classes of shippers over and under recoveries of fuel are occurring (*i.e.,* recourse, negotiated, or discounted customers). For example, recourse rate shippers could provide more fuel than necessary and negotiated rate shippers could have a capped fuel rate such that recourse shippers may be subsidizing negotiated rate shippers. The recourse rate shippers should be in a position to fully understand whether over recovered fuel for recourse rate contracts is being used to make up a deficiency of fuel for negotiated rate contracts. Similarly, shippers should be aware to the extent a pipeline is purchasing gas associated with a fuel deficiency attributable to negotiated rate contracts. Additionally, while generally more applicable to pipelines with stated fuel rates, shippers should be in a position to know whether the disposition of excess fuel is being sold or if the gas is used for imbalances such that pipelines are recovering the cost through periodic imbalance cashout reports. We find that reporting this information provides useful transparency regarding the amount of fuel used to operate compressor stations, the disposition of excess gas and how the deficiency was acquired, and how fuel costs and LAUF are allocated among customers. Consequently, we deny rehearing of this issue.

G. Discounted Rates as a Separate Category and Negotiated Rates as a Separate Category

20. INGAA reiterates its objection to reporting fuel assigned to discounted rates as a separate category, claiming that disclosing this information does not serve any regulatory purpose, because pipelines are prohibited from discounting fuel. Fuel expenses constitute a significant portion of the total expenses recovered by natural gas rates. Obscuring this information makes it harder for entities to track the reasonableness of these expenses. Contrary to INGAA's arguments, pipelines are not prohibited from discounting fuel under all circumstances.[14] In addition, the additional transparency provided by this Final Rule serves the important regulatory objective of assuring that rates are just and reasonable. If a pipeline is not discounting fuel then it should simply report zero in Column (K), Volume (in Dth) Not Collected. This approach provides an affirmative confirmation that fuel is not being discounted. Combining the discount rate category with negotiated rates would eliminate this confirmation. Consequently, we will retain the separate discount rate category.

21. Additionally, based on its contention that there is no cross-subsidy in instances where a negotiated rate customer pays the same fuel rate as a recourse rate customer, INGAA argues that there is no need to separate the reporting of recourse and negotiated rate contracts. The Commission has long required pipelines to separately account for rate components associated with negotiated rates.[15] We are not persuaded to modify that policy in this rule. Moreover, while INGAA points to certain circumstances where it argues that no cross-subsidy would occur, the reporting requirements of this rule apply to all negotiated rate contracts and thus INGAA's example does not suffice to contradict the need for this provision.

H. MidAmerican's Requested Clarification

22. INGAA argues that the Commission erred by not granting the clarification requested by MidAmerican (that the rule should only cover (1) Contracts with discounted and negotiated fuel rates and (2) headings should be changed to be ''discounted fuel rate'' and ''negotiated fuel rate''). INGAA argues this approach would be less burdensome but would accomplish the Commission's stated goals.

23. As we stated in Order No. 710–B,[16] the proposal to limit the scope of the rule to only require the reporting of fuel costs in contracts that include a specific provision for discounted or negotiated fuel would elevate form over substance and would omit contracts with negotiated and discounted rates, unless they include a specific provision covering discounted or negotiated fuel. This is contrary to the objective of the Final Rule of enhancing the transparency of fuel costs and we deny rehearing. Also, given our finding on the required reporting of gas contracts with discounted or negotiated fuel, we affirm our finding on the appropriate headings to be used.[17]

I. Excluded Contracts

24. INGAA argues that the Commission erred by assuming that MidAmerican's proposal would have excluded many contracts that otherwise would be reported. As we stated in Order No. 710–B, MidAmerican commented that, to its knowledge, very few discounted and negotiated rate agreements include a provision for discounted and negotiated fuel.[18] We concluded that, if this were true or if future contracts are written to make it true, then excluding the reporting of contracts not including a specific provision identifying discounted and negotiated fuel would be problematic.[19] INGAA argues that we erred in relying on MidAmerican's statement, but in no way rebuts it. Moreover, we were concerned that, even if contracts are not currently drafted in this fashion, future contracts could be rewritten to achieve this end and we do not wish to open this possibility. Accordingly, we deny INGAA's request for rehearing on this issue.

J. Start Date for New Data Collections

25. INGAA argues that the Final Rule orders the collection of data to begin too soon and that data under the new categories should not be required to be collected until calendar year 2012. We agree with INGAA that pipelines may not have the accounting systems in place to make the allocations of functionalized fuel by contract rate type required by the Final Rule and they may need to develop systems for making such allocations. We recognize some pipelines may not currently have in place the required accounting systems necessary to allocate fuel costs to negotiated, discounted and recourse transportation customers. In light of these considerations, we will grant rehearing and further delay the commencement of implementation of the filing requirements of the Final Rule until the fourth quarter period (''Q4'') of 2011. Thus, the data must be reported in the new format starting with the quarterly period October 1 through December 31, 2011 in Annual Report Forms 2 and 2–A with a due date of April 18, 2012. This should allow sufficient time for filers to develop the necessary data and perform the needed allocations. Individual pipeline companies may apply to the Commission for further extensions, based on their individual circumstances. Even if an extension is granted, the information will still be

[14] For example, in *Transwestern Pipeline Company,* 54 FERC ¶ 61,319, at 62,007 (1991), the Commission approved Transwestern's proposal to provide fuel discounts, provided that the minimum rate would not be lower than actual fuel costs, if any.

[15] *See, e.g., NorAm Gas Transmission Company,* 75 FERC ¶ 61,322, at 62,029 (1996); *Texas Eastern Transmission, LP,* 133 FERC ¶ 61,220, at P 19 (2010); *Gulf Crossing Pipeline Company LLC,* 123 FERC ¶ 61,100, at P 87 (2008).

[16] Order No. 710–B, 134 FERC ¶ 61,033 at P 55.

[17] *Id.* P 56.

[18] *Id.* P 53.

[19] *Id.* P 55.

required to be reported for the Q4 period of 2011 but, if an extension is granted, the due date for the filing of this information may be extended past the April 18, 2012 filing deadline. Pipeline companies seeking an extension must provide a detailed explanation of why (for example, an additional analysis of data is needed, or allocation factors are still being developed) they cannot meet the filing deadline. The Commission will evaluate these requests on a case-by-case basis, based on the facts presented.

K. Requested Clarification of Reported Backhaul Service

26. INGAA requests clarification that ''backhaul service offered under tariff'' means that, if the tariff does not include a ''backhaul'' rate schedule, then nothing need be reported for this.[20] A review of gas tariffs shows that many tariffs recover a charge for backhaul service, but do not necessarily provide for a separate backhaul rate schedule for that service. In many instances, the forwardhaul tariff permits backhaul service at or below the forwardhaul rate, with no separate backhaul rate schedule.[21] If we exclude these backhaul volumes, then total backhaul volumes would be understated for these transactions. Thus, we reject the argument that information on backhauls should be limited to those instances when the tariff includes a separate backhaul rate schedule. INGAA's requested clarification would keep needed information hidden and could encourage tariffs to be drafted in a manner to avoid the reporting of this information. We note that the discussion in Order No. 710–B at paragraph 52 was addressing the narrow instances, such as with reticulated gas systems, where it is not possible to clearly determine what is a backhaul and what is a forwardhaul. We did not intend this to restrict the reporting of backhauls in systems where the gas flow path can be determined. Put differently, if the pipeline is unable to determine whether the volume is forwardhaul or backhaul, then the volume can be reported entirely as forwardhaul. Accordingly, we affirm the findings we made on this subject at paragraphs 50–52 of Order No. 710–B and deny the requested clarification.

L. Need for Page 521d

27. Finally, INGAA argues that the Commission should retain the blank page 521d that we proposed in the June 2010 NOPR but omitted in Order No. 710–B. This omission was an oversight and we agree with INGAA that a filer would need this page to properly complete the Forms. Thus, we will correct this oversight and will include page 521d on the various forms.[22] We, likewise, are including pages 521a–d in the FERC Form Nos. 2/2–A/3–Q Submission Software System.

III. Information Collection Statement

28. The Office of Management and Budget's (OMB) regulations require approval of certain information collection requirements imposed by agency rules.[23] Previously, the Commission submitted to OMB the information collection requirements arising from Order No. 710–B and OMB approved those requirements.[24] In this order, the Commission is making no substantive changes to the content of the forms and the information that is required to be submitted. However, by adding in blank page 521d and re-estimating the reporting burden arising from Order No. 710–B, the Commission finds it necessary to make a formal submission to OMB for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995.[25]

29. This order affects the following existing data collections:

Title: FERC Form No. 2, ''Annual Report for Major Natural Gas Companies''; FERC Form No. 2–A, ''Annual Report for Nonmajor Natural Gas Companies.

Action: Proposed information collection.

OMB Control Nos. 1902–0028 (FERC Form No. 2); 1902–0030 (FERC Form No. 2–A).

Respondents: Businesses or other for profit.

Frequency of responses: Annually (FERC Form Nos. 2 and 2–A).

Necessity of the information: The information maintained and collected under the requirements of 18 CFR 260.1 and 18 CFR 260.2 is essential to the Commission's oversight duties. The data previously reported in the forms did not provide sufficient information to the Commission and the public to permit an evaluation of the filers' jurisdictional rates. Since the triennial restatement of rates requirement was abolished and pipelines are no longer required to submit this information, the need for current and relevant data is greater than in the past.

30. Without the information required in Order No. 710–B, it is difficult for the Commission and the public to perform an assessment of pipeline costs, and thereby help to ensure that rates are just and reasonable. Order No. 710–B accounts for the possibility that multiple pipelines may be required to develop and implement new procedures in order to provide the data in the revised forms. In any event, we believe the additional information required in Order No. 710–B will allow the Commission and form users to better analyze pipeline fuel costs, an important component in assessing the justness and reasonableness of pipelines' rates.

Burden Statement: As indicated in the above discussion, INGAA contends that the Commission underestimated the burden associated with implementing the changes mandated in Order No. 710–B. In light of INGAA's arguments, the Commission acknowledges that some filers may have to modify existing systems in order to collect the necessary data. To account for this, the Commission estimates a one-time burden of 80 hours per filer. This will increase the burden as follows:

[20] In Order No. 710–B, the Commission added lines 66–68 to page 521. The lines request a separation of forwardhaul and backhaul throughput volumes in Dths for the quarter.

[21] *See Trailblazer Pipeline Co.,* 39 FERC ¶ 61,103, at 61,324 (1987), where we stated that, as backhaul volumes are included within the definition of transportation in section 284.1(a) of the Commission's regulations (18 CFR 284.1(a)), Trailblazer may perform backhaul service pursuant to its firm and interruptible rate schedules and we did not require Trailblazer to adopt a separate backhaul rate in that proceeding. We also note that, for example, the Iroquois Gas Transmission System, L.P., FERC Gas Tariff, at Section 13 of the General Terms and Conditions, Second Revised Sheet No. 76, provides for backhaul transportation service to be provided pursuant to the firm transportation service rate schedule and not under a separate backhaul rate schedule.

[22] This page is shown as an attachment to this order.

[23] 5 CFR 1320.11.

[24] OMB approved the information collections prescribed in Order No. 710–B on May 16, 2011 for FERC Form No. 2 (OMB Control No. 1902–0028, ICR# 201101–1902–001), FERC Form No. 2–A (OMB Control No. 1902–0030, ICR# 201101–1902–003) and FERC Form No. 3–Q (OMB Control No. 1902–0205, ICR# 201101–1902–004).

[25] 44 U.S.C. 3507(d).

Data collection form[26]	Number of respondents	One-time filing per respondent	Filings per year	One-time additional hours for this form
FERC Form No. 2	84	80	1	6,720
FERC Form No. 2–A	44	80	1	3,520
Totals				10,240

Information Collection Costs: 10,240 hours at $120/hour= $1,228,800.

31. *Internal Review:* The Commission has reviewed the proposed changes and has determined that the changes are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support associated with the information requirements.

32. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, e-mail: *DataClearance@ferc.gov,* phone (202) 502–8663, fax: (202) 273–0873]. For submitting comments concerning the collections of information and the associated burden estimates, please submit comments to FERC in this Docket No. and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4638, fax: (202) 395–7285]. Due to security concerns, comments should be sent electronically to the following e-mail address: *oira_submission@omb.eop.gov.* Please refer to OMB Control Nos. 1902–0028 (FERC Form No. 2), and 1902–0030 (FERC Form No. 2–A), and the docket number of this Final Rule in your submission.

IV. Regulatory Flexibility Act

33. The Regulatory Flexibility Act of 1980 (RFA)[27] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.[28] However, the RFA does not define ''significant'' or ''substantial.'' Instead, the RFA leaves it up to an agency to determine the effect of its regulations on small entities.

34. In Order No. 710–B the Commission certified that the additional reporting requirements would not have a significant economic impact on a substantial number of small entities.[29] With the understanding that a one-time burden has now been added, the Commission affirms that the certification provided in Order No. 710–B remains accurate and no further justification is needed under the RFA.

The Commission orders:

(A) INGAA's request for rehearing is hereby denied in part and granted in part, as discussed in the body of this order.

(B) This order shall be published in the **Federal Register**.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[26] The FERC Form No. 3–Q (OMB Control No. 1902–0205) is not directly affected by the one-time burden increase because the filers will be making this one-time change in preparation for filing the FERC Form Nos. 2 and 2A in April 2012. It is expected that well before the date of the next FERC Form No. 3Q filing the one-time burden will have already been expended. However, the Commission intends to submit the FERC Form No. 3–Q to OMB for informational purposes.

[27] 5 U.S.C. 601–612.

[28] The RFA definition of ''small entity'' refers to the definition provided in the Small Business Act, which defines a ''small business concern'' as a business that is independently owned and operated and that is not dominant in its field of operation. 15 U.S.C. 632. The Small Business Size Standards component of the North American Industry Classification System defines a small natural gas pipeline company as one whose total annual revenues, including its affiliates, are $6.5 million or less. 13 CFR parts 121, 201.

[29] Order No. 710–B, 134 FERC ¶ 61,033 at P 89–91.

Note: This attachment will not be published in the Code of Federal Regulations.

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of Year/Qtr

Shipper Supplied Gas for the Current Quarter (continued)

Amount Collected (Dollars)				Volume (in Dth) Not Collected					
Month 1 Discounted Rate Amount (f)	Month 1 Negotiated Rate Amount (g)	Month 1 Recourse Rate Amount (h)	Month 1 Total Amount (i)	Month 1 Waived Dth (j)	Month 1 Discounted Dth (k)	Month 1 Negotiated Dth (l)	Month 1 Total Dth (m)	Month 1 Account(s) Debited (n)	Month 1 Account(s) Credited (o)

regulations affect taxpayers who file timely individual income tax returns and who fail to receive notification from the IRS of additional tax liability within the time period prescribed by section 6404(g).

DATES: *Effective Date:* These regulations are effective on August 22, 2011.

Applicability date: Section 301.6404–4(a)(5) applies to notices under section 6404(g)(1)(A) that are provided by the IRS on or after November 26, 2007, and that relate to individual Federal income tax returns that were timely filed before that date.

FOR FURTHER INFORMATION CONTACT: Nathan Rosen, (202) 622–3630 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Procedure and Administration Regulations (26 CFR part 301) by adding rules relating to the suspension of interest, penalties, additions to tax, or additional amounts under section 6404(g). Section 6404(g) was added to the Code by section 3305 of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206 (112 Stat. 685, 743) (RRA 98), effective for taxable years ending after July 22, 1998. Section 6404(g) was amended by section 903(c) of the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418, 1652) (AJCA), enacted on October 22, 2004, and by section 303 of the Gulf Opportunity Zone Act of 2005, Public Law 109–135 (119 Stat. 2577, 2608–09) (GOZA), enacted on December 21, 2005. Section 8242 of the Small Business and Work Opportunity Tax Act of 2007, Public Law 110–28 (121 Stat. 190, 200), extended the eighteen-month period within which the IRS can, without suspension of interest, contact a taxpayer regarding possible adjustments to the taxpayer's liability to thirty-six months, effective for notices provided after November 25, 2007.

On June 21, 2007, the Treasury Department and the IRS published in the **Federal Register** a notice of proposed rulemaking and notice of public hearing (REG–149036–04), 2007–34 IRB 411 (72 FR 34199), corrected at (72 FR 41045) (July 26, 2007), under section 6404(g). The proposed regulations provided guidance regarding the suspension of interest, penalties, additions to tax, or additional amounts under section 6404(g). No comments were received in response to the notice of proposed rulemaking and no public hearing was requested or held. Therefore, the proposed regulations are adopted as amended by this Treasury decision. The revisions are discussed in this preamble.

On June 21, 2007, the Treasury Department and the IRS also published a separate set of temporary regulations (TD 9333), 2007–33 IRB 350 (72 FR 34176), corrected at 72 FR 41022, and a notice of proposed rulemaking by cross-reference to temporary regulations (REG–149036–04), 2007–33 IRB 365 (72 FR 34204), corrected at 72 FR 41045, under section 6404(g) concerning the suspension of interest, penalties, additions to tax, or additional amounts with respect to listed transactions or undisclosed reportable transactions. Those temporary and proposed regulations are not the subject of this Treasury decision, and were published as final regulations on June 16, 2010 (TD 9488), 2010–28 IRB 51 (75 FR 33992).

Explanation of Revisions

The final regulations include new § 301.6404–4(a)(5) to address the matters that were the subject of Notice 2007–93. In general, section 6404(g) provides that if an individual taxpayer files a Federal income tax return on or before the due date for that return (including extensions), and if the IRS does not timely provide a notice to that taxpayer specifically stating the taxpayer's liability and the basis for that liability, then the IRS must suspend any interest, penalty, addition to tax, or additional amount with respect to any failure relating to the return that is computed by reference to the period of time the failure continues and that is properly allocable to the suspension period. A notice is timely if provided before the close of the 18-month period (36-month period, in the case of notices provided after November 25, 2007, subject to the provisions of § 301.6404–4(a)(5)) beginning on the later of the date on which the return is filed or the due date of the return without regard to extensions. The suspension period begins on the day after the close of the 18-month period (or 36-month period) and ends 21 days after the IRS provides the notice. This suspension rule applies separately with respect to each item or adjustment.

Notice 2007–93 set forth a special rule for notices under section 6404(g)(1) that (i) are provided by the IRS on or after November 26, 2007, and (ii) relate to individual Federal income tax returns that were timely filed before that date. Under the special rule:

1. If, as of November 25, 2007, the 18-month notification deadline had passed and the IRS had not provided notice to the taxpayer, the suspension described in section 6404(g)(1)(A) would begin on the day after the close of the 18-month period. The suspension would end 21 days after the date on which the notice was provided.

2. In all other cases, the suspension would begin on the day after the close of the 36-month notification period described in section 6404(g)(1)(A) and end 21 days after the date on which the notice was provided.

The final regulations incorporate substantially without change the special rule of Notice 2007–93 at § 301.6404–4(a)(5).

In addition, § 301.6404–4(b)(2) was revised to remove the reference to section 6501(c)(1) and the meaning of fraud, as fraud is not defined in section 6501(c)(1) but is instead generally described under case law and other guidance. Thus, fraud for purposes of § 301.6404–4(b)(2) has the same meaning as that provided in case law and other guidance.

Finally, minor editorial changes were made to clarify the terms of section 6404(g) and to modify a reference to official IRS forms.

Effect on Other Documents

The following publication is obsolete as of August 22, 2011:

Notice 2007–93 (2007–48 IRB 1072).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Nathan Rosen of the Office of Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 301

Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

■ **Par. 2.** Section 301.6404–0 is amended as follows:

■ 1. Revise the introductory text.

■ 2. Revise entries for § 301.6404–4(a) and (b)(1) through (b)(4).

■ 3. Revise entries for § 301.6404–4(c) and (d).

The revisions read as follows:

§ 301.6404–0 Table of contents.

This section lists the paragraphs contained in §§ 301.6404–1 through 301.6404–4.

* * * * *

§ 301.6404–4 Suspension of interest and certain penalties when the Internal Revenue Service does not timely contact the taxpayer.

(a) Suspension.
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(i) Amended returns filed on or after December 21, 2005, that show an increase in tax liability.
(ii) Amended returns that show a decrease in tax liability.
(iii) Amended returns and other documents as notice.
(iv) Joint return after filing separate return.
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(b) Exceptions.
(1) Failure to file tax return or to pay tax.
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(i) Description.
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* * * * *

(c) Special rules.
(1) Tentative carryback and refund adjustments.
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(i) In general.
(ii) Example.
(d) Effective/applicability date.

§ 301.6404–0T [Removed]

■ **Par. 3.** Section 301.6404–0T is removed.

■ **Par. 4.** Section 301.6404–4 is amended as follows:

■ 1. Add paragraphs (a) and (b)(1) through (b)(4).

■ 2. Add paragraph (c).

■ 3. Paragraph (d) is amended by adding a second sentence.

The additions and revisions read as follows:

§ 301.6404–4 Suspension of interest and certain penalties when the Internal Revenue Service does not timely contact the taxpayer.

(a) *Suspension.*—(1) *In general.* Except as provided in paragraph (b) of this section, if an individual taxpayer files a return of tax imposed by subtitle A on or before the due date for the return (including extensions) and the Internal Revenue Service does not timely provide the taxpayer with a notice specifically stating the amount of any increased liability and the basis for that liability, then the IRS must suspend the imposition of any interest, penalty, addition to tax, or additional amount, with respect to any failure relating to the return that is computed by reference to the period of time the failure continues to exist and that is properly allocable to the suspension period. The notice described in this paragraph (a) is timely if provided before the close of the 18-month period (36-month period in the case of notices provided after November 25, 2007, subject to the provisions of paragraph (a)(5)) beginning on the later of the date on which the return is filed or the due date of the return without regard to extensions.

(2) *Treatment of amended returns and other documents.*—(i) *Amended returns filed on or after December 21, 2005, that show an increase in tax liability.* If a taxpayer, on or after December 21, 2005, provides to the IRS an amended return or one or more other signed written documents showing an increase in tax liability, the date on which the return was filed will, for purposes of this paragraph (a), be the date on which the last of the documents was provided. Documents described in this paragraph (a)(2)(i) are provided on the date that they are received by the IRS.

(ii) *Amended returns that show a decrease in tax liability.* If a taxpayer provides to the IRS an amended return or other signed written document that shows a decrease in tax liability, any interest, penalty, addition to tax, or additional amount will not be suspended if the IRS at any time proposes to adjust the changed item or items on the amended return or other signed written document.

(iii) *Amended returns and other documents as notice.*—(A) As to the items reported, an amended return or one or more other signed written documents showing that the taxpayer owes an additional amount of tax for the taxable year serves as the notice described in paragraph (a)(1) of this section with respect to the items reported on the amended return.

(B) Example. An individual taxpayer timely files a Federal income tax return for taxable year 2008 on April 15, 2009. On January 19, 2010, the taxpayer mails to the IRS an amended return reporting an additional item of income and an increased tax liability for taxable year 2008. The IRS receives the amended return on January 21, 2010. The amended return will be treated for purposes of this paragraph (a) as filed on January 21, 2010, the date the IRS received it. Pursuant to paragraph (a)(2)(iii) of this section, the amended return serves as the notice described in paragraph (a)(1) of this section with respect to the item reported on the amended return. Accordingly, because the filing of the amended return and the provision of notice occur simultaneously, no suspension of any interest, penalty, addition to tax or additional amount will occur under this paragraph (a) with respect to the item reported on the amended return.

(iv) *Joint return after filing separate return.* A joint return filed under section 6013(b) is subject to the rules for amended returns described in this paragraph (a)(2). The IRS will not suspend any interest, penalty, addition to tax, or additional amount on a joint return filed under section 6013(b) after the filing of a separate return unless each spouse's separate return, if required to be filed, was timely.

(3) *Separate application.* This paragraph (a) shall be applied separately with respect to each item or adjustment.

(4) *Duration of suspension period.* The suspension period described in paragraph (a)(1) of this section begins the day after the close of the 18-month period (36-month period, in the case of notices provided after November 25, 2007, subject to the provisions of paragraph (a)(5)) beginning on the later of the date on which the return is filed or the due date of the return without regard to extensions. The suspension period ends 21 days after the earlier of the date on which the IRS mails the

required notice to the taxpayer's last known address, the date on which the required notice is hand-delivered to the taxpayer, or the date on which the IRS receives an amended return or other signed written document showing an increased tax liability.

(5) *Certain notices provided on or after November 26, 2007.* If the IRS provides the notice described in paragraph (a)(1) of this section to a taxpayer on or after November 26, 2007, and the notice relates to an individual Federal income tax return that was timely filed before that date, the following rules will apply:

(i) *Eighteen-month period has closed.* If, as of November 25, 2007, the 18-month period described in paragraph (a)(1) of this section has closed and the IRS has not provided the taxpayer with the notice described in that paragraph (a)(1), the suspension described in paragraph (a)(1) of this section will begin on the day after the close of the 18-month period. The suspension will end on the date that is 21 days after the notice is provided.

(ii) *All other cases.* In all other cases, the suspension described in paragraph (a)(1) of this section will begin on the day after the close of the 36-month period described in that paragraph (a)(1) and end on the date that is 21 days after the notice described in paragraph (a)(1) of this section is provided.

(6) *Examples.* The following examples, which assume that no exceptions in section 6404(g)(2) to the general rule of suspension apply, illustrate the rules of this paragraph (a).

Example 1. An individual taxpayer timely files a Federal income tax return for taxable year 2005 on April 17, 2006. On December 11, 2007, the taxpayer mails to the IRS an amended return reporting an additional item of income and an increased tax liability for taxable year 2005. The IRS receives the amended return on December 13, 2007. On January 16, 2008, the IRS provides the taxpayer with a notice stating that the taxpayer has an additional tax liability based on the disallowance of a deduction the taxpayer claimed on his original return and did not change on his amended return. The date the amended return was received substitutes for the date that the original return was filed with respect to the additional item of tax liability reported on the amended return. Thus, the IRS will not suspend any interest, penalty, addition to tax, or additional amount with respect to the additional item of income and the increased tax liability reported on the amended return. The suspension period for the additional tax liability based on the IRS's disallowance of the deduction begins on October 17, 2007, so the IRS will suspend any interest, penalty, addition to tax, and additional amount with respect to the disallowed deduction and additional tax liability from that date through February 6, 2008, which is 21 days after the IRS provided notice of the additional tax liability and the basis for that liability. The suspension period in this example begins 18 months after filing the return (not 36 months) because, as of November 25, 2007, the 18-month period beginning on the date the return was filed had closed without the IRS giving notice of the additional liability. Thus, under the rules in paragraph (a)(5) of this section, the suspension period begins 18 months from the April 17, 2006 return filing date.

Example 2. An individual taxpayer files a Federal income tax return for taxable year 2008 on April 15, 2009. The taxpayer consents to extend the time within which the IRS may assess any tax due on the return until June 30, 2013. On December 20, 2012, the IRS provides a notice to the taxpayer specifically stating the taxpayer's liability and the basis for the liability. The suspension period for the liability identified by the IRS begins on April 15, 2012, so the IRS will suspend any interest, penalty, addition to tax, and additional amount with respect to that liability from that date through January 10, 2013, which is 21 days after the IRS provided notice of the additional tax liability and the basis for that liability.

(7) *Notice of liability and the basis for the liability.*—(i) *In general.* Notice to the taxpayer must be in writing and specifically state the amount of the liability and the basis for the liability. The notice must provide the taxpayer with sufficient information to identify which items of income, deduction, loss, or credit the IRS has adjusted or proposes to adjust, and the reason for that adjustment. Notice of the reason for the adjustment does not require a detailed explanation or a citation to any Internal Revenue Code section or other legal authority. The IRS need not incorporate all of the information necessary to satisfy the notice requirement within a single document or provide all of the information at the same time. Documents that may contain information sufficient to constitute notice, either alone or in conjunction with other documents, include, but are not limited to, statutory notices of deficiency; examination reports (for example, Form 4549, *Income Tax Examination Changes or Form 886–A, Explanation of Items);* Form 870, *Waiver of Restriction on Assessments and Collection of Deficiency in Tax and Acceptance of Overassessment;* notices of proposed deficiency that allow the taxpayer an opportunity for review in the Office of Appeals (30-day letters); notices pursuant to section 6213(b) (mathematical or clerical errors); and notice and demand for payment of a jeopardy assessment under section 6861.

(ii) *Tax attributable to TEFRA partnership items.* Notice to the partner or the tax matters partner (TMP) of a partnership subject to the unified audit and litigation procedures of subchapter C of chapter 63 of subtitle F of the Internal Revenue Code (TEFRA partnership procedures) that provides specific information about the basis for the adjustments to partnership items is sufficient notice if a partner could reasonably compute the specific tax attributable to the partnership item based on the proposed adjustments as applied to the partner's individual tax situation. Documents provided by the IRS during a TEFRA partnership proceeding that may contain information sufficient to satisfy the notice requirements include, but are not limited to, a Notice of Final Partnership Administrative Adjustment (FPAA); examination reports (for example, Form 4605–A or Form 886–A); or a letter that allows the partners an opportunity for review in the Office of Appeals (60-day letter).

(iii) *Examples.* The following examples illustrate the rules of this paragraph (a)(7).

Example 1. During an audit of Taxpayer A's 2005 taxable year return, the IRS questions a charitable deduction claimed on the return. The IRS provides A with a 30-day letter that proposes to disallow the charitable contribution deduction resulting in a deficiency of $1,000 and informs A that A may file a written protest of the proposed disallowance with the Office of Appeals within 30 days. The letter includes as an attachment a copy of the revenue agent's report that states, ''It has not been established that the amount shown on your return as a charitable contribution was paid during the tax year. Therefore, this deduction is not allowable.'' The information in the 30-day letter and attachment provides A with notice of the specific amount of the liability and the basis for that liability as described in this paragraph (a)(7).

Example 2. Taxpayer B is a partner in partnership P, a TEFRA partnership for taxable year 2005. B claims a distributive share of partnership income on B's Federal income tax return for 2005 timely filed on April 17, 2006. On October 1, 2007, during the course of a partnership audit of P for taxable year 2005, the IRS provides P's TMP with a 60-day letter proposing to adjust P's income by $10,000. The IRS previously had provided the TMP with a copy of the examination report explaining that the adjustment was based on $10,000 of unreported net income. On October 31, 2007, P's TMP informs B of the proposed adjustment as required by § 301.6223(g)–1(b). By accounting for B's distributive share of the $10,000 of unreported income from P with B's other income tax items, B can determine B's tax attributable to the $10,000 partnership adjustment. The information in the 60-day letter and the examination report allows B to compute the specific amount of the liability attributable to the adjustment to the

partnership item and the basis for that adjustment and therefore satisfies the notice requirement of paragraph (a). Because the IRS provided that notice to the TMP, B's agent under the TEFRA partnership provisions, within 18 months of the April 17, 2006 filing date of B's return, any interest, penalty, addition to tax, or additional amount with respect to B's tax liability attributable to B's distributive share of the $10,000 of unreported partnership income will not be suspended under section 6404(g).

(8) *Providing notice.*—(i) *In general.* The IRS may provide notice by mail or in person to the taxpayer or the taxpayer's representative. If the IRS mails the notice, it must be sent to the taxpayer's last known address under rules similar to section 6212(b), except that certified or registered mail is not required. Notice is considered provided as of the date of mailing or delivery in person.

(ii) *Providing notice in TEFRA partnership proceedings.* In the case of TEFRA partnership proceedings, the IRS must provide notice of final partnership administrative adjustments (FPAA) by mail to those partners specified in section 6223. Within 60 days of an FPAA being mailed, the TMP is required to forward notice of the FPAA to those partners not entitled to direct notice from the IRS under section 6223. Certain partners with small interests in partnerships with more than 100 partners may form a Notice Group and designate a partner to receive the FPAA on their behalf. The IRS may provide other information after the beginning of the partnership administrative proceeding to the TMP who, in turn, must provide that information to the partners specified in § 301.6223(g)–1 within 30 days of receipt. Pass-thru partners who receive notices and other information from the IRS or the TMP must forward that notice or information within 30 days to those holding an interest through the pass-thru partner. Information provided by the IRS to the TMP is deemed to be notice for purposes of this section to those partners specified in § 301.6223(g)–1 as of the date the IRS provides that notice to the TMP. A similar rule applies to notice provided to the designated partner of a Notice Group, and to notice provided to a pass-thru partner. In the foregoing situations, the TMP, designated partner, and pass-thru partner are agents for direct and indirect partners. Consequently, notice to these agents is deemed to be notice to the partners for whom they act.

(b) *Exceptions.*—(1) *Failure to file tax return or to pay tax.* Paragraph (a) of this section does not apply to any penalty imposed by section 6651.

(2) *Fraud.* Paragraph (a) of this section does not apply to any interest, penalty, addition to tax, or additional amount for a year involving a false or fraudulent return. If a taxpayer files a fraudulent return for a particular year, paragraph (a) of this section may apply to any other tax year of the taxpayer that does not involve fraud. Fraud affecting a particular item on a return precludes paragraph (a) of this section from applying to any other items on that return.

(3) *Tax shown on return.* Paragraph (a) of this section does not apply to any interest, penalty, addition to tax, or additional amount with respect to any tax liability shown on a return.

(4) *Gross misstatement.*—(i) *Description.* Paragraph (a) of this section does not apply to any interest, penalty, addition to tax, or additional amount with respect to a gross misstatement. A *gross misstatement* for purposes of this paragraph (b) means:

(A) a substantial omission of income as described in section 6501(e)(1) or section 6229(c)(2);

(B) a gross valuation misstatement within the meaning of section 6662(h)(2)(A) and (B); or

(C) a misstatement to which the penalty under section 6702(a) applies.

(ii) *Effect of gross misstatement.* If a gross misstatement occurs, then paragraph (a) of this section does not apply to any interest, penalty, addition to tax, or additional amount with respect to any items of income omitted from the return and with respect to overstated deductions, even though one or more of the omitted items would not constitute a substantial omission, gross valuation misstatement, or misstatement to which section 6702(a) applies.

* * * * *

(c) *Special rules.*—(1) *Tentative carryback and refund adjustments.* If an amount applied, credited or refunded under section 6411 exceeds the overassessment properly attributable to a tentative carryback or refund adjustment, any interest, penalty, addition to tax, or additional amount with respect to the excess will not be suspended.

(2) *Election under section 183(e).*—(i) *In general.* If a taxpayer elects under section 183(e) to defer the determination of whether the presumption that an activity is engaged in for profit applies, the 18-month (or 36-month) notification period described in paragraph (a)(1) of this section will be tolled for the period to which the election applies. If the 18-month (or 36-month) notification period has passed as of the date the section 183(e) election is made, the suspension period described in paragraph (a)(4) of this section will be tolled for the period to which the election applies and will resume the day after the tolling period ends. Tolling will begin on the date the election is made and end on the later of the date the return for the last taxable year to which the election applies is filed or is due without regard to extensions.

(ii)

Example. In taxable year 2007, taxpayer begins training and showing horses. On January 4, 2011, the taxpayer elects under section 183(e) to defer the determination of whether the horse-related activity will be presumed (under section 183(d)) to be engaged in for profit. Accordingly, under section 183(e)(1), a determination of whether the section 183(d) presumption applies will not occur before the close of the 2013 taxable year. Assume that in 2014, the IRS is considering issuing a notice of deficiency for taxable year 2009 regarding tax deductions claimed for the horse-related activity. Pursuant to paragraph (c)(2)(i) of this section, the 36-month notification period under paragraph (a)(1) of this section will be tolled with respect to taxable year 2009 for the period to which the section 183(e) election applies. This tolling of the notification period begins on January 4, 2011 (the date the taxpayer made the section 183(e) election) and ends on the later of April 15, 2014, or the date the taxpayer's return for taxable year 2013 is filed.

(d) *Effective/applicability date.* * * * Paragraphs (a), (b)(1) through (b)(4), and (c) are effective on August 22, 2011.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: July 15, 2011.

Emily S. McMahon,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2011–21164 Filed 8–19–11; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2011–0744]

RIN 1625–AA08

Special Local Regulation for Marine Events; Mattaponi Madness Drag Boat Race, Mattaponi River, Wakema, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final rule.

SUMMARY: The Coast Guard will establish special local regulations during the Mattaponi Madness Drag

Boat Event, a series of power boat races to be held on the waters of the Mattaponi River, near Wakema, Virginia. These special local regulations are necessary to provide for the safety of life on navigable waters during the events. This action is intended to restrict vessel traffic during the drag boat races on the Mattaponi River immediately adjacent to the Rainbow Acres Campground, located in King and Queen County, near Wakema, Virginia.

DATES: This rule will be effective from 11 a.m. to 6 p.m. on August 27, 2011. In the case of inclement weather, this regulation will be effective from 11 a.m. to 6 p.m. on August 28, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0744 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0744 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LCDR Christopher A. O'Neal, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5580, e-mail *Christopher.A.ONeal@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive the application for this event in sufficient time to allow for publication of an NPRM, and any delay encountered in this regulation's effective date by publishing a NPRM would require either the cancellation of the event, or require that the event be held without a safety zone. Either course of action would be contrary to public interest since immediate action is needed to provide for the safety of life and property on navigable waters. Additionally, delaying the effective date would be contrary to the public interest since immediate action is needed to ensure the safety of the event participants, patrol vessels, spectator craft and other vessels transiting the event area. The potential dangers posed by drag boat racing, operating in speeds excess of 150 miles per hour, make special local regulations necessary. However, the Coast Guard will provide advance notifications to users of the effected waterways via marine information broadcasts, local notice to mariners, commercial radio stations and area newspapers. In addition, publishing an NPRM is unnecessary because this event is an annual event which mariners should be aware of taking place, as it has been published in the **Federal Register** since 2009. The Coast Guard has never received any comments regarding this event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest since immediate action is needed to ensure the safety of the event participants, patrol vessels, spectator craft and other vessels transiting the event area. The potential dangers posed by drag boat racing, operating in speeds excess of 150 miles per hour, make special local regulations necessary. However, the Coast Guard will provide advance notifications to users of the effected waterways via marine information broadcasts, local notice to mariners, commercial radio stations and area newspapers. In addition, publishing an NPRM is unnecessary because this event is an annual event which mariners should be aware of taking place, as it has been published in the **Federal Register** since 2009. The Coast Guard has never received any comments regarding this event.

Background and Purpose

The Mattaponi Volunteer Rescue Squad will be sponsoring a series of power boat racing events titled the ''Mattaponi Madness Drag Boat Event.'' The power boat races will be held on the following date: August 27, 2011, and in the case of inclement weather, the event will be rescheduled to August 28, 2011. The races will be held on the Mattaponi River immediately adjacent to the Rainbow Acres Campground in King and Queen County, Virginia. The power boat races will consist of approximately 45 vessels conducting high speed straight line runs along the river and parallel to the shoreline. A fleet of spectator vessels is expected to gather near the event site to view the competition. To provide for the safety of participants, spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the power boat races.

During this enforcement period, vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander.

Discussion of Rule

The Coast Guard is establishing special local regulations on specified waters of the Mattaponi River, in the vicinity of Wakema, Virginia. The regulated area includes all waters of Mattaponi River immediately adjacent to Rainbow Acres Campground in King and Queen County, Virginia. The regulated area includes a section of the Mattaponi River approximately three-fourths of a mile long and bounded in width by each shoreline, bounded to the east by a line that runs parallel along longitude 076°52′43″ W, near the mouth of Mitchell Hill Creek, and bounded to the west by a line that runs parallel along longitude 076°53′41″ W just north of Wakema, Virginia. The effect of this regulation would be to restrict general navigation in the regulated area during the drag boat races. This special local regulation will be enforced from 11 a.m. to 6 p.m. on August 27, 2011; and in the case of inclement weather, this special local regulation will be enforced from 11 a.m. to 6 p.m. on August 28, 2011. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. Non-participating vessels will be allowed to transit the regulated area between races, when the Coast Guard Patrol Commander determines it is safe to do so. This regulation is needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

In addition to notice in the **Federal Register**, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, and marine information broadcasts so mariners can adjust their plans accordingly.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking.

Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although this rule prevents traffic from transiting a portion of certain waterways during specified events, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts, local radio stations and area newspapers so mariners can adjust their plans.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

The rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in this section of Mattaponi River during the event from 11 a.m. to 6 p.m. on August 27 or from 11 a.m. to 6 p.m. on August 28, 2011.

Although this regulation prevents traffic from transiting a portion of Mattaponi River during the event, this rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only a limited period. Vessel traffic will be able to transit the regulated area between heats if the Coast Guard Patrol Commander deems it is safe to do so. Before the enforcement period, the Coast Guard will issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are

technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction. This rule involves implementation of regulations within 33 CFR part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, and sail board racing. Under figure 2–1, paragraph (34)(h), of the Instruction, an environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

Add temporary § 100.35T05–XXXX to read as follows:

§ 100.35T05–XXXX Special Local Regulation; Mattaponi Madness Drag Boat Race, Mattaponi River, Wakema, Virginia

(a) *Regulated Area.* The regulated area includes all waters of Mattaponi River immediately adjacent to Rainbow Acres Campground in King and Queen County, Virginia. The regulated area includes a section of the Mattaponi River approximately three-fourths of a mile long and bounded in width by each shoreline, bounded to the east by a line that runs parallel along longitude 076°52′43″ W, near the mouth of Mitchell Hill Creek, and bounded to the west by a line that runs parallel along longitude 076°53′41″ W just north of Wakema, Virginia. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Hampton Roads.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Hampton Roads with a commissioned, warrant or petty officer on board and displaying a Coast Guard ensign.

(c) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by an Official Patrol.

(ii) Proceed as directed by any official patrol.

(d) Enforcement Period: This regulation will be enforced from 11 a.m. to 6 p.m. on August 27, 2011. In the case of inclement weather, this regulation will be enforced from 11 a.m. to 6 p.m. on August 28, 2011.

Dated: August 2, 2011.

Mark S. Ogle,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 2011–21327 Filed 8–19–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0754]

RIN 1625–AA00

Safety Zone; Coast Guard Exercise, Detroit River, Ambassador Bridge to the Western Tip of Belle Isle

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Captain of the Port Detroit Zone on the Detroit River, from the Ambassador Bridge to the western tip of Belle Isle. This safety zone is intended to restrict vessels from portions of the Detroit River during the Coast Guard Exercise. This safety zone is necessary to protect the public from the hazards associated with this Coast Guard exercise.

DATES: This rule is effective and will be enforced from 8 a.m. to 3 p.m. on August 23, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0754 and are available online by going to *http://www.regulations.gov*, inserting USCG–2011–0754 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LT Adrian Palomeque, Prevention Department, Sector Detroit, Coast Guard; telephone (313)568–9508, e-mail *Adrian.F. Palomeque@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. Notice was not received in sufficient time for the Coast Guard to solicit public comments before the start of the event. Thus, waiting for a notice and comment period to run would be impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect the public from the hazards

associated with this Coast Guard exercise.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for the 30 day notice period to run rule would be impracticable and contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property.

Background and Purpose

On August 23, 2011, an exercise will be conducted by the Coast Guard along with local facilities and response organizations.

Discussion of Rule

This safety zone is necessary to ensure the safety of the public from the hazards associated with the Coast Guard Exercise. The exercise will occur between 8 a.m. and 3 p.m. on August 23, 2011. This rule will be in effect and the safety zone will be enforced from 8 a.m. to 3 p.m. on August 23, 2011.

The safety zone will begin at Ambassador Bridge to the western tip of Belle Isle and encompass all U.S. waters of the Detroit River starting at position 42°18′45″ N, 083°04′28″ W; to position 42°19′59″ N, 083°00′18″ W. All geographic coordinates are North American Datum of 1983 [NAD 83].

All persons and vessels shall comply with the instructions of the Captain of the Port Detroit or his designated on scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on scene representative. The Captain of the Port Detroit or his designated on scene representative may be contacted via VHF Channel 21.

Regulatory Analyses

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

Regulatory Planning and Review

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This determination is based on the short time that vessels will be restricted from the area of water impacted by the safety zone. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that during the short time this zone will be in effect, it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel or legal policy issue.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in a portion of the Detroit River between Ambassador bridge and the western tip of Belle Isle, between 8 a.m. and 3 p.m. on August 23, 2011.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will only be in effect and enforced for seven hours on one day. Vessels may also request permission from the Captain of the Port Detroit to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect, allowing vessel owners and operators to plan accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone which will only be effective temporarily and is therefore categorically excluded under paragraph 34(g) of the Instruction.

A final environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0754 to read as follows:

§ 165.T09–0754 Safety Zone; Coast Guard Exercise, Detroit River, Ambassador Bridge to the western tip of Belle Isle.

(a) *Location.* The safety zone will begin at Ambassador Bridge to the western tip of Belle Isle, and encompass all U.S. waters of the Detroit River, starting at position 42°18′45″ N, 083°04′28″ W; to position 42°19′59″ N, 083°00′18″ W. (DATUM: NAD 83).

(b) *Effective Period.* This regulation is effective and will be enforced from 8 a.m. until 3 p.m. on August 23, 2011.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 21.

(4) Vessel operators desiring to enter or operate within the safety zone should contact the Captain of the Port Detroit or his on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port or his on-scene representative.

Dated: August 8, 2011.

E. J. Marohn,

Commander, U. S. Coast Guard, Acting Captain of the Port Detroit.

[FR Doc. 2011–21331 Filed 8–19–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0578]

RIN 1625–AA00

Safety Zone; Chicago Harbor, Navy Pier East, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Navy Pier East Safety Zone in Chicago Harbor from August 12, 2011 through August 14, 2011 and again from September 28, 2011 through October 1, 2011. This action is necessary and intended to ensure safety of life on the navigable waters of the United States immediately prior to, during, and immediately after match race events. This rule will establish restrictions upon, and control movement of, vessels in a specified area immediately prior to, during, and immediately after match race events. During the enforcement period, no person or vessel may enter the safety zone without the permission

of the Captain of the Port, Sector Lake Michigan.

DATES: The regulations in 33 CFR 165.933 will be enforced daily from 8 a.m. until 8 p.m. on August 12–14, 2011 and again from 8 a.m. to 8 p.m. on September 28, 2011 through October 1, 2011.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail BM1 Adam Kraft, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at 414–747–7154, e-mail *Adam.D.Kraft@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone; 33 CFR 165.933–Chicago Harbor, Navy Pier East, Chicago, IL for the following events:

(1) *Chicago Match Race;* on August 12, 2011 from 8 a.m. through 8 p.m.; on August 13, 2011 from 8 a.m. through 8 p.m.; on August 14, 2011 from 8 a.m. through 8 p.m.; on September 28, 2011 from 8 a.m. through 8 p.m.; on September 29, 2011 from 8 a.m. through 8 p.m.; on September 30, 2011 from 8 a.m. through 8 p.m.; and on October 1, 2011 from 8 a.m. through 8 p.m.

All vessels must obtain permission from the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative to enter, move within or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice is issued under authority of 33 CFR 165.933 Safety Zone, Chicago Harbor, Navy Pier East, Chicago IL and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port, Sector Lake Michigan, will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended. If the Captain of the Port, Sector Lake Michigan, determines that the safety zone need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the safety zone. The Captain of the Port, Sector Lake Michigan, or his or her on-scene representative may be contacted via VHF Channel 16.

Dated: August 10, 2011.

M. W. Sibley,

Captain, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan.

[FR Doc. 2011–21334 Filed 8–19–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0752]

RIN 1625–AA00

Safety Zone; Port Huron Float Down, St. Clair River, Port Huron, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Captain of the Port Detroit Zone on the St. Clair River, Port Huron, Michigan. This safety zone is intended to restrict vessels from portions of the St. Clair River during the Port Huron Float Down. Though this is an unsanctioned, non-permitted event, this temporary safety zone is necessary to protect spectators and vessels from the hazards associated with river tubing and float-down events.

DATES: This rule is effective and will be enforced from 12 to 8 p.m. on August 21, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0752 and are available online by going to *http://www.regulations.gov*, inserting USCG–2011–0752 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Lt. Adrian Palomeque, Prevention Department, Sector Detroit, Coast Guard; telephone (313)568–9508, e-mail *Adrian.F.Palomeque@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. Notice was not received in sufficient time for the Coast Guard to solicit public comments before the start of the event. Thus, waiting for a notice and comment period to run would be impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect the public from the hazards associated with this Coast Guard exercise.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30-days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for the 30-day notice period to run would be impracticable and contrary to the public interest because immediate action is necessary to prevent possible loss of life or property.

Background and Purpose

On August 21, 2011, a non-permitted public event has been advertised over various social-media sites in which a large number of persons may float down a segment of the St. Clair River using inner tubes and other similar floatation devices. This event took place in 2009/2010, though it did not receive a state or Federal permit, it drew in over 5,000 participants. Despite the plan put together by the Federal, state and local officials, emergency responders and LE officials were overwhelmed with medical emergencies, people drifting across the international border, and people trespassing on residential property when trying to get out of the water before the designated finish line. Promotional information for the event continues to be published, and more than 5,000 people are anticipated to float down the river this year.

Based on the amount of public participation and safety concerns identified in 2009 and 2010, the Captain of the Port Detroit has determined that

the 2011 float-down poses significant risks to public safety and property. The likely combination of large numbers of participants, strong river currents, limited rescue resources, and difficult emergency response scenarios could easily result in serious injuries or fatalities to float-down participants and spectators. Establishing a safety zone to control movement at the location of the float-down will help ensure the safety of persons and property and minimize the associated risks.

Discussion of Rule

This safety zone is necessary to ensure the safety of spectators, vessels, and the public from the hazards associated with the Port Huron Float Down. The 2011 float-down event will occur between about 1 and 5 p.m. on August 21, 2011. This rule will be in effect and the safety zone will be enforced from 12 to 8 p.m. on August 21, 2011.

The safety zone will begin at Lighthouse Beach and encompass all U.S. waters of the St. Clair River bound by a line starting at a point on land north of Coast Guard Station Port Huron at position 43°00′25″ N; 082°25′20″ W, extending east to the international boundary to a point at position 43°00′25″ N; 082°25′02″ W, following south along the international boundary to a point at position 42°54′30″ N; 082°27′41″ W, extending west to a point on land (just north of Stag Island) at position 42°54′30″ N; 082°27′58″ W, and following north along the U.S. shoreline to the point of origin. All geographic coordinates are North American Datum of 1983 [NAD 83].

All persons and vessels shall comply with the instructions of the Captain of the Port Detroit or his designated on scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on scene representative. The Captain of the Port Detroit or his designated on scene representative may be contacted via VHF Channel 21.

Regulatory Analyses

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

Regulatory Planning and Review

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This determination is based on the short time that vessels will be restricted from the area of water impacted by the safety zone.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in a portion of the St. Clair River near Port Huron, MI between 12 p.m. and 8 p.m. on August 21, 2011.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: this rule will only be in effect and enforced for eight hours on one day. Vessels may request permission from the Captain of the Port Detroit to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect, allowing vessel owners and operators to plan accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone which will only be effective temporarily and is therefore categorically excluded under paragraph 34(g) of the Instruction.

A final environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0752 to read as follows:

§ 165.T09–0752 Safety Zone; Port Huron Float Down; St. Clair River; Port Huron, MI.

(a) *Location.* The safety zone will begin at Lighthouse Beach and encompass all U.S. waters of the St. Clair River, Port Huron, MI, bound by a line starting at a point on land north of Coast Guard Station Port Huron at position 43°00′25″ N; 082°25′20″ W, extending east to the international boundary to a point at position 43°00′25″ N; 082°25′02″ W, following south along the international boundary to a point at position 42°54′30″ N; 082°27′41″ W, extending west to a point on land (just north of Stag Island) at position 42°54′30″ N; 082°27′58″ W, and following north along the U.S. shoreline to the point of origin. (DATUM: NAD 83).

(b) *Effective Period.* This regulation is effective and will be enforced from 12 p.m. until 8 p.m. on August 21, 2011.

(c) *Regulations.*

(1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 21.

(4) Vessel operators desiring to enter or operate within the safety zone should contact the Captain of the Port Detroit or his on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port or his on-scene representative.

Dated: August 9, 2011.

J. E. Ogden,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 2011–21341 Filed 8–18–11; 4:15 pm]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Part 668

[Docket ID ED–2009–OPE–0003]

RIN 1840–AC95

Institutions and Lender Requirements Relating to Education Loans, Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program; Corrections

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Correcting amendments.

SUMMARY: On October 28, 2009, the Department of Education (Department) published final regulations in the **Federal Register** to implement requirements relating to education loans that were added to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Opportunity Act (HEOA). The Department also amended regulations for the Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program to implement certain provisions of the HEA that involve school-based loan issues and that were affected by the statutory changes made to the HEA by

the HEOA. That document inadvertently included minor technical errors in the amendments to 34 CFR part 668. This document corrects the final regulations.

DATES: August 22, 2011.

FOR FURTHER INFORMATION CONTACT: Marty Guthrie, U.S. Department of Education, 1990 K Street, NW., room 8042, Washington, DC 20006–8502. Telephone: (202) 219–7031 or via the Internet at: *Marty.Guthrie@ed.gov*.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.*, braille, large print, audiotape, or compact disc) on request to the contact person listed in this section.

SUPPLEMENTARY INFORMATION: This document corrects minor technical errors included in the final regulations which were published in the **Federal Register** on October 28, 2009 (74 FR 55626).

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

Accordingly, 34 CFR part 668 is corrected by making the following correcting amendments:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

§ 668.16 [Corrected]

■ 2. In § 668.16(m)(2)(iv), add the word ''will'' after the word ''we''.

§ 668.213 [Corrected]

■ 3. In § 668.213—

■ A. In paragraph (g)(1), add the words ''or of a rate described in paragraph (a)(2) of this section'' after the words ''you receive the notice of your loss of eligibility''.

■ B. In paragraph (g)(2), add the words ''or of a rate described in paragraph (a)(2) of this section'' after the words ''you receive the notice of your loss of eligibility''.

(Catalog of Federal Domestic Assistance Numbers: 84.032 Federal Family Education Loan Program; 84.038 Federal Perkins Loan Program; 84.268 William D. Ford Federal Direct Loan Program.)

Dated: August 17, 2011.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2011–21356 Filed 8–19–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AN85

Technical Revisions To Conform to the Caregivers and Veterans Omnibus Health Services Act of 2010

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This final rule amends Department of Veterans Affairs (VA) medical regulations to incorporate statutory amendments. Certain statutes authorizing VA health care benefits were amended by the Caregivers and Veterans Omnibus Health Services Act of 2010. The statutory amendments affect enrollment in certain health care priority categories and exempt catastrophically disabled veterans from copayment requirements.

DATES: *Effective Date:* This final rule is effective August 22, 2011.

FOR FURTHER INFORMATION CONTACT: Roscoe Butler, Deputy Director, Business Policy, Chief Business Office (163), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–1586. (This is not a toll free number).

SUPPLEMENTARY INFORMATION: This document amends 38 CFR part 17 to conform certain sections with statutory amendments made by sections 511 through 513 of the Caregivers and Veterans Omnibus Health Services Act of 2010 (the Act), Public Law 163–111. Sections 512 and 513 of the Act amended statutory provisions affecting the enrollment of veterans in the VA health care system. VA's enrollment regulation, 38 CFR 17.36, must be revised accordingly.

First, section 512 of the Act amended 38 U.S.C. 1705(a)(3) to add ''veterans who were awarded the [M]edal of [H]onor under [10 U.S.C.] 3741, 6241 or 8741 or [14 U.S.C.] 491'' to the list of veterans included in enrollment priority category three. Accordingly, we have revised 38 CFR 17.36(b)(3), our regulation implementing enrollment priority category three, consistent with the amendment of section 1705 .

Second, section 513 of the Act amended 38 U.S.C. 1710(e) to prescribe August 2, 1990, through November 11, 1998, as the specific period of time for enrollment eligibility based on active duty service in the Southwest Asia theater of operations during the Gulf War. Consistent with the statutory amendment, we are amending § 17.36(a)(3) and (b)(6) to include those specific dates.

Third, section 511 of the Act amended title 38, United States Code (U.S.C.), to add section 1730A, which reads as follows: ''Notwithstanding subsections (f) and (g) of [38 U.S.C. 1710 and 1722A(a)] or any other provision of law, the Secretary may not require a veteran who is catastrophically disabled, as defined by the Secretary, to make any copayment for the receipt of hospital care or medical services under the laws administered by the Secretary.'' In current 38 CFR 17.108(d), VA exempts 10 classes of veterans from the copayment requirements for inpatient hospital care or outpatient medical care. In current 38 CFR 17.110(c), we exempt 8 classes of veterans from copayment requirements for medication. Finally, in current 38 CFR 17.111(f), we exempt 7 classes of veterans from payment requirements for extended care services. Consistent with section 1730A, we are amending each of these regulations to add the new exemption for catastrophically disabled veterans.

Regarding the copayment exemption for extended care services, we note that under section 1730A, VA may exempt copayments for extended care services that are considered hospital care or medical services. In 38 U.S.C. 1701(6)(E), Congress defined ''medical services'' as including

''[n]oninstitutional extended care services, including alternatives to institutional extended care that the Secretary may furnish directly, by contract, or through provision of case management by another provider or payer.'' VA has long defined ''noninstitutional'' as ''a service that does not include an overnight stay.'' We assume that Congress was aware of these definitions and intended that we would interpret section 1730A consistent with them. Accordingly, we interpret section 1730A as exempting catastrophically disabled veterans from copayments charged for adult day health care, non-institutional geriatric evaluation, and non-institutional respite care, as described in current 38 CFR 17.111. These are the only extended care services listed in § 17.111 that do not require an overnight stay. Copayments for all other extended care services still apply (including Nursing Home Care).

We note that VA provides a number of additional extended care services not listed in current 38 CFR 17.111. These services include, homemaker/home health aide, purchased skilled home care, home based primary care, and any other noninstitutional alternative extended care services. Despite not being listed under current § 17.111, the copayment exemption will apply to these services because VA considers them ''medical services'' under the definition in section 1701(6)(E). Catastrophically disabled veterans will be exempt from copayments for such services under new § 17.108(d)(11).

Current § 17.36(e) defines ''catastrophically disabled'' to mean ''a permanent severely disabling injury, disorder, or disease that compromises the ability to carry out the activities of daily living to such a degree that the individual requires personal or mechanical assistance to leave home or bed or requires constant supervision to avoid physical harm to self or others.'' This is the only definition of the term in VA's medical regulations. Although § 17.36(e) applies to enrollment, in section 1730A, Congress prescribed the exemptions for any catastrophically disabled veteran, ''as defined by the Secretary.'' We interpret section 1730A as requiring application of VA's current regulation defining the term. We note that there is no legislative history suggesting that Congress intended a different definition of the term for purposes of copayment exemptions. Rather, it is reasonable to conclude that Congress intended to liberalize the benefits for certain veterans enrolled by VA under § 17.36(e). Thus, consistent with our interpretation of section 1730A, we have explicitly incorporated the current definition of ''catastrophically disabled'' in 38 CFR 17.108(d)(11).

Administrative Procedure Act

This final rule incorporates statutory provisions or interprets those provisions. Therefore, in accordance with 5 U.S.C. 553(b)(A), the provisions of the Administrative Procedure Act (APA) regarding notice of proposed rulemaking and opportunities for public participation are not applicable. Further, pursuant to section 553(d)(2), this final rule is exempt from the APA's 30-day delayed effective date requirement.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a regulatory action as a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, if it is a regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by state, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This final rule would have no such effect on state, local, or Tribal governments, or on the private sector.

Paperwork Reduction Act

This final rule does not contain any collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule will not cause a significant economic impact on health care providers, suppliers, or entities since only a small portion of the business of such entities concerns VA beneficiaries. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers and titles are 64.009 Veterans Medical Care Benefits, 64.010 Veterans Nursing Home Care, and 64.011 Veterans Dental Care.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on July 6, 2011, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Government programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing home care, Veterans.

Dated: August 16, 2011.

Robert C. McFetridge,

Director of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans

Affairs amends 38 CFR part 17 as follows:

PART 17—MEDICAL

■ 1. The authority citation for Part 17 continues to read as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

■ 2. Amend § 17.36 by:
■ a. In paragraph (a)(3), removing ''; or any'' and adding, in its place, ''(the period between August 2, 1990, and November 11, 1998), or any''.
■ b. In paragraph (b)(3), removing ''Purple Heart'' and adding, in its place, ''Medal of Honor or Purple Heart''.
■ c. In paragraph (b)(6), removing ''; or for any'' and adding, in its place, ''(the period between August 2, 1990, and November 11, 1998), or for any''.

■ 3. Amend § 17.108 by:
■ a. In paragraphs (d)(1) through (8), removing the semicolons at the end of each paragraph and adding, in each place, a period.
■ b. In paragraph (d)(9), removing ''; or'' at the end of the paragraph and adding, in its place, a period;
■ c. Adding paragraph (d)(11).
■ d. Revising the authority citation at the end of the section.

The addition and revision read as follows:

§ 17.108 Copayments for inpatient hospital care and outpatient medical care.

* * * * *

(d) * * *

(11) A veteran who VA determines to be catastrophically disabled, as defined in 38 CFR 17.36(e).

* * * * *

(Authority: 38 U.S.C. 501, 1710, 1730A)

■ 4. Amend § 17.110 by:
■ a. In paragraphs (c)(1) through (6), removing the semicolons at the end of each paragraph and adding, in each place, a period.
■ b. In paragraph (c)(7), removing ''; and'' and adding, in its place, a period.
■ c. Adding paragraph (c)(9).
■ d. Revising the authority citation at the end of the section.

The addition and revision read as follows:

§ 17.110 Copayments for medication.

* * * * *

(c) * * *

(9) A veteran who VA determines to be catastrophically disabled, as defined in 38 CFR 17.36(e).

(Authority: 38 U.S.C. 501, 1710, 1720D, 1722A, 1730A)

■ 5. Amend § 17.111 by:
■ a. In paragraphs (f)(1) through (f)(5), removing the semicolons at the end of each paragraph and adding, in each place a period.
■ b. In paragraph (f)(6), removing ''; or'' and adding, in its place, a period.
■ c. Adding paragraph (f)(8).

The addition reads as follows:

§ 17.111 Copayments for extended care services.

* * * * *

(f) * * *

(8) A veteran who VA determines to be catastrophically disabled, as defined in 38 CFR 17.36(e), is exempt from copayments for adult day health care, non-institutional respite care, and non-institutional geriatric care.

* * * * *

[FR Doc. 2011–21291 Filed 8–19–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 51

RIN 2900–AN96

Expansion of State Home Care for Parents of a Child Who Died While Serving in the Armed Forces

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends Department of Veterans Affairs (VA) regulations concerning the payment of per diem to a State for providing nursing home care to eligible veterans. The amendments remove a restriction on VA's payment of per diem, which required all non-veteran residents of a State home to be spouses of veterans, or parents of veterans all of whose children died while serving in the Armed Forces of the United States. Under this final rule, non-veteran residents of the State home must be spouses of veterans, or parents of veterans any of whose children died while serving in the Armed Forces.

DATES: *Effective Date:* This final rule is effective August 22, 2011.

FOR FURTHER INFORMATION CONTACT: Nancy Quest, Chief, State Veterans Home Clinical & Survey Oversight, Geriatrics and Extended Care Services (114), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–6064. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Under current 38 CFR 51.210(d), VA pays per diem to a State for providing nursing home care to eligible veterans in a State home if, among other things, all non-veteran residents of the home are spouses of veterans or parents of veterans all of whose children died while serving in the Armed Forces of the United States. In Public Law 111–246, Congress mandated that VA administer § 51.210(d) to permit a State home to provide services to ''a non-veteran any of whose children died while serving in the Armed Forces.'' This final rule implements Public Law 111–246 by amending § 51.210(d) to incorporate the language mandated by Congress. As amended, § 51.210(d) allows States to admit parents, ''any'' of whose children died while serving in the Armed Forces, to State homes without affecting VA per diem payments to States for care provided to veterans.

Effect of Rulemaking

Title 38, Code of Federal Regulations, as revised by this final rule, represents VA's implementation of its exclusive legal authority on this subject. Other than future amendments to this regulation or governing statute or public law, no contrary rules or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Administrative Procedure Act

These amendments incorporate a specific program requirement mandated by Congress. Accordingly, this rule is exempt from the prior notice-and-comment and delayed-effective-date requirements of 5 U.S.C. 553.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a regulatory action as a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, if it is a regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or

planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This final rule would have no such effect on State, local, or Tribal governments, or on the private sector.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The initial and final regulatory flexibility analyses requirements of section 603 and 604 of the Regulatory Flexibility Act, 5 U.S.C. 601–612, are not applicable to this rule because a notice of proposed rulemaking is not required for this rule. Even so, the Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. The State homes referenced in this final rule are State government entities under the control of State governments. All State homes are owned, operated and managed by State governments except for a small number that are operated by entities under contract with State governments. These contractors are not small entities. Therefore, this final rule is also exempt, pursuant to 5 U.S.C. 605(b), from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers and titles are 64.005, Grants to States for Construction of State Home Facilities; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.015, Veterans State Nursing Home Care; 64.018, Sharing Specialized Medical Resources; 64.019.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the **Federal Register** for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on July 7, 2011, for publication.

List of Subjects in 38 CFR Part 51

Administrative practice and procedure, Claims, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Dated: August 16, 2011.

Robert C. McFetridge,

Director of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, VA amends 38 CFR part 51 as follows:

PART 51—PER DIEM FOR NURSING HOME CARE OF VETERANS IN STATE HOMES

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 38 U.S.C. 101, 501, 1710, 1741–1743, 1745.

■ 2. Amend § 51.210 by:

■ a. In paragraph (d), removing ''or parents all of whose children died while serving in the armed forces'' and adding, in its place, '', or parents any of whose children died while serving in the Armed Forces''.

■ b. Revising the authority citation at the end of the section.

The revision reads as follows:

§ 51.210 Administration.

* * * * *

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1743, 8135; Pub. L. 111–246)

[FR Doc. 2011–21292 Filed 8–19–11; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0195; FRL–9453–6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revisions to Clean Air Interstate Rule Emissions Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. The revision, which amends the Virginia Clean Air Interstate Rule (CAIR) trading program, is comprised of technical corrections and revisions to the definition of a cogeneration unit to ensure the Commonwealth's CAIR trading program is consistent with federal CAIR requirements. This action is being taken under the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on September 21, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2011–0195. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2308, or by e-mail at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. On September 27, 2010, the Commonwealth of Virginia Department of Environmental Quality (VADEQ) submitted a revision to its SIP, including technical corrections and revisions to the definition of a

cogeneration unit to ensure the Commonwealth's CAIR trading program is consistent with Federal CAIR requirements.

I. Background

EPA approved Virginia's CAIR trading program on December 28, 2007 (72 FR 73602). In the notice of proposed rulemaking (NPR) for Virginia's CAIR trading program (72 FR 54385, September 25, 2007), EPA noted that it believed that Virginia clearly intended to replace the CAIR Federal Implementation Plan (FIP) with a State plan based on the CAIR model rule that would allow subject sources to participate in the EPA-administered regional CAIR trading program. However, EPA also noted that there were some provisions of Virginia CAIR regulations 9 VAC 5 Chapter 140, Parts II, III, and IV that could be interpreted in a way that might be inconsistent with the Commonwealth's intent. EPA determined that VADEQ's interpretations of these provisions, provided in its letter dated September 12, 2007, clarified the language of the Virginia regulations and were consistent with having the EPA-administered CAIR trading program become effective in Virginia. However EPA recommended, and VADEQ agreed to, promulgation of clarifying amendments to these provisions at the Commonwealth of Virginia's earliest opportunity.

Also, in a rulemaking dated October 19, 2007 (72 FR 59190), EPA changed the definition of ''cogeneration unit'' in CAIR, the CAIR model cap and trade rule, and the CAIR FIP with respect to the calculation methodology for the efficiency standard of a cogeneration unit, therefore Virginia was required to modify its CAIR SIP to be consistent with the revised Federal definition.

II. Summary of SIP Revision

On September 27, 2010, VADEQ submitted a SIP revision that amended Virginia's CAIR regulations. The SIP revision incorporates the clarifying revisions specified in the September 25, 2007 NPR proposing approval of Virginia's CAIR regulations and the changes to the definition of ''cogeneration unit'' made in EPA's revised CAIR rulemaking dated October 19, 2007. On May 26, 2011 (76 FR 30600), the NPR was published for public comment. Other specific requirements and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) That are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information Arequired by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts * * *.'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Final Action

EPA is approving the Virginia CAIR revisions submitted on September 27, 2010 as a revision to the Virginia SIP. The revisions are consistent with CAIR requirements.

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions

of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 21, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving revisions to Virginia's CAIR trading program may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 3, 2011.

W. C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended by revising the entries for Chapter 140, Sections 5–140–1010, 5–140–1020, 5–140–1060, 5–140–2010, 5–140–2020, 5–140–3010, and 5–140–3020 to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	*
9 VAC 5, Chapter 140 Regulation for Emissions Trading				
*	*	*	*	*
Part II NO_X Annual Trading Program				
Article 1 CAIR NO_X Annual Trading Program General Provisions				
5–140–1010	Purpose and Authority	3/18/09	8/22/11 [Insert page number where the document begins]	
5–140–1020	Definitions	3/18/09	8/22/11 [Insert page number where the document begins]	
*	*	*	*	*
5–140–1060	Standard Requirements	3/18/09	8/22/11 [Insert page number where the document begins]	
*	*	*	*	*
Part III NO_X Ozone Season Trading Program				
Article 1 CAIR NO_X Ozone Season Trading Program General Provisions.				
5–140–2010	Purpose and Authority	3/18/09	8/22/11 [Insert page number where the document begins]	

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
5–140–2020	Definitions	3/18/09	8/22/11 [Insert page number where the document begins]	
*	*	*	*	*
Part IV SO$_2$ Annual Trading Program				
Article 1 CAIR SO$_2$ Trading Program General Provisions				
5–140–3010	Purpose and Authority	3/18/09	8/22/11 [Insert page number where the document begins]	
5–140–3020	Definitions	3/18/09	8/22/11 [Insert page number where the document begins]	
*	*	*	*	*

* * * * *

[FR Doc. 2011–21267 Filed 8–19–11; 8:45 am]

BILLING CODE 6560–50–P

EVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD203–3119; FRL–9454–1]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; administrative change.

SUMMARY: EPA is updating the materials submitted by Maryland that are incorporated by reference (IBR) into the Maryland State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the Maryland Department of the Environment (MDE) and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC, and the EPA Regional Office.

DATES: *Effective Date:* This action is effective August 22, 2011.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, N.W., Room Number 3334, EPA West Building, Washington, DC 20460; or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

SUPPLEMENTARY INFORMATION:

I. Background

The SIP is a living document which the State revises as necessary to address its unique air pollution problems. Therefore, EPA, from time to time, must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and ''Identification of plan'' format are discussed in further detail in the May 22, 1997 **Federal Register** document. On November 1, 2004 (69 FR 69304), EPA published a document in the **Federal Register** beginning the new IBR procedure for Maryland. On February 2, 2006 (71 FR 5607), May 18, 2007 (72 FR 27957), March 11, 2008 (73 FR 12895), and March 19, 2009 (74 FR 11647), EPA published updates to the IBR material for Maryland.

Since the publication of the last IBR update, EPA has approved the following regulatory changes to the following Maryland regulations:

A. Added Regulations

1. COMAR 26.11.10 (Control of Iron and Steel Production Installations), regulation .05—1 (Control of Carbon Monoxide Emissions from Basic Oxygen Furnaces).

2. COMAR 26.11.19 (Volatile Organic Compounds from Specific Processes), regulations .09–1 (Control of VOC Emissions from Industrial Solvent Cleaning Operations Other Than Cold and Vapor Degreasing), .10–1 (Flexible Packaging Printing), and .33 (Control of Volatile Organic Compounds (VOCs) from Flat wood Paneling Coatings).

3. COMAR 26.11.28 (Clean Air Interstate Rule)—all regulations (.01 through .08).

B. Revised Regulations

1. COMAR 26.11.01.01 (General Administrative Provisions—Definitions), section .01B(17) (definition of ''fuel burning equipment'').

2. COMAR 26.11.09 (Control of Fuel Burning Equipment, Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations), regulation .01B (removal of the definition of ''fuel burning equipment'').

3. COMAR 26.11.19 (Volatile Organic Compounds from Specific Processes), regulations .06 (Large Appliance Coating), .07 (Paper, Fabric, Film, Foil, Vinyl, and Other Plastic Parts Coating), and .10 (Flexographic and Rotogravure Printing).

C. Removed Regulations

COMAR 26.11.10 (Control of Iron and Steel Production Installations), Regulation .06[2] (Carbon Monoxide).

II. EPA Action

In this action, EPA is doing the following:

A. In Paragraph 52.1070(b)

Announcing the update to the IBR material as of August 1, 2011.

B. In Paragraph 40 CFR 52.1070(c)

1. Removing the entry for COMAR 26.11.10.06[1], and replacing it with an entry for COMAR 26.11.10.06.
2. Correcting a typographical error in the title heading entry for COMAR 26.11.09.
3. Correcting typographical errors in the ''Title/subject'' column for the following entries: COMAR 26.11.19.07, 26.11.19.07–1, 26.11.19.09, 26.11.19.24, 26.11.29.11, and 11.14.08.22.
4. Correcting the date format in the ''State effective date'' column for the following entries: COMAR 26.11.24.04, and all 26 entries in COMAR 26.11.32.
5. Correcting the text in the ''Additional explanation/citation at 40 CFR 52.1100'' column for COMAR 26.11.01.01, 26.11.09.01, 26.11.19.10, and 26.11.29.09.

C. In Paragraph 52.1070(d)

Correcting the date in the ''State effective date'' column for the entry ''Potomac Electric Power Company (PEPCO)—Chalk Point Units #1 and #2.''

D. In Paragraph 52.1070(e)

Correcting the date format for the following entries:
1. Carbon Monoxide Maintenance Plan—City of Baltimore—Regional Planning District 118 (''EPA approval date'' column).
2. Carbon Monoxide Maintenance Plan—Montgomery County Election Districts 4, 7, and 13; Prince Georges County Election Districts 2, 6, 12, 16, 17, and 18 (''EPA approval date'' column).
3. 1-hour Ozone Attainment Plan—Washington DC 1-hour ozone nonattainment area (''State effective date'' column); and,
4. 8-Hour Ozone Maintenance Plan for the Kent and Queen Anne's Area (''State effective date'' column).

EPA has determined that today's rule falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect table entries.

III. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Maryland SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this ''Identification of plan'' update action for Maryland.

List of Subjects in 40 CFR Part 52

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

Dated: August 8, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V—Maryland

■ 2. Section 52.1070 is amended by:
■ a. Revising paragraph (b).
■ b. In paragraph (c),
■ i. Revising the entries for COMAR 26.11.01.01, 26.11.09 heading, and 26.11.09.01.
■ ii. Removing the entry for COMAR 26.11.10.06[1], and adding an entry for COMAR 26.11.10.06 in its place.
■ iii. Revising the entries for COMAR 26.11.19.07, 26.11.19.07–1, 26.11.19.09, 26.11.19.10, 26.11.19.24, 26.11.24.04, 26.11.29.09, 26.11.29.11, 26.11.32.01 through 26.11.32.26 inclusive, and 11.14.08.22.
■ c. In paragraph (d), revising the entry for Potomac Electric Power Company (PEPCO)—Chalk Point Units #1 and #2.
■ d. In paragraph (e), revising the entries for:

i. Carbon Monoxide Maintenance Plan—City of Baltimore—Regional Planning District 118.

ii. Carbon Monoxide Maintenance Plan—Montgomery County Election Districts 4, 7, and 13; Prince Georges County Election Districts 2, 6, 12, 16, 17, and 18.

iii. 1-hour Ozone Attainment Plan—Washington DC 1-hour ozone nonattainment area.

iv. 8-Hour Ozone Maintenance Plan for the Kent and Queen Anne's Area.

The amendments read as follows:

§ 52.1070 Identification of plan.

* * * * *

(b) *Incorporation by reference.*

(1) Material listed as incorporated by reference in paragraphs (c) and (d) was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The material incorporated is as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates on or after August 1, 2011 will be incorporated by reference in the next update to the SIP compilation.

(2)(i) EPA Region III certifies that the rules and regulations provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules and regulations which have been approved as part of the State implementation plan as of August 1, 2011.

(ii) EPA Region III certifies that the source-specific requirements provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated source-specific requirements which have been approved in the notebook ''40 CFR 52.1070(d)—Source-Specific Requirements'' as part of the State implementation plan as of December 1, 2008. No additional revisions were made since between December 1, 2008 and August 1, 2011.

(3) Copies of the materials incorporated by reference may be inspected at the EPA Region III Office at 1650 Arch Street, Philadelphia, PA 19103. For further information, call (215) 814–2108; the EPA, Air and Radiation Docket and Information Center, Room Number 3334, EPA West Building, 1301 Constitution Avenue NW, Washington, DC 20460. For further information, call (202) 566–1742; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(c) EPA-approved regulations.

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR § 52.1100
26.11.01	**General Administrative Provisions**			
26.11.01.01	Definitions	9/20/10	2/22/11 76 FR 9650	1. Exceptions: Paragraphs .01B(3), (13), (21) through (23), (25); all of section .01C. 2. Revision to paragraph .01B(17). The SIP effective date is 4/25/11.
* *	*	*	*	* *
26.11.09	**Control of Fuel Burning Equipment, Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations**			
26.11.09.01	Definitions	9/20/10	2/22/11 76 FR 9650	Revision removes definition of ''fuel-burning equipment.'' The SIP effective date is 4/25/11.
* *	*	*	*	* *
26.11.10	**Control of Iron and Steel Production Installations**			

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP—Continued

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR § 52.1100
* *	*	*	* *	*
26.11.10.06	Control of Volatile Organic Compounds from Iron and Steel Production Installations.	12/25/00	11/7/01 66 FR 56222	(c)(163).
* *	*	*	* *	*
26.11.19	**Volatile Organic Compounds from Specific Processes**			
* *	*	*	* *	*
26.11.19.07	Paper, Fabric, Film, Foil, Vinyl, and Other Plastic Parts Coating.	4/19/10	9/27/10 75 FR 59084	Revisions to Section .07A, .07B and the addition of new Section .07D.
26.11.19.07–1	Control of VOC Emissions from Solid Resin Decorative Surface Manufacturing.	6/15/98	6/17/99 64 FR 32415	(c)(142).
* *	*	*	* *	*
26.11.19.09	Control of Volatile Organic Compounds (VOC) Emissions from Cold and Vapor Degreasing.	6/5/95	8/4/97 62 FR 41853	(c)(123).
26.11.19.10	Flexographic and Rotogravure Printing.	4/19/10	9/27/10 75 FR 59086	Revision to section .10B(2).
* *	*	*	* *	*
26.11.19.24	Control of VOC Emissions from Leather Coating.	8/11/97	9/23/99 64 FR 41445	(c)(137).
* *	*	*	* *	*
26.11.24	**Stage II Vapor Recovery at Gasoline Dispensing Facilities**			
* *	*	*	* *	*
26.11.24.04	Testing Requirements	2/28/05	5/8/06 71 FR 26688	
* *	*	*	* *	*
26.11.29	**NO_X Reduction and Trading Program**			
* *	*	*	* *	*
26.11.29.09	Requirements for New Sources and Set-Aside Pool.	11/24/03	3/22/04 69 FR 13236	(c)(186)(i)(C)(*1*)–(*5*).
* *	*	*	* *	*
26.11.29.11	Record Keeping	5/1/00	1/10/01 66 FR 1866	(c)(154)(i)(B)(*1*).
* *	*	*	* *	*
26.11.32	**Control of Emissions of Volatile Organic Compounds from Consumer Products**			
26.11.32.01	Applicability and Exemptions	6/18/07	12/10/07 72 FR 69621.	
26.11.32.02	Incorporation by Reference	6/18/07	12/10/07 72 FR 69621.	
26.11.32.03	Definitions	6/18/07	12/10/07 72 FR 69621.	
26.11.32.04	Standards—General	6/18/07	12/10/07 72 FR 69621.	
26.11.32.05	Standards—Requirements for Charcoal Lighter Materials.	8/18/03	12/09/03 68 FR 68523	(c)(185).
26.11.32.06	Standards—Requirements for Aerosol Adhesives.	6/18/07	12/10/07 72 FR 69621.	

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP—Continued

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR § 52.1100
26.11.32.07	Standards—Requirements for Floor Wax Strippers.	8/18/03	12/09/03 68 FR 68523	(c)(185).
26.11.32.08	Requirements for Contact Adhesives, Electronic Cleaners, Footwear, or Leather Care Products, and General Purpose Cleaners.	6/18/07	12/10/07 72 FR 69621	New Regulation.
26.11.32.09	Requirements for Adhesive Removers, Electrical Cleaners, and Graffiti Removers.	6/18/07	12/10/07 72 FR 69621	New Regulation.
26.11.32.10	Requirements for Solid Air Fresheners and Toilet and Urinal Care Products.	6/18/07	12/10/07 72 FR 69621	New Regulation.
26.11.32.11	Innovative Products—CARB Exemption.	6/18/07	12/10/07 72 FR 69621	Recodification of existing Regulation .08.
26.11.32.12	Innovative Products—Department Exemption.	6/18/07	12/10/07 72 FR 69621.	
26.11.32.13	Administrative Requirements	6/18/07	12/10/07 72 FR 69621	Recodification of existing Regulation .10; Amended.
26.11.32.14	Reporting Requirements	6/18/07	12/10/07 72 FR 69621	Recodification of existing Regulation .11; Amended.
26.11.32.15	Variances	6/18/07	12/10/07 72 FR 69621	Recodification of existing Regulation .12; Amended.
26.11.32.16	Test Methods	6/18/07	12/10/07 72 FR 69621	Recodification of existing Regulation .13; Amended.
26.11.32.17	Alternative Control Plan (ACP)	6/18/07	12/10/07 72 FR 69621	Recodification of existing Regulation .14; Amended.
26.11.32.18	Approval of an ACP Application	6/18/07	12/10/07 72 FR 69621	Recodification of existing Regulation .15; Amended.
26.11.32.19	Record Keeping and Availability of Requested Information.	6/18/07	12/10/07 72 FR 69621	Recodification of existing Regulation .16.
26.11.32.20	Violations	6/18/07	12/10/07 72 FR 69621	Recodification of existing Regulation .17.
26.11.32.21	Surplus Reduction and Surplus Trading.	6/18/07	12/10/07 72 FR 69621	Recodification of existing Regulation .18; Amended.
26.11.32.22	Limited-use surplus reduction credits for early formulations of ACP Products.	6/18/07	12/10/07 72 FR 69621	Recodification of existing Regulation .19; Amended.
26.11.32.23	Reconciliation of Shortfalls	6/18/07	12/10/07 72 FR 69621	Recodification of existing Regulation .20; Amended.
26.11.32.24	Modifications to an ACP	6/18/07	12/10/07 72 FR 69621	Recodification of existing Regulation .21; Amended.
26.11.32.25	Cancellation of an ACP	6/18/07	12/10/07 72 FR 69621	Recodification of existing Regulation .22; Amended.
26.11.32.26	Transfer of an ACP	6/18/07	12/10/07 72 FR 69621	Recodification of existing Regulation .23
* *	*	*	*	* * *
11.14.08	**Vehicle Emissions Inspection Program**			
* *	*	*	*	* * *
11.14.08.22	Evaporative Test Equipment, Gas Cap Leak Test Equipment and On-Board Diagnostics Interrogation Equipment Periodic Quality Assurance Checks.	1/2/95 10/19/98	10/29/99 64 FR 58340	(c)(144).

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP—Continued

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR § 52.1100
* *	*	*	* *	*

(d) EPA approved state source-specific requirements.

Name of source	Permit number/type	State effective date	EPA approval date	Additional explanation
Potomac Electric Power Company (PEPCO)—Chalk Point Units #1 and #2.	#49352 Amended Consent Order	2/27/78	4/2/79 44 FR 19192	52.1100(c)(22); FRN republished 5/3/79 (44 FR 25840).
* *	*	*	* *	*

(e) EPA-approved nonregulatory and quasi-regulatory material.

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* *	*	*	* *	*
Carbon Monoxide Maintenance Plan.	City of Baltimore—Regional Planning District 118.	9/20/95 7/15/04 7/15/04	10/31/95 60 FR 55321 ..... 4/04/05 70 FR 16958	52.1100(c)(117). Revised Carbon Monoxide Maintenance Plan Base Year Emissions Inventory using MOBILE6.
Carbon Monoxide Maintenance Plan.	Montgomery County Election Districts 4, 7, and 13; Prince Georges County Election Districts 2, 6, 12, 16, 17, and 18.	10/12/95 3/3/04	1/30/96 61 FR 2931 ..... 4/04/05 70 FR 16958	52.1100(c)(118). Revised Carbon Monoxide Maintenance Plan Base Year Emissions Inventory using MOBILE6.
* *	*	*	* *	*
1-Hour Ozone Attainment Plan ...	Washington DC 1-hour ozone nonattainment area.	9/2/03 2/24/04	11/16/05 70 FR 69440.	
8-Hour Ozone Maintenance Plan for the Kent and Queen Anne's Area.	Kent and Queen Anne's Counties	5/2/06 5/19/06	12/22/06 71 FR 76920.	
* *	*	*	* *	*

[FR Doc. 2011–21260 Filed 8–19–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0286; FRL–9453–9]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Control of Nitrogen Oxides Emissions From Glass Melting Furnaces

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The SIP revisions pertain to the control of nitrogen oxide (NO_X) emissions from glass melting furnaces. EPA is approving these revisions to reduce NO_X emissions from glass melting furnaces in accordance with the requirements of the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on September 21, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID

Number EPA–R03–OAR–2011–0286. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 10, 2011 (76 FR 34021), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval for the control of NO_X emissions from glass melting furnaces. The formal SIP revision was submitted by the Pennsylvania Department of the Environmental Protection (PADEP) on July 23, 2010.

II. Summary of SIP Revision

The SIP revision adds definitions and terms to Title 25 of the Pennsylvania Code (25 Pa. Code) Chapter 121.1, relating to definitions, used in the substantive provision of this SIP revision. In addition, the SIP revision adds a new regulation pertaining to the NO_X emission standards in 25 Pa. Code Chapter 129 (Standard of Sources) sections 129.301 through 129.310 (Control of NO_X Emissions from Glass Melting Furnaces). The new regulation applies to an owner or operator of a glass melting furnace that emits or has the potential to emit NO_X at a rate greater than 50 tons per year in the Commonwealth of Pennsylvania, including the local air pollution control agencies in Philadelphia and Allegheny Counties. The new regulation consists of the following: (1) New definitions and terms; (2) exemptions that the emission requirements do not apply during periods of start-up, shutdown or idling, if the owner or operator complies with the start-up, shutdown and idling requirements; (3) emission requirements which provide the owner or operator of a glass melting furnace to determine allowable NO_X emissions by multiplying the tons of glass pulled by each furnace; (4) start-up requirements where the start-up exemption identifies the control technologies or strategies to be used to minimize emissions; (5) shutdown requirements where the duration as measured from the time the furnace operation drops below 25 percent of the permitted production capacity or fuel use capacity to when all emissions from the furnace cease, will not exceed 20 days; (6) idling requirements that provide the owner or operator operate the emission control system whenever technologically feasible during idling to minimize emissions; (7) compliance determination by installing, operating and maintaining continuous emissions monitoring systems (CEMS); (8) compliance demonstration on a furnace-by-furnace basis, facility-wide emissions averaging basis, or a system-wide emissions averaging basis among glass melting furnaces; and (9) reporting and recordkeeping requirements where the owner or operator calculates and reports the CEMS data and glass production data used to show compliance with the allowable NO_X emissions limitations on a quarterly basis no later than 30 days after the end of the quarter.

Other specific requirements for the control of NO_X emissions from glass melting furnaces and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving 25 Pa. Code Chapter 121.1, relating to definitions used in the substantive provision of this SIP revision and the new regulation pertaining to the NO_X standards in 25 Pa. Code Chapter 129 (Standards for Sources)—Control of NO_X Emissions from Glass Melting Furnaces (sections 129.301 through 129.310) as revisions to the Pennsylvania SIP.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 21, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action, pertaining to Pennsylvania's control of NO_X emissions from glass melting furnaces may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 8, 2011.

W.C. Early,

Acting, Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (c)(1) is amended by:

■ a. Revising the entry for Section 121.1.

■ b. Adding entries for Sections 129.301 through 129.310.

The amendments read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(1) * * *

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/§ 52.2063 citation
		Title 25—Environmental Protection Article III—Air Resources Chapter 121—General Provisions		
Section 121.1	Definitions	12/18/10	8/22/11 [*Insert page number where the document begins*].	Added new definitions and terms. The State effective date is 6/19/10.
*	*	*	*	*
		Chapter 129—Standard for Sources		
*	*	*	*	*
		Additional NO_X Requirements		
*	*	*	*	*
		Control of NO_X Emissions From Glass Melting Furnaces		
Section 129.301	Purpose	6/19/10	8/22/11 [*Insert page number where the document begins*].	New section
Section 129.302	Applicability	6/19/10	8/22/11 [*Insert page number where the document begins*].	New section
Section 129.303	Exemptions	6/19/10	8/22/11 [*Insert page number where the document begins*].	New section
Section 129.304	Emission requirements	6/19/10	8/22/11 [*Insert page number where the document begins*].	New section
Section 129.305	Start-up requirements	6/19/10	8/22/11 [*Insert page number where the document begins*].	New section
Section 129.306	Shutdown requirements	6/19/10	8/22/11 [*Insert page number where the document begins*].	New section
Section 129.307	Idling requirements	6/19/10	8/22/11 [*Insert page number where the document begins*].	New section
Section 129.308	Compliance determination.	6/19/10	8/22/11 [*Insert page number where the document begins*].	New section

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/§ 52.2063 citation
Section 129.309	Compliance demonstration.	6/19/10	8/22/11 [*Insert page number where the document begins*].	New section
Section 129.310	Recordkeeping	6/19/10	8/22/11 [*Insert page number where the document begins*].	New section
*	*	*	*	* * *

* * * * *

[FR Doc. 2011–21262 Filed 8–19–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 110303179–1290–02]

RIN 0648–XA632

Fisheries of the Northeastern United States; Spiny Dogfish Fishery; Commercial Period 1 Quota Harvested

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

ACTION: Temporary rule; closure of spiny dogfish fishery.

SUMMARY: NMFS announces that the spiny dogfish commercial quota available to the coastal states from Maine through Florida for the first semi-annual quota period, May 1, 2011–October 31, 2011, has been harvested. Therefore, effective 0001 hours, August 26, 2011, federally permitted spiny dogfish vessels may not fish for, possess, transfer, or land spiny dogfish until November 1, 2011, when the Period 2 quota becomes available. Regulations governing the spiny dogfish fishery require publication of this notification to advise the coastal states from Maine through Florida that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no Federal commercial quota is available for landing spiny dogfish in these states. This action is necessary to prevent the fishery from exceeding its Period 1 quota and to allow for effective management of this stock.

DATES: Effective at 0001 hr local time, August 26, 2011, through 2400 hr local time October 31, 2011.

FOR FURTHER INFORMATION CONTACT: Carly Knoell, (978) 281–9224, or *Carly.Knoell@noaa.gov.*

SUPPLEMENTARY INFORMATION: Regulations governing the spiny dogfish fishery are found at 50 CFR part 648, subpart L. The regulations require annual specification of a commercial quota, which is allocated into two quota periods based upon percentages specified in the fishery management plan. The fishery is managed from Maine through Florida, as described in § 648.230.

The initial total commercial quota for spiny dogfish for the 2011 fishing year is 20 million lb (9,071.85 mt) (76 FR 32874, June 7, 2011). The commercial quota is allocated into two periods (May 1 through October 31, and November 1 through April 30). Vessel possession limits are set at 3,000 lb (1.36 mt) per trip for both Quota Periods 1 and 2. Quota Period 1 is allocated 11,580,000 lb (5,252.6 mt), and Quota Period 2 is allocated 8,420,000 lb (3,819.25 mt) of the commercial quota. The total quota cannot be exceeded, so landings in excess of the amount allocated to Period 1 have the effect of reducing the quota available to the fishery during Period 2.

The Administrator, Northeast Region, NMFS (Regional Administrator), monitors the commercial spiny dogfish quota for each quota period and, based upon dealer reports, state data, and other available information, determines when the total commercial quota will be harvested. NMFS is required to publish a notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the Federal spiny dogfish commercial quota has been harvested and no Federal commercial quota is available for landing spiny dogfish for the remainder of that quota period.

Section 648.4(b) provides that Federal spiny dogfish permit holders agree, as a condition of the permit, not to land spiny dogfish in any state after NMFS has published notification in the **Federal Register** that the commercial quota has been harvested and that no commercial quota for the spiny dogfish fishery is available. Therefore, effective 0001 hr local time, August 26, 2011, landings of spiny dogfish in coastal states from Maine through Florida by vessels holding commercial Federal fisheries permits will be prohibited through October 31, 2011, 2400 hr local time. The 2011 Period 2 quota will be available for commercial spiny dogfish harvest on November 1, 2011. Effective August 26, 2011, federally permitted dealers are also advised that they may not purchase spiny dogfish from vessels issued Federal spiny dogfish permits that land in coastal states from Maine through Florida.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest. This action closes the spiny dogfish fishery until November 1, 2011, under current regulations. The regulations at § 648.231 require such action to ensure that spiny dogfish vessels do not exceed the 2011 Period 1 quota. Data indicating the spiny dogfish fleet will have landed the 2011 Period 1 quota have only recently become available. If implementation of this closure is delayed to solicit prior public comment, the quota for Period 1 will be exceeded, thereby undermining the conservation objectives of the FMP. The AA further finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reasons stated above.

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

Dated: August 17, 2011.

Galen R. Tromble,

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

[FR Doc. 2011–21386 Filed 8–19–11; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 162
Monday, August 22, 2011

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 733

RIN 3206–AM44

Political Activity—Federal Employees Residing In Designated Localities

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: OPM proposes to amend its regulations at 5 CFR part 733 by granting Federal employees residing in King George County, Virginia, a partial exemption from the political activity restrictions specified in 5 U.S.C. 7323(a)(2) and (3), and adding King George County to its regulatory list of designated localities in 5 CFR 733.107(c). The proposed amendment reflects OPM's determination that King George County meets the criteria in 5 U.S.C. 7325 and 5 CFR 733.107(a) for a partial exemption to issue.

DATES: Written comments must be received on or before October 21, 2011.

ADDRESSES: Comments may be mailed to Elaine Kaplan, General Counsel, Room 7355, United States Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Jo-Ann Chabot, Office of the General Counsel, United States Office of Personnel Management, (202) 606–1700.

SUPPLEMENTARY INFORMATION: The Hatch Act, at 5 U.S.C. 7321–7326, governs the political activity of Federal employees, and individuals employed with the United States Postal Service and the Government of the District of Columbia. Section 7323(a) generally permits Federal employees who are not employed in the Federal agencies or positions described in section 7323(b), as amended, to take an active part in partisan political campaigns. Employees employed in the Federal agencies or positions specified in 5 U.S.C. 7323(b), as amended, generally may participate in nonpartisan political activities. According to 5 U.S.C. 7323(a)(2) and (3), Federal employees may not become candidates for partisan political office and may not solicit, accept, or receive political contributions. Section 7325, however, authorizes OPM to prescribe regulations exempting Federal employees from the prohibitions in section 7323(a)(2) and (3) to the extent OPM considers it to be in their domestic interest.

Under the authority of 5 U.S.C. 7325, OPM may issue such regulatory exemptions when two conditions exist in the municipality or political subdivision. One condition is met if the municipality or political subdivision is in Maryland or Virginia and is in the immediate vicinity of the District of Columbia, *or* if the majority of voters in the municipality are employed by the Government of the United States. The second condition is met if OPM determines that, because of special or unusual circumstances, the domestic interest of the employees is served by permitting their political participation in accordance with regulations prescribed by OPM.

In regulations at 5 CFR 733.107(c) OPM has designated municipalities and political subdivisions where Federal employees may participate in local elections. At 5 CFR 733.103–733.106, OPM has established limitations on political participation by most Federal employees residing in these designated municipalities and subdivisions. Under 5 CFR 733.103, most Federal employees who reside in a municipality or political subdivision designated by OPM may:

(1) Run as independent candidates for election to partisan political office in elections for local office in the municipality or political subdivision;

(2) Solicit, accept, or receive a political contribution as, or on behalf of, an independent candidate for partisan political office in elections for local office in the municipality or political subdivision;

(3) Accept or receive a political contribution on behalf of an individual who is a candidate for local partisan political office and who represents a political party;

(4) Solicit, accept, or receive uncompensated volunteer services as an independent candidate, or on behalf of an independent candidate, for local partisan political office, in connection with the local elections of the municipality or subdivision; and

(5) Solicit, accept, or receive uncompensated volunteer services on behalf of an individual who is a candidate for local partisan political office and who represents a political party.

Under 5 CFR 733.104, however, these employees may not:

(1) Run as the representative of a political party for local partisan political office;

(2) Solicit a political contribution on behalf of an individual who is a candidate for local partisan political office and who represents a political party;

(3) Knowingly solicit a political contribution from any Federal employee, except as permitted under 5 U.S.C. 7323(a)(2)(A)–(C).

(4) Accept or receive a political contribution from a subordinate;

(5) Solicit, accept, or receive uncompensated volunteer services from a subordinate for any political purpose;

(6) Participate in political activities:

○ While they are on duty:

○ While they are wearing a uniform, badge, or insignia that identifies the employing agency or instrumentality or the position of the employee;

○ While they are in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof; or

○ While using a Government-owned or leased vehicle or while using a privately owned vehicle in the discharge of official duties.

Moreover, candidacy for, and service in, a partisan political office shall not result in neglect of, or interference with, the performance of the duties of the employee or create a conflict, or apparent conflict, of interest.

Sections 733.103 and 733.104 of Title 5, Code of Federal Regulations, do not apply to individuals, such as career senior executives and employees of the Federal Bureau of Investigation, who are employed in the agencies or positions listed in 5 CFR 733.105(a). These individuals are subject to the more stringent limitations described in 5 CFR 733.105 and 733.106.

Individuals who require advice concerning specific political activities, and whether an activity is permitted or prohibited under 5 CFR 733.103–733.106, should contact the United

States Office of Special Counsel at (800) 854–2824 or (202) 254–3650. Requests for Hatch Act advisory opinions may be made by e-mail to: *hatchact@osc.gov.*

In response to requests from a Federal employee who resides in King George County, Virginia, OPM proposes to designate that county as one in which Federal employees may run for local partisan political office, subject to the limitations established by OPM, and accept or receive political contributions in connection with elections for local public office. This proposal reflects OPM's determination that special or unusual circumstances exist so that it is in the domestic interest of Federal employees residing in King George County to participate in these political activities. This determination is based on written material provided by the applicant, interviews with the applicant, and documentary material obtained through independent research. Principal factors leading to OPM's determination are the proximity of King George County to the District of Columbia, the rapid growth of the county within the past few years, significant public issues associated with this growth, and a significant Federal presence within King George County.

A copy of this notice will be published in two local newspapers serving King George County.

If this proposed rule is adopted, OPM will amend 5 CFR 733.107(c) by adding King George County to the list of designated Virginia municipalities and political subdivisions in which Federal Government employees may participate in elections for local partisan political office in accordance with the conditions specified in 5 CFR 733.103–733.106. The addition of King George County will be listed after Herndon, Virginia, and before Loudoun County, Virginia.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the changes will affect only employees of the Federal Government.

List of Subjects in 5 CFR Part 733

Political activity—Federal employees residing in designated localities.

U.S. Office of Personnel Management.

John Berry,

Director.

Accordingly, the Office of Personnel Management proposes to amend 5 CFR part 733 as follows:

PART 733—POLITICAL ACTIVITY—FEDERAL EMPLOYEES RESIDING IN DESIGNATED LOCALITIES

1. The authority citation for part 733 continues to read as follows:

Authority: 5 U.S.C. 7325; sec. 308 of Pub. L. 104–93, 109 Stat. 961, 966 (Jan. 6, 1996).

2. Section 733.107(c) is amended by adding King George County, Virginia, alphabetically to the list of designated Virginia municipalities and political subdivisions as set forth below.

§ 733.107 Designated localities.

* * * * *

(c)

* * *

In Virginia

* * *

King George County

* * *

[FR Doc. 2011–21392 Filed 8–19–11; 8:45 am]

BILLING CODE 6325–48–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0836; Directorate Identifier 2010–NE–38–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc (RR) Trent 800 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

> Fuel leaks from the engine have occurred in-service due to damage to sections of the fan case Low Pressure (LP) fuel tubes which run between the Low Pressure and the High Pressure (HP) fuel pumps. This damage has been caused by frettage between the securing clips and the tube outer surface, which has caused localised thinning of the tube wall thickness. The thinning of the tube wall causes the tube to fracture and fuel loss to occur.

We are proposing this AD to prevent engine fuel leaks, which could result in risk to the airplane.

DATES: We must receive comments on this proposed AD by October 6, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

For service information identified in this AD, contact Rolls-Royce plc, P.O. Box 31, Derby, DE24 8BJ, United Kingdom: telephone 44 (0) 1332 242424; fax 44 (0) 1332 249936.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *alan.strom@faa.gov;* telephone (781) 238–7143; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–0836; Directorate Identifier 2010–NE–38–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We

will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, *etc.*). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0188, dated September 20, 2010 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Fuel leaks from the engine have occurred in-service due to damage to sections of the fan case Low Pressure (LP) fuel tubes which run between the Low Pressure and the High Pressure (HP) fuel pumps. This damage has been caused by frettage between the securing clips and the tube outer surface, which has caused localised thinning of the tube wall thickness. The thinning of the tube wall causes the tube to fracture and fuel loss to occur.
>
> This AD requires inspection and, if necessary, replacement of fan case LP fuel tubes and clips.

Relevant Service Information

Rolls-Royce plc has issued Alert Service Bulletin RB.211–73–AD685, Revision 5, dated August 18, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of this Proposed AD

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

Costs of Compliance

We estimate that this proposed AD would affect about 110 products of U.S. registry. We also estimate that it would take about 3 work-hours per product to comply with this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $225 per product. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $52,800.

Authority for this Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

(3) Will not affect intrastate aviation in Alaska, and

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Rolls-Royce plc: Docket No. FAA–2011–0836; Directorate Identifier 2010–NE–38–AD.

Comments Due Date

(a) We must receive comments by October 6, 2011.

Affected Airworthiness Directives (ADs)

(b) None.

Applicability

(c) This AD applies to Rolls-Royce plc (RR) Trent 875–17, 877–17, 884–17, 884B–17, 892–17, 892B–17, and 895–17 turbofan engines. These engines are installed on, but not limited to, Boeing 777 series airplanes.

Reason

(d) This AD results from:

Fuel leaks from the engine have occurred in-service due to damage to sections of the fan case Low Pressure (LP) fuel tubes which run between the Low Pressure and the High Pressure (HP) fuel pumps. This damage has been caused by frettage between the securing clips and the tube outer surface, which has caused localised thinning of the tube wall thickness. The thinning of the tube wall causes the tube to fracture and fuel loss to occur.

We are issuing this AD to prevent engine fuel leaks, which could result in risk to the airplane.

Actions and Compliance

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

Initial Inspection

(f) Within 2,000 hours in service after the effective date of this AD, or before accumulating 3,000 hours-since-new or 3,000 hours-since-last inspection, whichever is latest, do one of the following:

On-wing Inspection

(1) Inspect the fan case LP fuel tubes (Part Numbers (P/N) FK22617, FK19213 and FK23986) and the clips that hold the fuel tubes in place. Use paragraphs 3.A.(2) and 3.A.(3) (On-wing) of RR Non-Modification Service Bulletin (NMSB) RB.211–73–D685, Revision 5, dated August 18, 2010, or

In-shop Inspection

(2) Inspect the fan case LP fuel tubes (P/N FK22617, FK19213 and FK23986) and the clips that hold the fuel tubes in place. Use

paragraphs 3.B.(2) and 3.B.(3) (In-shop) of RR NMSB RB.211–73–D685, Revision 5, dated August 18, 2010.

Repetitive Inspection

(g) Following accomplishment of the initial inspection in compliance with the requirements of paragraph (f)(1) or (f)(2) of this AD, repeat the inspection at intervals not exceeding 3,000 hours, and, if necessary, replace the fan case LP fuel tubes (P/N FK22617, FK19213 and FK23986) and the clips that hold the fuel tubes in place. Use paragraphs 3.A.(2) and 3.A.(3) (On-wing) or 3.B.(2) and 3.B.(3) (In-shop) of RR NMSB RB.211–73–D685, Revision 5, dated August 18, 2010.

FAA AD Differences

(h) None.

Alternative Methods of Compliance (AMOCs)

(i) The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(j) Refer to Mandatory Continuing Airworthiness Information European Aviation Safety Agency (EASA) Airworthiness Directive 2010–0188, dated September 20, 2010, and Rolls-Royce plc Alert Service Bulletin RB.211–73–AD685, Revision 5, dated August 18, 2010, for related information. Contact Rolls-Royce plc, P.O. Box 31, Derby, DE24 8BJ, United Kingdom: telephone 44 (0) 1332 242424; fax 44 (0) 1332 249936, for a copy of this service information.

(k) Contact Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *alan.strom@faa.gov;* telephone (781) 238–7143; fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on August 5, 2011.

Peter A. White,

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

[FR Doc. 2011–21311 Filed 8–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0627; Airspace Docket No. 11–ASO–27]

Proposed Amendment of Class E Airspace; Pelion, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E Airspace at Pelion, SC, as new Standard Instrument Approach Procedures have been developed at Lexington County Airport at Pelion. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport. This action also would recognize the airport name change to Lexington County Airport at Pelion.

DATES: Comments must be received on or before October 6, 2011. 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.

ADDRESSES: Send comments on this rule to: U. S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2011–0627; Airspace Docket No. 11–ASO–27, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2011–0627; Airspace Docket No. 11–ASO–27) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Annotators wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–0627; Airspace Docket No. 11–ASO–27.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace extending upward from 700 feet above the surface to support new standard instrument approach procedures developed at Lexington County Airport at Pelion, Pelion, SC. Airspace reconfiguration is necessary due to the design of new arrival procedures, and for continued safety and management of IFR operations at the airport. Also, the airport name would be changed from Corporate Airport to Lexington County Airport at Pelion.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9U, dated August 18, 2010,

and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would 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 proposed 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 proposed regulation is within the scope of that authority as it would amend Class E airspace at Lexington County Airport at Pelion, Pelion, SC.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; 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.

* * * * *

ASO SC E5 Pelion, SC [AMENDED]

Lexington County Airport at Pelion, Pelion, SC

(Lat. 33°47′41″ N., long. 81°14′45″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Lexington County Airport at Pelion.

Issued in College Park, Georgia, on August 12, 2011.

Mark D. Ward,

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

[FR Doc. 2011–21287 Filed 8–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0556; Airspace Docket No. 11–ASO–21]

Proposed Amendment of Class E Airspace; Jacksonville, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E Airspace at Jacksonville, NC, as new Standard Instrument Approach Procedures have been developed at Albert J Ellis Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before October 6, 2011. 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.

ADDRESSES: Send comments on this rule to: U. S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey, SE., Washington, DC 20590–0001; *Telephone:* 1–800–647–5527; *Fax:* 202–493–2251. You must identify the Docket Number FAA–2011–0556; Airspace Docket No. 11–ASO–21, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2011–0556; Airspace Docket No. 11–ASO–21) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Annotators wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–0556; Airspace Docket No. 11–ASO–21.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/*

airports_airtraffic/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E surface area airspace and Class E airspace extending upward from 700 feet above the surface to support new standard instrument approach procedures developed at Albert J Ellis Airport, Jacksonville, NC, and for continued safety and management of IFR operations at the airport.

Class E airspace designations are published in Paragraph 6002 and 6005, respectively, of FAA Order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would 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 proposed 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 proposed regulation is within the scope of that authority as it would amend Class E airspace at Albert J Ellis Airport, Jacksonville, NC.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; 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 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ASO NC E2 Jacksonville Albert J Ellis Airport, NC [Amended]

Jacksonville, Albert J. Ellis Airport, NC
(Lat. 34°49′45″ N., long. 77°36′44″ W.)

Within a 4.2-mile radius of Albert J. Ellis Airport. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

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

* * * * *

ASO NC E5 Jacksonville, NC [Amended]

Jacksonville, New River MCAS, NC
(Lat. 34°42′31″ N., long. 77°26′23″ W.)
Albert J. Ellis Airport
(Lat. 34°49′45″ N., long. 77°36′44 ″ W.)
Onslow Memorial Hospital Point In Space Coordinates
(Lat. 34°45′36″ N., long. 77°22′28″ W.)

That airspace extending upward from 700 feet or more above the surface within a 7-mile radius of New River MCAS, and within a 6.7-mile radius of Albert J. Ellis Airport, and within a 6-mile radius of the point in space (lat. 34°45′36″ N., long. 77°22′28″ W.) serving Onslow Memorial Hospital.

Issued in College Park, Georgia on August 12, 2011.

Mark D. Ward,

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

[FR Doc. 2011–21288 Filed 8–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0785; Airspace Docket No. 11–AEA–20]

Proposed Amendment of Class E Airspace; Luray, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E Airspace at Luray, VA, as new Standard Instrument Approach Procedures have been developed at Luray Caverns Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport. This action also would update the geographic coordinates of the airport.

DATES: Effective 0901 UTC, Comments must be received on or before October 6, 2011. 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.

ADDRESSES: Send comments on this rule to: U. S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2011–0785; Airspace Docket No. 11–AEA–20, at the beginning of your comments. You

may also submit and review received comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2011–0785; Airspace Docket No. 11–AEA–20) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Annotators wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–0785; Airspace Docket No. 11–AEA–20.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace extending upward from 700 feet above the surface to support new standard instrument approach procedures developed at Luray Caverns Airport, Luray, VA. Airspace reconfiguration is necessary for continued safety and management of IFR operations at the airport. The geographic coordinates for Luray Caverns Airport also would be adjusted to coincide with the FAAs aeronautical database.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would 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 proposed 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 proposed regulation is within the scope of that authority as it would amend Class E airspace at Luray Caverns Airport, Luray, VA.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; 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 VA E5 Luray, VA [Amended]

Luray Caverns Airport, VA
(Lat. 38°40′2″ N., long. 78°30′4″ W.)

That airspace extending upward from 700 feet above the surface within a 14.5-mile radius of Luray Caverns Airport.

Issued in College Park, Georgia, on August 10, 2011.

Mark D. Ward,

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

[FR Doc. 2011–21289 Filed 8–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0007]

30 CFR Part 1206

Second Notice of Intent To Establish an Indian Oil Valuation Negotiated Rulemaking Committee

AGENCY: Office of Natural Resources Revenue, Interior.

ACTION: Notice of intent.

SUMMARY: On January 31, 2011, the Department published a notice of intent to establish an Indian Oil Valuation Negotiated Rulemaking Committee. In that notice, we asked interested parties to nominate representatives for membership on the Committee and addressed many of the requirements of Section 564 of the Negotiated Rulemaking Act. This notice identifies the persons proposed to serve on the Committee and addresses the rest of the requirements of Section 564 of the Negotiated Rulemaking Act.

DATES: Submit written comments on or before September 21, 2011.

ADDRESSES: You may submit comments and applications by the following methods:

- Electronically go to *http://www.regulations.gov.* In the entity titled ''Enter Keyword or ID,'' enter ONRR–2011–0007, and then click search. Follow the instructions to submit public comments. The ONRR will post all comments to the docket.
- Mail or hand-carry (also, courier service) comments to Mr. Karl Wunderlich, Office of Natural Resources Revenue (ONRR), P.O. Box 25165, MS 300B2, Denver, CO 80225–0165. Please reference the Docket No. ONRR–2011–0007 in your comments.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Wunderlich, ONRR, Telephone: (303) 231–3663; Fax: (303) 231–3194, or E-mail: *karl.wunderlich@onrr.gov.*

SUPPLEMENTARY INFORMATION: On January 31, 2011, the Department published a notice of intent to establish an Indian Oil Valuation Negotiated Rulemaking Committee (76 FR 5317). You may refer to that notice for background information. The Committee will develop specific recommendations regarding proposed revisions to the existing regulations for valuation of oil production from Indian leases. One of the key issues to be addressed is the major portion valuation requirement. Section 564 of the Negotiated Rulemaking Act requires an agency to consider eight elements when it is considering the establishment of a Negotiated Rulemaking Committee. In the January 2011 notice, we announced our intent to establish a negotiated rulemaking committee to negotiate and develop a proposed rule and asked interested parties to nominate representatives for membership on the Committee. We received 12 responses nominating individuals to serve on the Committee. This notice addresses the rest of the elements of Section 564. We believe that using a negotiated rulemaking committee to make specific recommendations regarding valuation of oil from Indian leases would help the Office of Natural Resources Revenue (ONRR) in developing a rulemaking.

The interests significantly affected are oil and gas companies who produce oil and pay royalties on Indian leases, and Indian Tribes and individual Indian mineral owners who receive royalties from oil produced from Indian leases located on their lands.

The ONRR is making a commitment to ensure that the Committee has sufficient administrative and technical resources to complete its work in a timely fashion. ONRR, with the help of a facilitator, will prepare all agendas, provide meeting notes, and provide a final report of any issues on which that the committee reached consensus. ONRR will also obtain meeting space for all meetings.

The use of negotiated rulemaking will not unreasonably delay the development of a proposed rule because time limits will be placed on the negotiation. We anticipate that negotiation will expedite a proposed rule and ultimately the acceptance of a final rule.

There is a reasonable likelihood that the Committee will reach consensus on a proposed rule within a fixed period of time. It is anticipated that a proposed rule will be published for notice and comment within 30 months of convening the committee. Quarterly meetings will be held with the first meeting planned for early fall.

Proposed Members of the Committee

The Department believes that the interests significantly affected by this rule will be represented by the representatives listed below:

Claire Ware, A representative of the Shoshone and Arapaho Tribes of the Wind River Reservation;

Manuel Myore, A representative of the Ute Indian Tribe;

Roger Bird Bear, A representative of the allottees of Fort Berthold, North Dakota;

Marcella Giles, A representative of the allottees of Oklahoma Indian Land/Mineral Owners of Associated Nations;

Perry Shirley, A representative of The Navajo Nation;

James Barnes, A representative of the Council of Petroleum Accountants Societies;

Rob Thompson, A representative of the Western Energy Alliance;

Dan Riemer, A representative of the American Petroleum Institute;

Jack Vaughn, A representative of Peak Energy Resources;

Dee Ross, A representative of Chesapeake Energy Corporation;

Donald Sant, Paul Tyler, and John Barder, Three representatives of the Office of Natural Resources Revenue; and

Weldon Loudermilk, A representative of the Bureau of Indian Affairs.

Persons who will be significantly affected by a proposed rule, and who believe their interests will not be adequately represented by any person listed above, may apply for or nominate another person for membership on the negotiated rulemaking committee to represent such interests to the proposed rule. Each application or nomination should include: (1) The name of the applicant or nominee and a description of the interests such person shall represent; (2) evidence that the applicant or nominee is authorized to represent parties related to the interests the person proposes to represent; (3) a written commitment that the applicant or nominee shall actively participate in good faith in the development of the rule under consideration; and (4) the reasons that the persons do not adequately represent the interests of the person submitting the application or nomination.

All submission of comments and applications should be submitted no later than 30 calendar days following publication of this notice. Please submit comments and applications by instructions shown in **ADDRESSES**.

The ONRR will publish the first meeting date in a **Federal Register** notice. The Committee will determine the dates of future meetings, and we will then publish notice of the dates in the **Federal Register**. The first meeting will develop the ground rules on what consensus means and if there is any issues other than the major portion analysis that needs to be discussed.

Following receipt of comments on this notice, ONRR will establish the Negotiated Rulemaking Committee. The ONRR will participate in the Committee to represent the Federal Government's statutory mission. After the Committee

reaches consensus on the provisions of a proposed rule ONRR will develop a proposed rule to be published in the **Federal Register**.

Certification

I hereby certify that the Indian Oil Valuation Negotiated Rulemaking Committee is in the public interest.

Dated: August 15, 2011.

Ken Salazar,

Secretary of the Interior.

[FR Doc. 2011–21305 Filed 8–19–11; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

43 CFR Part 2

RIN 1090–AA94

Amendment of Privacy Act Regulations, Request for Comments

AGENCY: Office of the Secretary, Interior.

ACTION: Proposed Rule.

SUMMARY: The Department of the Interior is amending its regulations to exempt certain records from particular provisions of the Privacy Act. Specifically, the Department proposes to exempt certain records of the newly-created Debarment and Suspension Program system of records from one or more provisions of the Privacy Act.

DATES: Submit written comments on October 3, 2011.

ADDRESSES: Send written comments, identified by RIN 1090–AA94, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Karen Burke, OS/NBC Privacy Act Officer, Office of the Secretary, Department of the Interior, 1951 Constitution Ave, NW., Mail Stop 116 SIB, Washington, DC 20240.
- *E-mail:* Karen Burke, OS/NBC Privacy Act Officer, Office of the Secretary, *privacy@nbc.gov*.

FOR FURTHER INFORMATION CONTACT: Karen Burke, OS/NBC Privacy Act Officer, Office of the Secretary, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Mail Stop 116 SIB, Washington, DC 20240. E-mail at *privacy@nbc.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Department of the Interior (DOI) Office of Acquisition and Property Management maintains the Debarment and Suspension Program system of records. The primary purpose of this system of records is to assist DOI in conducting and documenting debarment and suspension proceedings to ensure that Federal procurements and Federal discretionary assistance, loans, and benefits are awarded to presently responsible business entities, organizations, and individuals. Additional purposes of the system are to: Promote understanding of the case decision path and concerns addressed by the debarring and suspending official in reaching a decision; to promote the submission of relevant arguments in contested cases; to educate the public and private bar as to the kinds of mitigating factors and remedial measures that demonstrate present responsibility; and to enhance the transparency of decision making.

Pursuant to 5 U.S.C. 552a (k)(2) and (k)(5), the head of a Federal agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is ''investigatory material complied for law enforcement purposes, other than material within the scope of subsection (j)(2)'' or ''investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information. * * *''

To the extent that this system of records contains investigatory material within the provision of 5 U.S.C. 552a(k)(2) and (k)(5), the Department of the Interior proposes to exempt the Debarment and Suspension Program System of Records from provisions 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (H), (I); and (f). Exemptions from these particular subsections are justified for the following reasons:

1. From subsection (c)(3) because granting access to the accounting for each disclosure as normally required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or action interest by DOI or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and/or lead to suppression, alteration, or destruction of evidence.

2. From subsections (d) and (f) because providing access to records of a debarment or suspension action investigation and the right to contest the contents of those records and force changes to be made to the information contained therein to individuals whose names may appear in the records due to having provided information about a respondent but who are not the subject of the debarment or suspension action would seriously interfere with and thwart the orderly and unbiased conduct of the investigation, impede debarment or suspension case preparation, and/or conflict with the evidentiary fact finding process under the debarment and suspension rules.

Providing rights normally afforded under the Privacy Act and agency rules could provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or result in destruction of evidence interfering with the development of the suspension or debarment action; and/or jeopardize pending or ongoing judicial proceedings or impede the ability to act to protect Federal procurement and non-procurement program interests. Additionally, the debarment and suspension rules provide a process which accords recipients of action notices, as part of the contest process, the opportunity, where facts material to the action are determined to be genuinely in dispute, for an evidentiary fact finding hearing at which to confront and cross examine the government's witnesses.

3. From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity to accomplish a purpose of the agency will be clear.

4. From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

5. From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. DOI will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

Procedural Requirements

1. Regulatory Planning and Review (E.O. 12866)

The Office of Management and Budget (OMB) has determined that this rule is not a significant rule and has not reviewed it under the requirements of Executive Order 12866. We have evaluated the impacts of the rule as required by E.O. 12866 and have determined that it does not meet the criteria for a significant regulatory action. The results of our evaluation are given below.

(a) This rule will not have an annual effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities.

(b) This rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(c) This rule does not alter the budgetary effects of entitlements, grants, user fees, concessions, loan programs, water contracts, management agreements, or the rights and obligations of their recipients.

(d) This rule does not raise any novel legal or policy issues.

2. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not impose a requirement for small businesses to report or keep records on any of the requirements contained in this rule. The exemptions to the Privacy Act apply to individuals, and individuals are not covered entities under the Regulatory Flexibility Act.

3. Small Business Regulatory Enforcement Fairness Act (SBREFA)

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

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

4. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments in the aggregate, or on the private sector, of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. This rule makes only minor changes to 43 CFR part 2. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

5. Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. This rule makes only minor changes to 43 CFR part 2. A takings implication assessment is not required.

6. Federalism (E.O. 13132)

In accordance with Executive Order 13132, this rule does not have any federalism implications to warrant the preparation of a Federalism Assessment. The rule is not associated with, nor will it 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. A Federalism Assessment is not required.

7. Civil Justice Reform (E.O. 12988)

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

(a) Does not unduly burden the judicial system.

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

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

8. Consultation With Indian Tribes (E.O. 13175)

In accordance with Executive Order 13175, the Department of the Interior has evaluated this rule and determined that it would have no substantial effects on Federally recognized Indian Tribes.

9. Paperwork Reduction Act

This rule does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required.

10. National Environmental Policy Act

This rule does not constitute a major Federal action and would not have a significant effect on the quality of the human environment. Therefore, this rule does not require the preparation of an environmental assessment or environmental impact statement under the requirements of the National Environmental Policy Act of 1969.

11. Data Quality Act

In developing this rule, there was no need to conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

12. Effects on Energy Supply (E.O. 13211)

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

13. Clarity of This Regulation

We are required by Executive Order 12866 and 12988, the Plain Writing Act of 2010 (H.R. 946), and the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means each rule we publish must:

—Be logically organized;
—Use the active voice to address readers directly;
—Use clear language rather than jargon;
—Be divided into short sections and sentences; and
—Use lists and tables wherever possible.

List of Subjects in 43 CFR Part 2

Privacy Act, Sensitive information, Freedom of Information Act, Reporting and recordkeeping requirements.

Dated: August 9, 2011.

Rhea Suh,

Assistant Secretary for Policy, Management and Budget.

For the reasons stated in the preamble, the Department of the Interior proposes to amend 43 CFR part 2 as follows:

PART 2—RECORDS AND TESTIMONY; FREEDOM OF INFORMATION ACT

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301, 552 and 552a; 31 U.S.C. 9701 and 43 U.S.C. 1460–1461. Appendix F to Part 2 also is issued under 30 U.S.C. 201–209; 30 U.S.C. 351–360.

2. In § 2.79, add paragraphs (b)(14) and (c)(4) to read as follows:

§ 2.79 Exemptions.

* * * * *

(b)* * *

(14) Debarment and Suspension Program, DOI–11.

(c)* * *

(4) Debarment and Suspension Program, DOI–11.

* * * * *

[FR Doc. 2011–21306 Filed 8–19–11; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204 and 252

RIN 0750–AG47

[DFARS Case 2011–D039]

Defense Federal Acquisition Regulation Supplement; Safeguarding Unclassified DoD Information

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule; extension of comment period.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to add a new subpart and associated contract clauses to address requirements for safeguarding unclassified DoD information. The comment period is being extended 93 days to provide additional time for interested parties to review the proposed DFARS changes.

DATES: Comments on the proposed rule should be submitted in writing to one of the addresses shown below on or before November 30, 2011, to be considered in the formation of the final rule.

ADDRESSES: Submit comments identified by DFARS Case 2011–D039, using any of the following methods:

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

○ *E-mail: dfars@osd.mil.* Include DFARS Case 2011–D039 in the subject line of the message.

○ *Fax:* 703–602–0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Mr. Julian Thrash, OUSD(AT&L)DPAP(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

To confirm receipt of your comment, please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 93 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Julian Thrash, telephone 703–602–0310.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** on June 29, 2011 (76 FR 38089), with a request for comments by August 29, 2011. DoD is extending the comment period for 93 days to provide additional time for interested parties to review the proposed DFARS changes.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2011–21337 Filed 8–19–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R9–IA–2011–0027; 96300–1671–0000–R4]

RIN 1018–AW81

Endangered and Threatened Wildlife and Plants; U.S. Captive-Bred Inter-Subspecific Crossed or Generic Tigers

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to amend the regulations that implement the Endangered Species Act (Act) by removing inter-subspecific crossed or generic tiger (*Panthera tigris*) (*i.e.,* specimens not identified or identifiable as members of Bengal, Sumatran, Siberian, or Indochinese subspecies from the list of species that are exempt from registration under the Captive-bred Wildlife (CBW) regulations. The exemption currently allows those individuals or breeding operations who want to conduct otherwise prohibited activities, such as take, interstate commerce, and export, under the Act with U.S. captive-bred, live inter-subspecific crossed or generic tigers to do so without becoming registered. We are proposing this change to the regulations to strengthen control over captive breeding of tigers in the United States to ensure that such breeding supports the conservation of the species in the wild consistent with the purposes of the Act. The inter-subspecific crossed or generic tigers remain listed as endangered under the Act, and a person would need to obtain authorization under the current statutory and regulatory requirements to conduct any otherwise prohibited activities with them.

DATES: We will consider comments received or postmarked on or before September 21, 2011.

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

Electronically: Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Enter Keyword or ID box, enter FWS–R9–IA–2011–0027, which is the docket number for this rulemaking. Then, in the Search panel at the top of the screen, under the Document Type heading, check the box next to Proposed Rules to locate this document. You may submit a comment by clicking on ''Send a Comment.''

By hard copy: Submit by U.S. mail or *hand-delivery to:* Public Comments Processing, *Attn:* FWS–R9–IA–2011–0027; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not accept e-mails or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section at the end of **SUPPLEMENTARY INFORMATION** for further information about submitting comments).

FOR FURTHER INFORMATION CONTACT: Timothy J. Van Norman, Chief, Branch of Permits, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 212, Arlington, VA 22203; telephone 703–358–21040; fax 703–358–2281. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

To prevent the extinction of wildlife and plants, the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), and its implementing regulations, prohibit any person subject to the jurisdiction of the United States from conducting certain activities unless authorized by a permit. These activities include import, export, take, and interstate or foreign commerce. The Department of the Interior may permit these activities for endangered species for scientific research or enhancement of the propagation or survival of the species, provided the activities are consistent with the purposes of the Act.

In addition, for threatened species, permits may be issued for the above-listed activities, as well as zoological, horticultural, or botanical exhibition; education; and special purposes consistent with the Act. The Secretary of the Interior has delegated the authority to administer endangered and threatened species permit matters to the Director of the Fish and Wildlife Service. The Service's Division of Management Authority administers the permit program for the import or export of listed species; the sale or offer for sale in interstate and foreign commerce for nonnative listed species; and the take of nonnative listed wildlife within the United States.

Previous Federal Action

In 1979, the Service published the Captive-bred Wildlife (CBW) regulations (44 FR 54002, September 17, 1979) to reduce Federal permitting requirements and facilitate captive breeding of endangered and threatened species under certain conditions. These conditions include:

(1) A person may become registered with the Service to conduct otherwise prohibited activities when the activities can be shown to enhance the propagation or survival of the species;

(2) Interstate commerce is authorized only when both the buyer and seller are registered for the same species;

(3) The registration is only for live, mainly non-native endangered or threatened wildlife that was born in captivity in the United States (although the Service may determine that a native species is eligible for the registration; to date, the only native species granted eligibility under the registration is the Laysan duck (*Anas laysanensis*));

(4) Registration does not authorize activities with non-living wildlife, a provision that is intended to discourage the propagation of endangered or threatened wildlife for consumptive markets; and

(5) The registrants are required to maintain written records of authorized activities and report them annually to the Service. The CBW registration has provided zoological institutions and breeding operations the ability to quickly move animals between registered institutions for breeding purposes.

In 1993, the Service amended the CBW regulations at 50 CFR 17.21(g) (58 FR 68323, December 27, 1993) to eliminate public education through exhibition of living wildlife as the sole justification for the issuance of a CBW registration. ''This decision was based on the Service's belief that the scope of the CBW system should be revised to relate more closely to its original intent, *i.e.,* the encouragement of responsible breeding that is specifically designed to help conserve the species involved'' (63 FR 48636).

In 1998, the Service amended the CBW regulations (63 FR 48634, September 11, 1998) to delete the requirement to obtain a CBW registration for holders of inter-subspecific crossed or generic tigers (*Panthera tigris*) (*i.e.,* specimens not identified or identifiable as members of Bengal, Sumatran, Siberian, or Indochinese subspecies (*Panthera tigris tigris, P. t. sumatrae, P. t. altaica,* and *P. t. corbetti,* respectively)). Any otherwise prohibited activities with these specimens are authorized only when the activities can be shown to enhance the propagation or survival of the species, provided the principal purpose is to facilitate captive breeding. Although no written annual reports are required, holders of these specimens must maintain accurate written records of activities, including births, deaths, and transfers of specimens, and make the records accessible to Service agents for inspection at reasonable hours as provided in 50 CFR 13.46 and 13.47. The exemption for inter-subspecific crossed or generic tigers was based on the alleged lack of conservation value of these specimens due to their mixed or unknown genetic composition. The intention behind the exemption was for the Service to focus its oversight on populations of ''purebred'' animals of the various tiger subspecies to further their conservation in the wild. Despite this exemption, inter-subspecific crossed or generic tigers are still protected under the Act.

Species Status

The wild tiger was once abundant throughout Asia. By the end of the 19th Century, an estimated 100,000 tigers occurred in the wild (Nowak 1999, p. 828), but by the late 1990s, the estimated population declined to 5,000–7,000 animals (Seidensticker *et al.* 1999, p. xvii). Today's population is thought to be 3,000–5,000 individuals, according to the IUCN (International Union for Conservation of Nature) Red List estimate (Chundawat *et al.* 2010, unpaginated), with no more than 2,500 mature breeding adults (Williamson and Henry 2008, pp. 7, 43). The once-abundant tiger now lives in small, fragmented groups, mostly in protected forest, refuges, and national parks (FWS 2010a, p. 1). The species occupies only about 7 percent of its original range, and in the past decade, the species' range has decreased by as much as 41 percent (Dinerstein *et al.* 2007, p. 508).

For many years, the international community has expressed concern about the status of tigers in the wild and the risk that captive tigers may sustain the demand for tiger parts, which would ultimately have a detrimental effect on the survival of the species in the wild. In 2005, Werner (p. 24) estimated there were 4,692 tigers held in captivity in the United States. Approximately 264 tigers were held in institutions registered with the Association of Zoos and Aquariums (AZA), 1,179 in wildlife sanctuaries, 2,120 in institutions registered by the U.S. Department of Agriculture (USDA), and 1,120 in private hands. In 2008, Williamson and Henry stated that as many as 5,000 tigers are in captivity in the United States, but cautioned that, given the current State and Federal legal framework that regulates U.S. captive tigers, the exact size of the population is unknown (Williamson and Henry 2008). An estimated 5,000 captive tigers occur on China's commercial tiger farms, where tigers are being bred intensively and produce more than 800 animals each year (Williamson and Henry 2008, p. 40). Tiger body parts, such as organs, bones, and pelts, are in demand not only in China, but also on the global black market. Organs and bones are used in traditional Asian medicines, which are purchased by consumers who believe the parts convey strength, health, and virility.

Conservation Status

The tiger is a species of global concern, is classified as endangered in the IUCN Red List (IUCN 2010), and is protected by a number of U.S. laws and treaties. It is listed as endangered under the Act. Section 3 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.'' The listing is at the species level and, thus, includes all subspecies of tiger (including those that are of unknown subspecies, referred to as ''generic'' tigers) and inter-subspecific crosses.

The species is also protected by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Under this treaty, 175 member countries (Parties) work together to ensure that international trade in protected species is not detrimental to the survival of wild populations. The United States and all the tiger range countries are Parties to CITES. The tiger is listed in Appendix I, which includes species threatened with extinction whose trade is permitted only under exceptional circumstances, and which generally precludes commercial trade. The United

States has a long history of working within CITES to promote tiger conservation and has been a leader in supporting strong actions within CITES for tigers, including strict controls on captive-bred animals. In 2007 at the 14th meeting of the Conference of the Parties to CITES (CoP14), we were closely involved in drafting Decision 14.69, which calls on countries with intensive commercial breeding operations of tigers to implement measures to restrict the captive population to a level supportive only to conserving wild tigers, and for tigers not to be bred for trade in their parts and products. Although the decision was primarily directed at large commercial breeding operations such as those found in China, we are aware of the large number of captive tigers in the United States and the need to be vigilant in monitoring these tigers as well.

The tiger is afforded additional protection under the Captive Wildlife Safety Act (CWSA) and the Rhinoceros and Tiger Conservation Act (RTCA). The CWSA amended the Lacey Act to address concerns about public safety and the growing number of big cats, including tigers, in private hands in the United States. The law and its regulations make it illegal to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any live big cats except by certain exempt entities. Entities exempt from the CWSA include a person, facility, or other entity licensed by the USDA Animal and Plant Health Inspection Service under the Animal Welfare Act to possess big cats (typically zoos, circuses, and researchers) or registered to transport big cats; State colleges, universities, and agencies; State-licensed wildlife rehabilitators and veterinarians; and wildlife sanctuaries that meet certain criteria.

The RTCA is another powerful tool in combating the international trade in products containing tiger parts. It prohibits the sale, import, and export of products intended for human use and containing, or labeled or advertised as containing, any substance derived from tiger and provides for substantial criminal and civil penalties for violators. The RTCA also establishes a fund that allows the Service to grant money in support of on-the-ground tiger conservation efforts, such as anti-poaching programs, habitat and ecosystem management, development of nature reserves, wildlife surveys and monitoring, management of human-wildlife conflict, and public awareness campaigns (FWS 2010b. p. 1).

Concerns Raised and Recommendations

The World Wildlife Fund, TRAFFIC North America, other nongovernmental organizations (NGOs), and the public have expressed concerns about the potential role U.S. captive tigers may play in the trade in tiger parts. In July 2008, TRAFFIC published a report entitled, *Paper Tigers? The Role of the U.S. Captive Tiger Population in the Trade in Tiger Parts* (Williamson and Henry 2008). The report found no indication that U.S. tigers currently are entering domestic or international trade as live animals or as parts and products. However, given the precarious status of tigers in the wild and the potential that U.S. captive tigers could enter trade and undermine conservation efforts, TRAFFIC made several recommendations to close potential loopholes in current Federal and State regulations to address the potential use of captive U.S. tigers in trade. One of those recommendations was for the Service to rescind the exemption under 50 CFR 17.21(g)(6) for holders of inter-subspecific crossed or generic tigers to register and submit annual reports under the CBW regulations.

Proposed Removal of Inter-Subspecific Crossed or Generic Tigers From 50 CFR 17.21(g)(6)

Based on an analysis of current information on factors posing a threat to tigers and their status in the wild, we propose to amend the CBW regulations that implement the Act by removing inter-subspecific crossed or generic tiger (*Panthera tigris*) (*i.e.,* specimens not identified or identifiable as members of Bengal, Sumatran, Siberian, or Indochinese subspecies (*Panthera tigris tigris, P. t. sumatrae, P. t. altaica,* and *P. t. corbetti,* respectively) from paragraph (g)(6) of 50 CFR 17.21. This action would eliminate the exemption from registering and reporting under the CBW regulations by persons who want to conduct otherwise-prohibited activities under the Act with live inter-subspecific crossed or generic tigers born in the United States. Inter-subspecific crossed or generic tigers remain listed as endangered under the Act, and a person would need to qualify for an exemption or obtain an authorization under the remaining statutory and regulatory requirements to conduct any prohibited activities.

We are proposing this change to the regulations to ensure that we maintain strict control of captive tigers in the United States. We do not believe that breeding inter-subspecific crossed or generic tigers provides a conservation benefit for the long-term survival of the species. Inter-subspecific tiger crosses and animals of unknown subspecies cannot be used for maintaining genetic viability and distinctness of specific tiger subspecies. Generic tigers are of unknown genetic origin and are typically not maintained in a manner to ensure that inbreeding or other inappropriate matings of animals do not occur. By exempting inter-subspecific crossed or generic tigers from the CBW registration process in 1998, we may have inadvertently suggested that the breeding of these tigers qualifies as conservation. By removing the exemption, we can reinforce the value of conservation breeding of individual tiger subspecies and discourage the breeding of tigers of unknown or mixed lineage.

Although we are unaware of any evidence that tiger parts are entering into trade from the captive U.S. population of tigers, we recognize that the use of tiger parts and products, including in traditional medicine, poses a significant threat to wild tiger populations. The United States has worked vigorously with other CITES countries to encourage not only the adoption of measures to protect wild tiger populations from poaching and illegal trade, but also the implementation of measures to ensure that breeding of tigers in captivity supports conservation goals and that tigers are not bred for trade in parts and products. Despite a lack of evidence that parts from captive-bred tigers in the United States are entering international trade, we are taking this action out of an abundance of caution given the precarious status of tigers in the wild.

The CBW exemption also has created enforcement difficulties. Specifically, law enforcement cases have hinged on whether activities the Service has identified as illegal were actually exempted under the current regulations. By removing the exemption, persons engaged in otherwise-prohibited activities will need to obtain a permit or other authorization, giving the Service greater ability to make enforcement cases involving tigers.

It should be noted, however, that removing the exemption for inter-subspecific crossed or generic tigers will not result in control of ownership, intrastate commerce, or noncommercial movement of these tigers across State lines. These activities are not prohibited by the Act, and we have no authority to prohibit them.

Finally, we are also proposing to reorganize paragraph (g)(6) to make the section clearer and more user-friendly. The proposed text reorganizes the list of species that are exempted from the

registration process by grouping like species together. This reorganization consists primarily of redesignating subparagraphs. With the exception of removing inter-subspecific crossed or generic tigers, the text is the same as currently appears in 50 CFR 17.21(g)(6).

Required Determinations

Regulatory Planning and Review—Executive Order 12866: The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria.

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act: Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions) (5 U.S.C. 601 *et seq.*). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

The U.S. Small Business Administration (SBA) defines a small business as one with annual revenue or employment that meets or is below an established size standard. We expect that the majority of the entities involved in taking, exporting, re-importing, and selling in interstate or foreign commerce of inter-subspecific crossed or generic tigers would be considered small as defined by the SBA.

This proposed rule would require individuals conducting otherwise prohibited activities with the inter-subspecific crossed or generic tiger to apply for authorization under the Act and pay an application fee of $100–$200. The regulatory change is not major in scope and would create only a modest financial or paperwork burden on the affected members of the general public.

We, therefore, certify that this rule would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

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

a. Would not have an annual effect on the economy of $100 million or more. This rule proposes to remove the inter-subspecific crossed or generic tigers from the exemption to register under the CBW regulations. If finalized, individuals and captive-breeding operations would need to obtain endangered species permits or other authorization to engage in certain otherwise prohibited activities. This proposed rule would not have a negative effect on this part of the economy. It will affect all businesses, whether large or small, the same. There is not a disproportionate share of benefits for small or large businesses.

b. Would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, Tribal, or local government agencies; or geographic regions. This rule would result in a small increase in the number of applications for permits or other authorizations to conduct otherwise-prohibited activities with inter-subspecific crossed or generic tigers.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act: Under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This proposed rule would not significantly or uniquely affect small governments. A Small Government Agency Plan is not required.

b. This proposed rule would not produce a Federal requirement of $100 million or greater in any year and is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings: Under Executive Order 12630, this rule would not have significant takings implications. A takings implication assessment is not required. This proposed rule is not considered to have takings implications because it allows individuals to obtain authorization for otherwise prohibited activities with the inter-subspecific crossed or generic tigers when issuance criteria are met.

Federalism: This proposed revision to part 17 does not contain significant Federalism implications. A Federalism Assessment under Executive Order 13132 is not required.

Civil Justice Reform: Under Executive Order 12988, the Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of subsections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act: The Office of Management and Budget approved the information collection in part 17 and assigned OMB Control Number 1018–0093, which expires February 28, 2014. This proposed rule does not contain any new information collections or recordkeeping requirements for which OMB approval is required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA): The Service has determined that this proposed action is a regulatory change that is administrative and procedural in nature. As such, the proposed amendment is categorically excluded from further NEPA review as provided by 43 CFR 46.210(i), of the Department of the Interior Implementation of the National Environmental Policy Act of 1969; final rule (73 FR 6129269 (October 15, 2008)). No further documentation will be made.

Government-to-Government Relationship with Tribes: Under the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian Tribes and have determined that there are no effects.

Energy Supply, Distribution or Use: Executive Order 13211 pertains to regulations that significantly affect

energy supply, distribution, and use. This proposed rule would not significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

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

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

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

Public Comments

You may submit your comments and materials concerning this rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* If you provide personal identifying information in your written comments, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service; Division of Management Authority; 4401 N. Fairfax Drive, Suite 212; Arlington, VA 22203; telephone, (703) 358–2093.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.21 by revising paragraph (g)(6) to read as set forth below:

§ 17.21 Prohibitions.

* * * * *

(g) * * *

(6) *Exemption from registration requirement.*

(i) If the conditions in paragraph (g)(6)(ii) of this section are met, then any person subject to the jurisdiction of the United States seeking to engage in any of the activities authorized by paragraph (g)(1) of this section may do so without first registering with the Service with respect to the following species:

(A) The bar-tailed pheasant (*Syrmaticus humiae*), Elliot's pheasant (*S. ellioti*), Mikado pheasant (*S. mikado*), brown eared pheasant (*Crossoptilon mantchuricum*), white eared pheasant (*C. crossoptilon*), cheer pheasant (*Catreus wallichii*), Edward's pheasant (*Lophura edwardsi*), Swinhoe's pheasant (*L. swinhoii*), Chinese monal (*Lophophorus lhuysii*), and Palawan peacock pheasant (*Polyplectron emphanum*);

(B) Parakeets of the species *Neophema pulchella* and *N. splendida;*

(C) The Laysan duck (*Anas laysanensis*); and

(D) The white-winged wood duck (*Cairina scutulata*).

(ii) *Conditions for exemption to register.* The following conditions must exist for persons dealing with the species listed in paragraph (g)(6)(i) of this section to be eligible for exemption from the requirement to register with the Service:

(A) The purpose of the activity is to enhance the propagation or survival of the affected exempted species.

(B) Such activity does not involve interstate or foreign commerce, in the course of a commercial activity, with respect to nonliving wildlife.

(C) Each specimen to be reimported is uniquely identified by a band, tattoo, or other means that was reported in writing to an official of the Service at a port of export prior to export of the specimen from the United States.

(D) No specimens of the taxa in paragraph (g)(6) of this section that were taken from the wild may be imported for breeding purposes absent a definitive showing that the need for new bloodlines can be met only by wild specimens, that suitable foreign-bred, captive individuals are unavailable, and that wild populations can sustain limited taking. In addition, an import permit must be issued under § 17.22.

(E) Any permanent exports of such specimens meet the requirements of paragraph (g)(4) of this section.

(F) Each person claiming the benefit of the exception in paragraph (g)(1) of this section must maintain accurate written records of activities, including births, deaths, and transfers of specimens, and make those records accessible to Service agents for inspection at reasonable hours as set forth in §§ 13.46 and 13.47.

* * * * *

Dated: August 4, 2011.

Eileen Sobeck,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–21303 Filed 8–19–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648–XA633

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Gulf of Alaska Fishery Resources; Notice of Rockfish Program Public Workshops

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

ACTION: Notice of public workshops.

SUMMARY: NMFS will present two public workshops on the Central Gulf of Alaska Rockfish Program (Rockfish Program) for potentially eligible participants and other interested parties. At each workshop, NMFS will provide an overview of the proposed Rockfish Program, discuss the key differences between the Rockfish Program and the Rockfish Pilot Program, provide information on the proposed rule comment process, and answer questions. NMFS is conducting these public workshops to assist fishery participants in understanding and reviewing the proposed rule that would implement this new Rockfish Program.

DATES: Two workshops will be held on the following dates:

1. Monday, August 29, 2011, 1 p.m. to 3 p.m. Alaska Daylight Time, Kodiak, AK.

2. Tuesday, August 30, 2011, 5 p.m. to 7 p.m. Pacific Daylight Time, Seattle, WA.

ADDRESSES: The workshops will be held at the following locations:

1. Kodiak—Kodiak Fisheries Research Center (Main Conference Room), 301 Research Court, Kodiak, AK 99615.

2. Seattle—Mountaineers Program Center (Cascade Room), 7700 Sand Point Way, NE, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Gwen Herrewig, 907–586–7091.

SUPPLEMENTARY INFORMATION: On July 28, 2011 (76 FR 45217), NMFS published a Notice of Availability to implement the proposed Central Gulf of Alaska (GOA) Rockfish Program as Amendment 88 to the Fishery Management Plan for Groundfish of the Gulf of Alaska. NMFS anticipates publication of the proposed rule to implement the Central GOA Rockfish Program prior to workshop held in Kodiak on Monday, August 29, 2011. The proposed Rockfish Program is necessary to replace the Central Gulf of Alaska Rockfish Pilot Program (Pilot Program) that is scheduled to expire December 31, 2011. Amendment 88 was approved by the North Pacific Fishery Management Council (Council) on June 14, 2010. Although some modifications were recommended by the Council, the proposed Rockfish Program would retain the conservation, management, safety, and economic gains realized under the Pilot Program. The recommended modifications would improve the functionality of the Rockfish Program and resolve identified issues in the management and viability of the fisheries. The proposed Rockfish Program would include similar implementation, management, monitoring, and enforcement measures to those developed under the Pilot Program, however, the new program would:

- Change the qualifying years for eligibility of quota share (QS);
- Use a different suite of years to determine the allocation of QS and sideboard limits;
- Assign to rockfish cooperatives a specific portion of the Central GOA total allowable catch of species historically harvested in the rockfish fisheries;
- Assign a specific amount of halibut prohibited species catch to cooperatives and conserve a portion of the halibut that will remain unallocated;
- Restrict the entry level fishery to longline gear only;
- Relax the requirements to form a cooperative;
- Specify the location where harvesters in cooperatives may deliver rockfish;
- Remove the requirement that harvesters in a catcher vessel cooperative deliver to a specific processor;
- Discontinue the limited access fishery;
- Simplify sideboards, and slightly modify sideboards for catcher/processors;
- Implement a cost recovery program, except for the entry level longline fishery;
- Establish a catch monitoring and control plan specialist; and
- Be authorized for 10 years, from January 1, 2012, until December 31, 2021.

NMFS is conducting public workshops for fishery participants to provide assistance in reviewing the proposed requirements of this new program. At each workshop, NMFS will provide an overview of the proposed Rockfish Program, discuss the key differences between the Rockfish Program and the Pilot Program, and provide information on the public comment process for the proposed rule. NMFS anticipates discussing key elements of the proposed Rockfish Program at the meeting, such as eligibility and the QS application process; cooperative and opt-out provisions; entry level longline fishery, sideboards, deliveries, and cooperative quota transfer provisions; monitoring and enforcement; and electronic reporting. Additionally, NMFS will answer questions from workshop participants. For further information on the proposed Rockfish Program, please visit the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

Special Accommodations

These workshops are physically accessible to people with disabilities. Requests for special accommodations should be directed to Gwen Herrewig (see **FOR FURTHER INFORMATION CONTACT**) at least 5 working days before the workshop date.

Dated: August 17, 2011.

Galen Tromble,

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

[FR Doc. 2011–21421 Filed 8–19–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 76, No. 162

Monday, August 22, 2011

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 17, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of publication of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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

National Agricultural Statistics Service

Title: 2012 Census of Agriculture.

OMB Control Number: 0535–0226.

Summary of Collection: The National Agricultural Statistics Service (NASS) is responsible for conducting the Census of Agriculture under the authority of the Census of Agriculture Act of 1997, Public Law 105–113. The census of agriculture is required by law every five years and is the primary source of statistics concerning the nation's agricultural industry. It provides the only basis of consistent, comparable data throughout the more than 3,000 counties in the 50 States and Puerto Rico. For the outlying areas of American Samoa, Commonwealth of the Northern Mariana Islands, Guam and U.S. Virgin Islands, it is the only source of consistent, comparable agricultural data.

Need and Use of the Information: The data collection for the censuses of agriculture will be conducted primarily by mail-out/mail-back procedures and direct enumeration methods for Guam, the U.S. Virgin Islands and Commonwealth of the Northern Mariana Islands. The census provides data on the number and types of farms, land use, crop area and selected production, livestock inventory and sales, production contracts, production expenses, farm-related income, and other demographic characteristics. This information will serve as the basis for many agriculturally-based decisions. Census information is used by the Administration, Congress, and the Federal Agencies to formulate and evaluate national agricultural programs and policy, by the Department of Agriculture and the Bureau of Economic analysis to compile farm sector economic indicators, and by State and county governments in the development of local agricultural programs.

Description of Respondents: Farms; Individuals or households.

Number of Respondents: 4,237,100.

Frequency of Responses: Reporting: Other (Every 5 years).

Total Burden Hours: 2,545,498.

National Agricultural Statistics Service

Title: Conservation Effects Assessment Project.

OMB Control Number: 0535–0245.

Summary of Collection: The National Agricultural Statistics Service (NASS) primary function is to prepare and issue official State and national estimates of crop and livestock production, disposition and prices. The goal of this information collection is to obtain land management information that will assist the Natural Resources Conservation Service in assessing environmental benefits associated with implementation of various conservation programs and installation of associated conservation practices. The authority for these data collection activities is granted under U.S. Code Title 7, Section 2204.

Need and Use of the Information: The survey will utilize personal interviews to administer a questionnaire that is designed to obtain from farm operators field-specific data associated with selected National Resources Inventory sub-sample units in the contiguous 48 States. Data collected in this survey will be used in conjunction with previously collected data on soils, climate, and cropping history. The assessment will be used to report progress annually on Farm Bill implementation to Congress and the general public.

Description of Respondents: Farms.

Number of Respondents: 2,451.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 2,251.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–21360 Filed 8–19–11; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Forest Service

Flathead Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Flathead Resource Advisory Committee will meet in Kalispell, 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 of the meeting is to hear project proposal presentations for 2012.

DATES: The meetings will be held September 6, 13, 20 and 27, 2011. Each meeting will be held 5–8 p.m.

ADDRESSES: The meeting will be held at 650 Wolfpack Way, Flathead National Forest Office, Kalispell, MT. Written comments should be sent to Flathead National Forest, Attn: RAC, 650 Wolfpack Way, Kalispell, MT 59901. Comments may also be sent via e-mail to *ckendall@fs.fed.us* or via facsimile to 406–758–5351.

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 650 Wolfpack Way, Kalispell, MT. Visitors are encouraged to call ahead to 406–758–6485 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Craig Kendall, Flathead National Forest, 406.758.6485.

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

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: presentation of project proposals and approval of projects. 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 requests by three calendar days prior to the meeting will have the opportunity to address the Comittee at those sessions.

Dated: August 15, 2011.

Chip Weber,

Forest Supervisor, Flathead National Forest.

[FR Doc. 2011–21344 Filed 8–19–11; 8:45 am]

BILLING CODE 3410–11–P

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, September 16, 2011, at 9 a.m. in Coeur d'Alene, Idaho for a business meeting. The business meeting is open to the public.

DATES: September 16, 2011.

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

FOR FURTHER INFORMATION CONTACT: Maggie Pittman, Acting 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.

Dated: August 16, 2011.

Maggie Pittman,

Acting Forest Supervisor.

[FR Doc. 2011–21345 Filed 8–19–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval To Revise and Extend a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Agricultural Resources Management Survey and Chemical Use Surveys. Revision to burden hours may be needed due to changes in the size of the target population, sampling design, and/or questionnaire length.

DATES: Comments on this notice must be received by October 21, 2011 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0235, by any of the following methods:

- *E-mail: ombofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *Fax:* (202) 720–6396.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Agricultural Resources Management Survey and Chemical Use Surveys.

OMB Control Number: 0535–0218.

Expiration Date of Approval: December 31, 2011.

Type of Request: Intent to revise and extend a currently approved information collection for a period of three years.

Abstract: The Agricultural Resource Management Surveys (ARMS) are the primary source of information for the U.S. Department of Agriculture on a broad range of issues related to: Production practices, costs and returns, pest management, chemical usage, and contractor expenses. Data is collected on both a whole farm level and on selected commodities.

ARMS is the only source of information available for objective evaluation of many critical issues related to agriculture and the rural economy, such as: Whole farm finance data, including data sufficient to construct estimates of income for farms by type of operation, loan commodities, income for operator households, credit, structure, and organization; marketing information, and other economic data on input usage, production practices, and crop substitution possibilities. Data from ARMS are used to produce estimates of net farm income by type of commercial producer as required in 7 U.S.C. 7998 and estimates of enterprise production costs as required in 7 U.S.C. 1441(a). Data from ARMS are also used as weights in the development of the Prices Paid Index, a component of the Parity Index referred to in the Agricultural Adjustment Act of 1938. These indexes are used to calculate the annual Federal grazing fee rates as described in the Public Rangelands Improvement Act of 1978 and Executive Order 12,548 and as promulgated in regulations found at 36 CFR 222.51.

In addition, ARMS is used to produce estimates of sector-wide production expenditures and other components of income that are used in constructing the estimates of income and value-added

which are transmitted to the U.S. Department of Commerce, Bureau of Economic Analysis, by the USDA Economic Research Service (ERS) for use in constructing economy-wide estimates of Gross Domestic Product. This transmittal of data, prepared using the ARMS, is undertaken to satisfy a 1956 agreement between the Office of Management and Budget and the Departments of Agriculture and Commerce that a single set of estimates be published on farm income.

Chemical Use Surveys: Congress has mandated that NASS and ERS build nationally coordinated databases on agricultural chemical use and related farm practices; these databases are the primary vehicles used to produce specified environmental and economic estimates. The surveys will help provide the knowledge and technical means for producers and researchers to address on-farm environmental concerns in a manner that maintains agricultural productivity.

Authority: These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995 Public Law 104–13 (at 44 U.S.C. 3501, *et seq.*) and Office of Management and Budget regulations at 5 CFR part 1320.

NASS also complies with OMB Implementation Guidance, ''Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA),'' **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average approximately 35 minutes per survey.

Respondents: Farmers, ranchers, farm managers, farm contractors, and farm households.

Estimated Number of Respondents: Approximately 85,000 respondents will be sampled each year. Over half of these respondents will be contacted more than one time in a single year.

Estimated Total Annual Burden on Respondents: Approximately 73,000 hours per year.

Copies of this information collection and related instructions can be obtained without charge from the NASS Clearance Officer, at (202) 690–2388 or at: *ombofficer@nass.usda.gov.*

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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods. All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, on July 27, 2011.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. 2011–21361 Filed 8–19–11; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding Availability: Section 515 Multi-Family Housing Preservation Revolving Loan Fund (PRLF) Demonstration Program for Fiscal Year 2011

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service of Rural Development previously announced the availability of funds and the timeframe to submit applications for loans to private non-profit organizations, and State and local housing finance agencies, to carry out a demonstration program to provide revolving loans for the preservation and revitalization of low-income Multi-Family Housing (MFH) in a Notice published November 9, 2010 (75 FR 68748). Rural Development did not receive sufficient applications to use all available funds. As a result, Rural Development is soliciting additional applications under this Notice. Housing that is assisted by this demonstration program must be financed by Rural Development through its MFH loan program under Sections 515, 514 and 516 of the Housing Act of 1949. The goals of this demonstration program will be achieved through loans made to intermediaries. The intermediaries will establish their programs for the purpose of providing loans to ultimate recipients for the preservation and revitalization of low income Sections 515, 514 and 516 MFH as affordable housing.

DATES: The deadline for receipt of all applications in response to this Notice is 5 p.m., Eastern Time, September 21, 2011. The application closing deadline is firm as to date and hour. Rural Development will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline. Acceptance by a post office or private mailer does not constitute delivery. Facsimile, electronic transmissions and postage due applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: Sherry Engel, Financial and Loan Analyst, Multi-Family Housing, U.S. Department of Agriculture, Rural Housing Service, 4949 Kirschling Court, Stevens Point, Wisconsin 54481 or Timothy James, Financial and Loan Analyst, Multi-Family Housing, STOP 0781 (Room 1263–S), U.S. Department of Agriculture, Rural Housing Service, 1400 Independence Avenue, SW., Washington, DC 20250–0781 or by telephone at: (715) 345–7677 or (202) 720–1610, TDD (302) 857–3585 or via e-mail at: *sherry.engel@wdc.usda.gov* or *timothy.james@wdc.usda.gov.* (Please note the phone numbers are not toll free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 (2005) *et seq.,* the Office of Management and Budget (OMB) must approve all ''collections of information'' by Rural Development. The Act defines ''collection of information'' as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *.'' (44 U.S.C. 3502(3)(A)) Because this Notice is expected to receive less than 10 respondents, the Paperwork Reduction Act does not apply.

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under Number 10.415.

Overview

The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2010 (Pub. L. 111–80), October 21, 2009 provided funding for, and authorized Rural Development to, establish a revolving loan fund demonstration

program for the preservation and revitalization of the Sections 515, 514 and 516 MFH portfolio. The Department of Defense and Full Years Continuing Appropriations Act, 2011 (Pub. L. 112–10) April 15, 2011, continued the authority and provided funding for the revolving loan fund demonstration program. Sections 514, 515 and 516 of the Housing Act of 1949 as amended, provides Rural Development the authority to make loans for low income MFH, farm labor housing, and related facilities.

Program Administration

I. Funding Opportunities Description

This Notice requests applications from eligible applicants for loans to establish and operate revolving loan funds for the preservation of low-income MFH properties within the Rural Development Sections 515, 514 and 516 MFH portfolios. Rural Development's regulations for the Section 514, 515 and 516 MFH Program are published at 7 CFR Part 3560.

Housing that is constructed or repaired must meet the Rural Development design and construction standards and the development standards contained in 7 CFR Part 1924, Subparts A and C, respectively. Once constructed, Section 514, 515, and 516 MFH must be managed in accordance with the program's regulation, 7 CFR Part 3560. Tenant eligibility is limited to persons who qualify as a very low-, or low-income, household or who are eligible under the requirements established to qualify for housing benefits provided by sources other than Rural Development, such as U.S. Department of Housing and Urban Development Section 8 assistance or Low Income Housing Tax Credit assistance, when a tenant receives such housing benefits. Additional tenant eligibility requirements are contained in 7 CFR 3560.152, 3560.577, and 3560.624.

II. Award Information

The Act made funding available for loans to private non-profit organizations, or such non-profit organizations' affiliate loan funds and State and local housing finance agencies, to carry out a housing demonstration program to provide revolving loans for the preservation of low income MFH project. The total amount of funding available for this program is $7,038,926.76. This funding is a combination of carryover from previous fiscal years and FY 2011 funds. Loans to intermediaries under this demonstration program shall have an interest rate of no more than one percent and the Secretary of Agriculture may defer the interest and principal payment to Rural Development for up to three years during the first three years of the loan. The term of such loans shall not exceed 30 years. Funding priority will be given to entities with equal or greater matching funds from third parties, including housing tax credits for rural housing assistance and to entities with experience in the administration of revolving loan funds and the preservation of MFH.

Funding Restrictions

No loan made to a single intermediary applicant under this demonstration program may exceed $2,125,000 and any such loan may be limited by geographic area so that multiple loan recipients are not providing similar services to the same service areas. All PRLF loan obligations will expire two years after the date of obligation.

Prior fiscal years PRLF loan obligations not closed within the above two-year obligation period must be de-obligated to allow more immediate program use unless a six-month extension is granted by the National Office. The request for an extension will be sent to the National Office by the relevant State Office.

Loans made to the PRLF ultimate recipient must meet the intent of providing decent, safe, and sanitary rural housing and be consistent with the requirements of Title V of the Housing Act of 1949, as amended.

III. Eligibility Information

Applicant Eligibility

(1) Eligibility Requirements—Intermediary

(a) The types of entities which may become intermediaries are private non-profit organizations, which may include faith and community based organizations, and State and local housing finance agencies.

(b) The intermediary must have:

(i) The legal authority necessary for carrying out the proposed loan purposes and for obtaining, giving security, and repaying the proposed loan.

(ii) A proven record of successfully assisting low-income Multi-Family Housing projects. Such record will include recent experience in loan making and loan servicing that is similar in nature to the loans proposed for the PRLF demonstration program. The applicant must provide documentation of a delinquency and loss rate not which does not exceed four percent. The applicant will be responsible for providing such information to Rural Development.

(iii) A staff with loan making and servicing experience.

(iv) A plan showing Rural Development, that the ultimate recipients will only use the funds to preserve low-income MFH projects.

(c) No loans will be extended to an intermediary unless:

(i) There is adequate assurance of repayment of the loan evidenced by the fiscal and managerial capabilities of the proposed intermediary.

(ii) The amount of the loan, together with other funds available, is adequate to complete the preservation or revitalization of the project.

(iii) The intermediary's prior calendar year audit is an unqualified audited opinion signed by an independent certified public accountant acceptable to the Agency and performed in accordance with Generally Accepted Government Auditing Standards (GAGAS). The unqualified audited opinion must provide a statement relating to the accuracy of the financial statements.

(d) Intermediaries, and the principals of the intermediaries, must not be suspended, debarred, or excluded based on the ''List of Parties Excluded from Federal Procurement and Nonprocurement Programs''. In addition, intermediaries and their principals must not be delinquent on Federal debt or be Federal judgment debtors.

(e) The intermediary and its principal officers (including immediate family) must have no legal or financial interest in the ultimate recipient.

(f) The intermediary's Debt Service Coverage Ratio (DSCR) must be greater than 1.25 for the fiscal year immediately prior to the year of application. The DSCR is the financial ratio the loan committee will use to determine an applicant's capacity to borrow and service additional debt.

The loan committee will use the intermediary's Earnings Before Interest and Taxes (EBIT) to determine DSCR. EBIT is determined by adding net income or net loss to depreciation and interest expense. The loan committee will compare the principal and interest payment multiplied by the DSCR to the EBIT derived from the applicants consolidated income statement. For example, if an applicant requests a loan amount of $2,000,000 at a one percent interest rate amortized over 30 years, the principal and interest payments will be $77,193, annually. Therefore, an applicant who requests $2,000,000 needs an EBIT of at least $96,491.00 ($77,193 × 1.25). Only debt service from

unrestricted revolving loans will be considered in the above calculation. An unrestricted loan is an account in which the accumulated revenues are not dictated by a donor or sponsor.

(g) Intermediaries that have received one or more PRLF loans may apply for and be considered for subsequent PRLF loans provided all the following are met:

(i) For prior PRLF loans at least 50 percent of an intermediary's PRLF loans must have been disbursed to eligible ultimate recipients;

(ii) Intermediaries requesting subsequent loans must meet the requirements of section III (1) of this NOTICE;

(iii) The delinquency rate of the outstanding loans of the intermediary's PRLF revolving fund does not exceed 4 percent at the time of application for the subsequent loan;

(iv) The intermediary is in compliance with all applicable regulations and its loan agreements with Rural Development;

(v) Subsequent loans will not exceed $1 million each and not more than one loan will be approved by Rural Development for an intermediary in any single fiscal year unless the request is authorized by a PRLF appropriation; and

(vi) Total outstanding PRLF indebtedness of an intermediary to Rural Development will not exceed $15 million at any time.

Only eligible applicants will be scored and ranked. Funding priority will be given to entities with equal or greater matching funds, including housing tax credits for rural housing assistance. Refer to the Selection Criteria section of the Notice for further information on funding priorities.

(2) Eligibility requirements—Ultimate recipients.

(a) To be eligible to receive loans from the PRLF, ultimate recipients must:

(i) Currently have a Rural Development Section 515, 514 loans, or 516 grant for the property to be assisted by the PRLF demonstration program.

(ii) Certify that the principal officers (including their immediate family) of the ultimate recipient, hold no legal or financial interest in the intermediary.

(iii) Be in compliance with all Rural Development programs and civil rights requirements or have an Agency approved workout plan in place which will correct a non-compliance status.

(b) Any delinquent debt to the Federal Government including a non-tax judgment lien (other than a judgment in the U.S. tax courts), by the ultimate recipient or any of its principals, shall cause the proposed ultimate recipient to be ineligible to receive a loan from the PRLF. PRLF loan funds may not be used to satisfy the delinquency.

(c) The ultimate recipient cannot be currently debarred or suspended from Federal Government programs.

(d) There is a continuous need for the property in the community as affordable housing.

Other Administrative Requirements

(1) The following policies and regulations apply to loans to intermediaries made in response to this Notice:

(a) PRLF intermediaries will be required to provide Rural Development with the following reports:

(i) An annual audit;

(A) The dates of the audit report period need not coincide with other reports on the PRLF. Audit reports shall be due 90 days following the audit period. The audit period will be set by the intermediary. The intermediary will notify Rural Development of the date. Audits must cover all of the intermediary's activities. Audits will be performed by an independent certified public accountant. An acceptable audit will be performed in accordance with GAGAS and include such tests of the accounting records as the auditor considers necessary in order to express an unqualified audited opinion on the financial condition of the intermediary.

(B) It is not intended that audits required by this program be separate from audits performed in accordance with State and local laws or for other purposes. To the extent feasible, the audit work for this program should be done in connection with these other audits. Intermediaries covered by OMB Circular A–133 should submit audits made in accordance with that circular.

(ii) Quarterly or semiannual performance reports (due to Rural Development 30 days after the end of the fiscal quarter or half);

(A) Performance reports will be required quarterly during the first year after loan closing. Thereafter, performance reports will be required semiannually. Also, Rural Development may resume requiring quarterly reports if the intermediary becomes delinquent in repayment of its loan or otherwise fails to fully comply with the provisions of its workout plan or Loan Agreement, or Rural Development determines that the intermediary's PRLF is not adequately protected by the current financial status and paying capacity of the ultimate recipients.

(B) These performance reports shall contain information only on the PRLF, or if other funds are included, the PRLF portion shall be segregated from the others; and in the case where the intermediary has more than one PRLF from Rural Development, a separate report shall be made for each PRLF.

(C) The performance reports will include OMB Standard Form 269, Financial Status Report and OMB Standard Form 272, Federal Cash Transaction Report. These reports will provide information on the intermediary's lending activity, income and expenses, financial condition and a summary of names and characteristics of the ultimate recipients the intermediary has financed.

(iii) Annual proposed budget for the following year; and other reports as Rural Development may require from time to time regarding the conditions of the loan.

(b) Security will consist of a pledge by the intermediary of all assets now or hereafter placed in the PRLF, including cash and investments, notes receivable from ultimate recipients, and the intermediary's security interest in collateral pledged by ultimate recipients. Except for good cause shown, Rural Development will not obtain assignments of specific assets at the time a loan is made to an intermediary or ultimate recipient. The intermediary will covenant in the loan agreement that, in the event the intermediary's financial condition deteriorates or the intermediary takes action detrimental to prudent fund operation or fails to take action required of a prudent lender, the intermediary will provide additional security, execute any additional documents, and undertake any reasonable acts Rural Development may request to protect Rural Development's interest or to perfect a security interest in any asset, including physical delivery of assets and specific assignments to Rural Development. All debt instruments and collateral documents used by an intermediary in connection with loans to ultimate recipients may be assignable.

(c) RHS may consider, on a case by case basis, subordinating its security interest on the ultimate recipient's property to the lien of the intermediary so that Rural Development has a junior lien interest when an independent appraisal verifies the Rural Development subordinated lien will continue to be fully secured.

(d) The term of the loan to an ultimate recipient may not exceed the less of 30 years or the remaining term of the Rural Development loan.

(e) When loans are made to ultimate recipients restrictive-use provisions must be incorporated, as outlined in 7 CFR Section 3560.662.

(f) The policies and regulations contained in 7 CFR Part 1901, Subpart

F regarding historical and archaeological properties apply to all loans funded under this Notice.

(g) The policies and regulations contained in 7 CFR Part 1940, Subpart G (and any successor regulation) regarding environmental assessments apply to all loans to ultimate recipients funded under this Notice. Loans to intermediaries under this program will be considered a categorical exclusion under the National Environmental Policy Act, requiring the completion of Form RD 1940–22, *''Environmental Checklist for Categorical Exclusions,''* by Rural Development.

(h) An Intergovernmental Review,'' will be conducted in accordance with the procedures contained in 7 CFR part 3015, subpart V, if the applicant is a cooperative.

(2) The intermediary agrees to the following:

(a) To obtain written Rural Development approval, before the first lending of PRLF funds to an ultimate recipient, of:

(i) All forms to be used for relending purposes, including application forms, loan agreements, promissory notes, and security instruments; and

(ii) The intermediary's policy with regard to the amount and form of security to be required.

(b) To obtain written approval from Rural Development before making any significant changes in forms, security policy, or the intermediary's workout plan. Rural Development may approve changes in forms, security policy, or workout plans at any time upon a written request from the intermediary and determination by Rural Development that the change will not jeopardize repayment of the loan or violate any requirement of this Notice or other Rural Development regulations. The intermediary must comply with the workout plan approved by Rural Development so long as any portion of the intermediary's PRLF loan is outstanding;

(c) To allow Rural Development to take a security interest in the PRLF, the intermediary's portfolio of investments derived from the proceeds of the loan award, and other rights and interests as Rural Development may require;

(d) To return, as an extra payment on the loan any funds that have not been used in accordance with the intermediary's workout plan by a date two years from the date of the loan agreement. The intermediary acknowledges that Rural Development may cancel the approval of any funds not yet delivered to the intermediary if funds have not been used in accordance with the intermediary's workout plan within the two year period. Rural Development, at its sole discretion, may allow the intermediary additional time to use the loan funds by delaying cancellation of the funds by not more than three additional years. If any loan funds have not been used by five years from the date of the loan agreement, the approval will be canceled for any funds that have not been delivered to the intermediary and the intermediary will return, as an extra payment on the loan, any funds it has received and not used in accordance with the workout plan. In accordance with the Rural Development approved promissory note, regular loan payments will be based on the amount of funds actually drawn by the intermediary.

(e) The intermediary will be required to enter into a Rural Development approved loan agreement and promissory note. The intermediary will receive a 30-year loan at a one percent interest rate. The loan will be deferred for up to three years if requested in the intermediary's work plan.

(f) Loans made to the PRLF ultimate recipient must meet the intent of providing decent, safe, and sanitary rural housing by preserving and regulating existing properties financed with 514, 515, and 516 funds. They must also be consistent with the requirements of Title V of the Housing Act of 1949, as amended.

(g) When an intermediary proposes to make a loan from the PRLF to an ultimate recipient, Rural Development concurrence is required prior to final approval of the loan. The intermediary must submit a request for Rural Development concurrence of a proposed loan to an ultimate recipient. Such request must include:

(i) Certification by the intermediary that:

(A) The proposed ultimate recipient is eligible for the loan;

(B) The proposed loan is for eligible purposes;

(C) The proposed loan complies with all applicable statutes and regulations; and

(D) Prior to closing the loan to the ultimate recipient, the intermediary and its principal officers (including immediate family) hold no legal or financial interest in the ultimate recipient, and the ultimate recipient and its principal officers (including immediate family) hold no legal or financial interest in the intermediary.

(ii) Copies of sufficient material from the ultimate recipient's application and the intermediary's related files, to allow Rural Development to determine the:

(A) Name and address of the ultimate recipient;

(B) Loan purposes;

(C) Interest rate and term;

(D) Location, nature, and scope of the project being financed;

(E) Other funding included in the project;

(F) Nature and lien priority of the collateral; and

(G) Environmental impacts of this action. This will include an original Form RD 1940–20, ''*Request for Environmental Information,''* completed and signed by the intermediary. Attached to this form will be a statement stipulating the age of the building to be rehabilitated and a completed and signed Federal Emergency Management Agency (FEMA) Form 81–93, ''*Standard Flood Hazard Determination.''* If the age of the building is over 50 years or if the building is either on or eligible for inclusion in the National Register of Historic Places, then the intermediary will immediately contact Rural Development to begin Section 106 of the National Historic Preservation Act of 1966 consultation with the State Historic Preservation Officer. If the building is located within a 100-year flood plain, then the intermediary will immediately contact Rural Development to analyze any effects as outlined in 7 CFR part 1940, Subpart G, Exhibit C. The intermediary will assist Rural Development in any additional requirements necessary to complete the environmental review.

(ii) Such other information as Rural Development may request on specific cases.

(h) Upon receipt of a request for concurrence in a loan to an ultimate recipient Rural Development will:

(i) Review the material submitted by the intermediary for consistency with Rural Development's preservation and revitalization principles which include the following;

(A) There is a continuing need for the property in the community as affordable housing. If Rural Development determines there is no continuing need for the property the ultimate recipient is ineligible for the loan;

(B) When the transaction is complete, the property will be owned and controlled by eligible Section 514, 515, or 516 borrowers;

(C) The transaction will address the physical needs of the property;

(D) Existing tenants will not be displaced because of increased post-transaction rents;

(E) Post-transaction basic rents will not exceed comparable market rents; and

(F) Any equity loan amount will be supported by a market value appraisal.

(ii) The Intermediary shall pledge as collateral for non-Rural Development funds its PRLF Revolving Fund, including its portfolio of investments derived from the proceeds of other funds and this loan award.

(iii) Issue a letter concurring with the loan when all requirements have been met or notify the intermediary in writing the reasons for denial when Rural Development determines it is unable to concur with the loan.

IV. Application and Submission Information

Submission Address

Applications should be submitted to U.S. Department of Agriculture, Rural Housing Service; Attention: Timothy James, Financial and Loan Analyst, Multi-Family Housing STOP 0781 (Room 1263–S), U.S. Department of Agriculture, Rural Housing Service, 1400 Independence Avenue, SW., Washington, DC 20250–0781.

The application process is a two step process: First, all applicants will submit proposals to the National Office for loan committee review. The initial loan committee will determine if the borrower is eligible, score the application, and rank the applicants according to the criteria established in this Notice. Only eligible borrowers will be scored. The loan committee will select proposals for further processing. In the event that a proposal is selected for further processing and the applicant declines, the next highest ranked unfunded applicant may be selected.

Second, after the loan is obligated to the intermediary but prior to the loan closing, the State Office in the applicant's residence or State where the applicant will be doing its intermediary work will provide written approval of all forms to be used for relending purposes, including application forms, loan agreements, promissory notes, and security instruments. Additionally, the State Office will provide written approval of the applicant's binding policy with regard to the amount and form of security to be required.

Once the loan closes, the applicant will be required to comply with the terms of its work plan which describes how the money will be used, the loan agreement, the promissory note and any other loan closing documents. At the time of loan closing, Rural Development and loan recipient shall enter into a loan agreement and a promissory note acceptable to Rural Development. Loans obligated by State Offices to intermediaries must close on or before the second anniversary of the obligation. Applicants who have not closed by this date must de-obligate PRLF funds to allow further program use of funds.

Application Requirements

The application must contain the following:

(1) A summary page, that is double-spaced and not in narrative form, that lists the following items:

(a) Applicant's name.

(b) Applicant's Taxpayer Identification Number.

(c) Applicant's address.

(d) Applicant's telephone number.

(e) Name of applicant's contact person, telephone number, and address.

(f) Amount of loan requested.

(2) Form RD 4274–1, *Application for Loan (Intermediary Relending Program*).'' This form can be found at: *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD4274–1.PDF*.

(3) A written workout plan and other evidence Rural Development require that demonstrates the feasibility of the intermediary's program to meet the objectives of this demonstration program. The plan must, at a minimum:

(a) Document the intermediary's ability to administer this demonstration program in accordance with the provisions of this Notice. In order to adequately demonstrate the ability to administer the program, the intermediary must provide a complete listing of all personnel responsible for administering this program along with a statement of their qualifications and experience. The personnel may be either members or employees of the intermediary's organization or contract personnel hired for this purpose. If the personnel are to be contracted for, the contract between the intermediary and the entity providing such service will be submitted for Rural Development review, and the terms of the contract and its duration must be sufficient to adequately service Rural Development loan through to its ultimate conclusion. If Rural Development determines the personnel lack the necessary expertise to administer the program, the loan request will be denied;

(b) Document the intermediary's ability to commit financial resources under the control of the intermediary to the establishment of the demonstration program. This should include a statement of the sources of non-Rural Development funds for administration of the intermediary's operations and financial assistance for projects;

(c) Demonstrate a need for loan funds. As a minimum, the intermediary should identify a sufficient number of proposed and known ultimate recipients to justify Agency funding of its loan request, or include well developed targeting criteria for ultimate recipients consistent with the intermediary's mission and strategy for this demonstration program, along with supporting statistical or narrative evidence that such prospective recipients exist in sufficient numbers to justify Rural Development funding of the loan request;

(d) Include a list of proposed fees and other charges it will assess to the ultimate recipients;

(e) Provide documentation to Rural Development the intermediary has secured commitments of significant financial support from public agencies and private organizations or have received tax credits for the calendar year prior to this Notice;

(f) Include the intermediary's plan (specific loan purposes) for relending the loan funds. The plan must be of sufficient detail to provide Rural Development with a complete understanding of what the intermediary will accomplish by lending the funds to the ultimate recipient and the complete mechanics of how the funds will flow from the intermediary to the ultimate recipient. The service area, eligibility criteria, loan purposes, fees, rates, terms, collateral requirements, limits, priorities, application process, method of disposition of the funds to the ultimate recipient, monitoring of the ultimate recipient's accomplishments, and reporting requirements by the ultimate recipient's management must at least be addressed by the intermediary's relending plan;

(g) Provide a set of goals, strategies, and anticipated outcomes for the intermediary's program. Outcomes should be expressed in quantitative or observable terms such as low-income housing complexes rehabilitated or low-income housing units preserved, and should relate to the purpose of this demonstration program; and

(h) Providing technical assistance to ultimate recipients is not required as part of this program. However if the intermediary provides technical assistance, the intermediary will provide specific information as to how and what type of technical assistance the intermediary will provide to the ultimate recipients and potential ultimate recipients. For instance describe the qualifications of the technical assistance providers, the nature of technical assistance that will be available, and expected and committed sources of funding for technical assistance. If other than the intermediary itself, describe the organizations providing such assistance and the arrangements between such organizations and the intermediary.

(4) A pro forma balance sheet at start-up and projected balance sheets for at least three additional years; and projected cash flow and earnings statements for at least three years supported by a list of assumptions showing the basis for the projections. The projected earnings statement and balance sheet must include one set of projections that shows the PRLF must extend to include a year with a full annual installment on the PRLF loan.

(5) A written agreement of the intermediary to Rural Development agreeing to the audit requirements.

(6) Form RD 400–4, ''*Assurance Agreement.''* A copy of which can be obtained at: *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD400–4.PDF*.

(7) Complete organizational documents, including evidence of authority to conduct the proposed activities.

(8) Most recent unqualified audit report signed by a CPA and prepared in accordance with GAGAS.

(9) Form RD 1910–11, *Applicant Certification Federal Collection Policies for Consumer or Commercial Debts.''* A copy of which can be obtained at: *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD1910–11.PDF*.

(10) Form AD–1047, ''*Certification Regarding Debarment, Suspension, and other Responsibility Matters—Primary Covered Transactions.''* A copy of which can be obtained at: *http://www.ocio.usda.gov/forms/doc/AD1047–F–01–92.PDF*.

(11) Exhibit A–1 of RD Instruction 1940–Q, ''*Certification for Contracts, Grants, and Loans.''* A copy of which can be obtained at: *http://www.rurdev.usda.gov/me/CBP/const/1940qa1.pdf*.

(12) Copies of the applicant's tax returns for each of the three years prior to the year of application, and most recent audited financial statements.

(13) A separate one-page information sheet listing each of the ''Selection Criteria'' contained in this Notice, followed by the page numbers of all relevant material and documentation that is contained in the proposal that supports these criteria. Applicants are also encouraged, but not required; to include a checklist of all of the application requirements and to have their application indexed and tabbed to facilitate the review process.

(14) Financial statements (consolidated or unconsolidated) for the year prior to this Notice.

(15) A borrower authorization statement allowing Rural Development the authorization to verify past and present earnings with the preparer of the intermediary's financial statements.

V. Application Review Information

All applications will be evaluated by a loan committee. The loan committee will make recommendations to the Rural Housing Service Administrator concerning preliminary eligibility determinations and for the selection of applications for further processing based on the selection criteria contained in this Notice and the availability of funds. The Administrator will inform applicants of the status of their application within 30 days of the loan application closing date set forth in this Notice.

Selection Criteria

Selection criteria points will be allowed only for factors evidenced by well documented, reasonable plans which provide assurance that the items have a high probability of being accomplished. The points awarded will be as specified in paragraphs (1) through (4) of this section. In each case, the intermediary's application must provide documentation that the selection criteria have been met in order to qualify for selection criteria points. If an application does not cover one of the categories listed, it will not receive points for that criteria.

(1) Other funds. Points allowed under this paragraph are to be based on documented successful history or written evidence that the funds are available.

(a) The intermediary will obtain non-Rural Development loan or grant funds or provide housing tax credits (measured in dollars) to pay part of the cost of the ultimate recipients' project cost. Points for the amount of funds from other sources are as follows:

(i) At least 10 percent but less than 25 percent of the total development cost (as defined in 7 CFR part 3560 Section 3560.11)—5 points;

(ii) At least 25 percent but less than 50 percent of the total development cost—10 points; or

(iii) 50 percent or more of the total development cost—15 points.

(b) The intermediary will provide loans to each ultimate recipient from its own funds (not loan or grant) to pay part of the ultimate recipients' project cost. The amount of the intermediary's own funds will average per project:

(i) At least 10 percent but less than 25 percent of the total development costs—5 points;

(ii) At least 25 percent but less than 50 percent of total development costs—10 points; or

(iii) 50 percent or more of total development costs—15 points.

(2) Intermediary contribution. The Intermediary will contribute its own funds not derived from Rural Development. The Non-Rural Development contributed funds will be placed in a separate account from the PRLF loan account. The intermediary shall contribute funds not derived from Rural Development into a separate bank account or accounts according to their ''workout plan.'' These funds are to be placed into an interest bearing counter-signature-account for three years as set forth in the loan agreement. The counter-signature-account will require a signature from a Rural Development employee and intermediary. After three years, these funds shall be commingled with the PRLF to provide loans to the ultimate recipient for the preservation and revitalization of Section 515 Multi-Family Housing.

The amount of non-Agency derived funds contributed to the PRLF will equal the following percentage of Rural Development PRLF loan:

(a) At least 5 percent but less than 15 percent—15 points;

(b) At least 15 percent but less than 25 percent—30 points; or

(c) 25 percent or more—50 points.

(3) Experience. The intermediary has actual experience in the administration of revolving loan funds and the preservation of Multi-Family Housing, with a successful record, for the following number of full years. Applicants must have actual experience in both the administration of revolving loan funds and the preservation of Multi-Family Housing in order to qualify for points under the selection criteria. If the number of years of experience differs between the two types of above listed experience, the type of experience with the lesser number of years will be used for the selection criteria.

(a) At least one but less than three years—5 points;

(b) At least three but less than five years—10 points;

(c) At least five but less than 10 years—20 points; or

(d) 10 or more years—30 points.

(4) The DER is the financial ratio used to determine how much debt an applicant has relative to its equity. DER is calculated from the balance sheet by adding the short term or current debt plus the long term debt, and then dividing that number by the intermediary's equity. In order to receive points the intermediary must submit a summary of how the DER was calculated.

(5) Administrative. The Administrator may assign up to 25 additional points to an application to account for the following items not adequately covered by the other priority criteria set out in this section. The items that will be considered are the amount of funds requested in relation to the amount of need; a particularly successful affordable housing development record; a service area with no other PRLF coverage; a service area with severe affordable housing problems; a service area with emergency conditions caused by a natural disaster; an innovative proposal; the quality of the proposed program; economic development plan from the local community, particularly a plan prepared as part of a request for an Empowerment Zone/Enterprise Community designation; or excellent utilization of an existing revolving loan fund program. The Administrator will document the reasons for the particular point allocation.

VI. Appeal Process

All adverse determinations regarding applicant eligibility and the awarding of points as part of the selection process are appealable. Instructions on the appeal process will be provided at the time an applicant is notified of the adverse action.

Equal Opportunity and Nondiscrimination Requirements

(1) In accordance with the Fair Housing Act, Title VI of the Civil Rights Act of 1964, the Equal Credit Opportunity Act, the Age Discrimination Act of 1975, Executive Order 12898, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973, neither the intermediary nor Rural Development will discriminate against any employee, proposed intermediary or proposed ultimate recipient on the basis of sex, marital status, race, familial status, color, religion, national origin, age, physical or mental disability (provided the proposed intermediary or proposed ultimate recipient has the capacity to contract), because all or part of the proposed intermediary's or proposed ultimate recipient's income is derived from public assistance of any kind, or because the proposed intermediary or proposed ultimate recipient has in good faith exercised any right under the Consumer Credit Protection Act, with respect to any aspect of a credit transaction anytime Rural Development loan funds are involved.

(2) The policies and regulations contained in 7 CFR Part 1901, Subpart E apply to this program.

(3) The Rural Housing Service (RHS) Administrator will assure that equal opportunity and nondiscrimination requirements are met in accordance with the Fair Housing Act, Title VI of the Civil Rights Act of 1964, the Equal Credit Opportunity Act, the Age Discrimination Act of 1975, Executive Order 12898, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973.

(4) All housing must meet the accessibility requirements found at 7 CFR Section 3560.60(d).

(5) To file a complaint of discrimination, write to USDA, Assistant Secretary for Civil Rights Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW., STOP 9410, Washington, DC 20250–9410, or call (866) 632–9992 (English) or (800) 877–8339 (TDD) or (866) 377–8642 (English Federal-relay) or (800) 845–6136 (Spanish Federal-relay). USDA is an equal opportunity provider, employer, and lender. The U.S. Department of Agriculture prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.)

Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Dated: August 16, 2011.

Robert Lewis,

Acting Administrator, Rural Housing Service.

[FR Doc. 2011–21318 Filed 8–19–11; 8:45 am]

BILLING CODE 3410–XV–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: International Trade Administration (ITA).

Title: Application for the President's ''E'' and ''E'' Star Awards for Export Expansion.

Form Number(s): ITA–725P.

OMB Control Number: 0625–0065.

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

Burden Hours: 600.

Number of Respondents: 30.

Average Hours per Response: 20.

Needs and Uses: Expanding the U.S. exports is a national priority and essential to improving U.S. trade performance. The Department of Commerce, International Trade Administration, U.S. Commercial Service serves as the key U.S. government agency responsible for promoting exports of goods and services from the United States and assisting U.S. exporters in their dealings with foreign governments.

The ''E'' Award Program was established by Executive Order 10978 (EO), to afford suitable recognition to persons, firms, or organizations that contribute significantly in the effort to increase U.S. exports and to encourage U.S. companies to sell their products and services internationally. The EO authorized the Secretary of Commerce, in cooperation with the Secretary of the Interior, the Secretary of Agriculture, the Administrator of the Small Business Administration, and the heads of other Government departments and agencies, to establish procedures for the nomination and the granting of awards. A second Presidential award, the ''E Star'' Award, was authorized by the Secretary of Commerce, to afford continuing recognition of noteworthy export promotion efforts.

The application form is used to determine eligibility for the ''E'' Award and the ''E Star'' Award within established criteria. In addition to the application form and written justification, applicants can submit supporting materials that show their qualification for the respective awards, although supporting materials are not required. Examples of supporting materials can include: Translated company and product literature; promotional materials; client impact statements; or anything the company or organization deems relevant to its qualification for the respective award.

The ''E'' and ''E Star'' Awards are the highest honors that our nation bestows upon American exporters and organizations that contribute to exporting. These awards recognize firms and organizations for their competitive achievements in world markets, as well as the benefits of their success to the U.S. economy. The purpose of this information collection is to determine the applicant's eligibility to receive a Presidential award.

Respondents benefit from the collection of this information because it affords them with recognition of their exporting success from the U.S. government; and can use this recognition to further market themselves and thereby increase business and reputation.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Wendy Liberante, (202) 395–3647.

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 Wendy Liberante, OMB Desk Officer, Fax number (202) 395–5167 or via the Internet at *Wendy_L._Liberante@omb.eop.gov.*

Dated: August 16, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–21310 Filed 8–19–11; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Transportation and Related Equipment; Technical Advisory Committee; Notice of Partially Closed Meeting

The Transportation and Related Equipment Technical Advisory Committee will meet on September 14, 2011, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, l4th Street between Constitution & Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

Public Session

1. Welcome and Introductions.

2. Status Reports by Working Groups Chairs.

3. Public Comments/Proposals.

Closed Session

4. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than September 7, 2011.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via e-mail.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on October 15, 2010, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 §§ (10)(d)), that the portion of the meeting dealing with matters the disclosure of portion of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)1 and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: August 15, 2011.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2011–21401 Filed 8–19–11; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee (RPTAC) will meet September 13, 2011, 9 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Public Session

1. Opening remarks by the Chairman.

2. Opening remarks by Bureau of Industry and Security.

3. Export Enforcement update.

4. Regulations update.

5. Working group reports.

6. Automated Export System (AES) update.

7. Presentation of papers or comments by the Public.

Closed Session

8. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than September 6, 2011.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via e-mail.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 9, 2011, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 (10)(d)), that the portion of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)1 and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: August 15, 2011.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2011–21403 Filed 8–19–11; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–520–804]

Certain Steel Nails From the United Arab Emirates: Postponement of Preliminary Determination of Antidumping Duty Investigation

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

DATES: *Effective Date:* August 22, 2011.

FOR FURTHER INFORMATION CONTACT: Michael A. Romani at (202) 482–0198, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Postponement of Preliminary Determination

On April 27, 2011, the Department of Commerce (the Department) initiated the antidumping duty investigation on nails from the United Arab Emirates. See *Certain Steel Nails From the United Arab Emirates: Initiation of Antidumping Duty Investigation,* 76 FR 23559 (April 27, 2011). The notice of initiation stated that the Department would issue its preliminary determination for this investigation no later than 140 days after the issuance of the initiation in accordance with section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.205(b)(1) unless postponed.

On August 8, 2011, Mid Continent Nail Corporation (the petitioner) made a timely request pursuant to section 733(c)(1) of the Act and 19 CFR 351.205(b)(2) and (e) for postponement of the preliminary determination in this investigation. The petitioner requested a 50-day postponement of the preliminary determination in order to allow the Department additional time to resolve a number of complex issues in this investigation.

The petitioner submitted a request for postponement of the preliminary determination more than 25 days before the scheduled date of the preliminary determination. See 19 CFR 351.205(e). Therefore, because the petitioner provided reasons for its request and the Department finds no compelling reasons to deny the request, the Department is postponing the deadline for the preliminary determination in accordance with section 733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2) and (e) by 50 days to October 27, 2011. The deadline for the final determination will continue to be 75 days after the date of the preliminary determination unless extended.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: August 15, 2011.

Christian Marsh,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–21387 Filed 8–19–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–865, A–201–839]

Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea and Mexico: Postponement of Preliminary Determinations of Antidumping Duty Investigations

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

FOR FURTHER INFORMATION CONTACT: Henry Almond (Republic of Korea) (202) 482–0049 or David Goldberger (Mexico) (202) 482–4136; AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230.

SUPPLEMENTARY INFORMATION:

Postponement of Preliminary Determinations

On April 19, 2011, the Department of Commerce (the Department) initiated antidumping duty investigations of imports of bottom mount combination refrigerator-freezers from the Republic of Korea (Korea) and Mexico. *See Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea and Mexico: Initiation of Antidumping Duty Investigations,* 76 FR 23281 (April 26, 2011). The notice of initiation stated that we would issue our preliminary determinations no later than 140 days after the date of initiation. Currently, the preliminary determinations in these investigations are due on September 6, 2011.

On August 11, 2011, Whirlpool Corporation (hereafter, the petitioner) made timely requests, pursuant to 19 CFR 351.205(e) and section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), for a 50-day postponement of the preliminary determinations in the investigations. The petitioner stated that a postponement of these preliminary determinations is necessary because of the complexities of the investigations, the novelty of the issues raised, and because the Department is still involved in gathering and analyzing data from the respondents.

Under section 733(c)(1)(A) of the Act, if the petitioner makes a timely request for an extension of the period within which the preliminary determination must be made under subsection (b)(1), then the Department may postpone making the preliminary determination under subsection (b)(1) until not later than the 190th day after the date on which the administering authority initiated the investigation. Therefore, because there are no compelling reasons to deny its requests, the Department is postponing the preliminary determinations in these investigations until October 26, 2011, which is 190 days from the date on which the Department initiated these investigations.

The deadline for the final determinations will continue to be 75 days after the date of the preliminary determinations, unless extended.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: August 16, 2011.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–21390 Filed 8–19–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools (i.e., Axes & Adzes, Bars & Wedges, Hammers & Sledges, and Picks & Mattocks) From the People's Republic of China: Continuation of Antidumping Duty Orders

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

SUMMARY: As a result of the determinations by the Department of Commerce (''Department'') and the International Trade Commission (''ITC'') that revocation of the antidumping duty orders on heavy forged hand tools (*i.e.*,

Axes & Adzes, Bars & Wedges, Hammers & Sledges, and Picks & Mattocks) (''Hand Tools'') from the People's Republic of China (''PRC'') would likely lead to continuation or recurrence of dumping and of material injury to an industry in the United States, the Department is publishing a notice of continuation of the antidumping duty orders.

DATES: *Effective Date:* August 22, 2011.

FOR FURTHER INFORMATION CONTACT: Emeka Chukwudebe, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0219.

SUPPLEMENTARY INFORMATION: On January 3, 2011, the Department initiated the third sunset review of the antidumping duty orders on Hand Tools from the PRC pursuant to section 751(c)(2) of the Tariff Act of 1930, as amended (''Act''). *See Initiation of Five-Year (''Sunset'') Review*, 76 FR 89 (January 3, 2011). As a result of its review, the Department found that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping and notified the ITC of the magnitude of the margins likely to prevail were the orders to be revoked. *See Heavy Forged Hand Tools (i.e., Axes & Adzes, Bars & Wedges, Hammers & Sledges, and Picks & Mattocks) From the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Orders*, 76 FR 24856 (May 3, 2011).

On August 10, 2011, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on Hand Tools from the PRC would likely lead to continuation or recurrence of material injury to an industry in the United States. *See Heavy Forged Hand Tools From China*, 76 FR 50755 (August 16, 2011), and USITC Publication 4250 (August 2011), Heavy Forged Hand Tools from China: Investigation Nos. 731–TA–457–A–D (Third Review).

Scope of the Orders

The products covered by these orders are Hand Tools comprising the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg (3.33 pounds); (2) bars over 18 inches in length, track tools and wedges; (3) picks and mattocks; and (4) axes, adzes and similar hewing tools. Hand Tools include heads for drilling hammers, sledges, axes, mauls, picks and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars, and tampers; and steel wood splitting wedges. Hand Tools are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot blasting, grinding, polishing and painting, and the insertion of handles for handled products. Hand Tools are currently provided for under the following Harmonized Tariff Schedule of the United States subheadings: 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded from these orders are hammers and sledges with heads 1.5 kg. (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under. The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of the orders is dispositive.

Continuation of the Orders

As a result of the determinations by the Department and the ITC that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on Hand Tools from the PRC. U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of continuation of the orders will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of the orders no later than 30 days prior to the fifth anniversary of the effective date of continuation.

This five-year (sunset) review and this notice are in accordance with sections 751(c) and 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: August 16, 2011.

Christian Marsh,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–21394 Filed 8–19–11; 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 September 12, 2011. 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: 11–026. *Applicant:* Purdue University, 745 Agriculture Mall Dr., West Lafayette, IN 47907. *Instrument:* SPSx Moisture Sorption Analyzer. *Manufacturer:* Projekt Messtechnik, Germany. *Intended Use:* The SPSx will be used to monitor the water-solid interaction behavior of food ingredients (both amorphous and crystalline) and blends of powdered food ingredients. The instrument monitors water-solid interactions by taking gravimetric measurement of samples continuously using a microbalance to monitor sample weight after exposure to the programmed relative humidity and temperature conditions. The SPSx is the leading instrument in monitoring multiple samples exposed to the same experimental conditions by use of a sampling wheel and enclosed top weighing balance, allowing for the measurement of up to 23 samples in a single experimental protocol. A unique feature of this instrument is that it monitors multiple samples at one time, ensuring that conditions do not vary from one experiment to the next. *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:* March 23, 2011.

Dated: August 16, 2011.

Gregory Campbell,

Director, IA Subsidies Enforcement Office.

[FR Doc. 2011–21391 Filed 8–19–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Final Rescission of New Shipper Reviews of Jining Yifa Garlic Produce Co., Ltd., Shenzhen Bainong Co., Ltd., and Yantai Jinyan Trading Inc.

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

SUMMARY: On May 3, 2011, the Department of Commerce (Department) published a preliminary intent to rescind the new shipper reviews (NSRs) of fresh garlic from the People's Republic of China (PRC) covering the period of review (POR) November 1, 2009, through April 30, 2010, for Jining Yifa Garlic Produce Co., Ltd. (Jining Yifa) and Shenzhen Bainong Co., Ltd. (Shenzhen Bainong) and November 1, 2009, through May 31, 2010, for Yantai Jinyan Trading Inc. (Yantai Jinyan). *See Fresh Garlic From the People's Republic of China: Preliminary Intent To Rescind New Shipper Reviews,* 76 FR 24857 (May 3, 2011) (*Preliminary Intent to Rescind*). The Department preliminarily found that Jining Yifa's and Shenzhen Bainong's sales were not *bona fide.* The Department preliminarily found that Yantai Jinyan was not entitled to an NSR.

The Department continues to find that the U.S. sales of subject merchandise exported by Jining Yifa and Shenzhen Bainong during the POR were not *bona fide* and is rescinding the NSRs of Jining Yifa and Shenzhen Bainong. After analyzing the comments submitted by parties with respect to Yantai Jinyan, the Department continues to find that Yantai Jinyan was not entitled to an NSR. Therefore, the Department is rescinding Yantai Jinyan's NSR.

DATES: *Effective Date:* August 22, 2011.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith, Milton Koch, or Justin Neuman, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–5255, (202) 482–2584, and (202) 482–0486, respectively.

SUPPLEMENTARY INFORMATION:

Background

Since the Department issued the *Preliminary Intent to Rescind,* the following events have occurred with respect to Jining Yifa, Shenzhen Bainong, and Yantai Jinyan. On May 16, 2011, the Department issued a supplemental questionnaire to Jining Yifa. On May 18, 2011, Jining Yifa informed the Department that it would not respond to the supplemental questionnaire. On May 19, 2011, the Department issued a supplemental questionnaire to Shenzhen Bainong. On June 9, 2011, Shenzhen Bainong filed its response to our supplemental questionnaire. No parties filed case briefs with respect to Jining Yifa. Yantai Jinyan and Shenzhen Bainong timely filed case briefs. The Fresh Garlic Producers Association and its individual Members, Christopher Ranch LLC, The Garlic Company, Valley Garlic, and Vessey and Company (collectively, Petitioners) timely filed rebuttal briefs separately addressing the parties' case briefs.

Scope of the Order

The products covered by the order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay. The scope of the order does not include the following: (a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed. The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive. In order to be excluded from the order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to U.S. Customs and Border Protection (CBP) to that effect.

Final Rescission of NSR: Jining Yifa

In the *Preliminary Intent to Rescind,* the Department analyzed the *bona fides* of Jining Yifa's sales, and preliminarily found Jining Yifa's sales to the United States to be not *bona fide.* In the *Preliminary Intent to Rescind,* we stated that we would continue to gather information with respect to this issue. The Department subsequently issued a supplemental questionnaire to Jining Yifa; in response, Jining Yifa provided a letter explaining that it would not respond. No party submitted briefs regarding Jining Yifa.

Absent any new information on the record or arguments regarding Jining Yifa and the *Preliminary Intent to Rescind,* the Department continues to find that the sales by Jining Yifa are not *bona fide;* therefore, these sales do not provide a reasonable or reliable basis for calculating a dumping margin. Thus, the Department is rescinding the NSR of Jining Yifa.

Final Rescission of NSR: Shenzhen Bainong

In the *Preliminary Intent to Rescind,* the Department analyzed the *bona fides* of Shenzhen Bainong's sales and preliminarily found Shenzhen Bainong's sales to the United States to be not *bona fide.* In the *Preliminary Intent to Rescind,* we stated that we would continue to gather information with respect to this issue. The Department subsequently issued a supplemental questionnaire to Shenzhen Bainong, to which Shenzhen Bainong responded. Shenzhen Bainong filed a case brief and Petitioners filed a rebuttal brief. The Department has analyzed Shenzhen Bainong's supplemental questionnaire response and the case and rebuttal briefs. We continue to find that Shenzhen Bainong's sale is not *bona fide* and does not provide a reasonable or reliable basis for calculating a dumping margin. Thus we are rescinding the NSR for Shenzhen Bainong.

Final Rescission of NSR: Yantai Jinyan

As noted above, the Department received a case brief and a rebuttal brief from Yantai Jinyan and Petitioners, respectively. In the *Preliminary Intent to Rescind,* the Department stated that its decision to initiate the NSR and to extend the POR was based on the information provided by Yantai Jinyan in its request for an NSR. The Department reached a preliminary decision to rescind the NSR of Yantai Jinyan because the Department found that Yantai Jinyan's request for review contained a misrepresentation regarding

the timing of the sale at issue. The Department continues to find that Yantai Jinyan's request for an NSR did not meet the minimum requirements for an NSR under 19 CFR 351.214(b)(2)(iv)(C). Specifically, the sale that Yantai Jinyan certified in its request as the first sale to an unaffiliated customer in the United States was later identified by Yantai Jinyan as a sale to an affiliated customer. In order to qualify for an NSR under 19 CFR 351.214, a company must certify and document, among other things, the date of the first sale to an unaffiliated customer in the United States. Once all the facts surrounding the transaction were established, it became clear that Yantai Jinyan did not have a sale or entry during the standard POR; as such, there was in fact no basis upon which to initiate an NSR. Consequently, we preliminarily determined that the Department's decision to initiate the NSR of Yantai Jinyan was based on inaccurate information provided by Yantai Jinyan. *See Preliminary Intent to Rescind,* 76 FR at 24858. After analyzing Yantai Jinyan's case brief and Petitioners' rebuttal brief, the Department continues to find that Yantai Jinyan's request for an NSR did not meet the requirements for initiation. As such, it is appropriate to rescind the NSR of Yantai Jinyan.

The Department is currently conducting an antidumping duty administrative review for the POR November 1, 2009, through October 31, 2010, to which Yantai Jinyan is subject. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 75 FR 81565, 81569 (December 28, 2010). As indicated in the *Preliminary Intent to Rescind,* the Department has moved Yantai Jinyan's separate rate application from the record of this NSR to the record of the 2009–2010 administrative review, and will consider it in the context of the administrative review. *See* ''Memorandum from Jacqueline Arrowsmith to the File through Dana S. Mermelstein, Program Manager, AD/CVD Operations 6, Moving Yantai Jinyan's Separate Rates Application to the November 1, 2009 through October 31, 2010 (16th) Administrative Review,'' dated concurrently with this notice.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed in the ''Memorandum to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, Issues and Decision Memorandum: Fresh Garlic from the People's Republic of China; Final Rescission of New Shipper Reviews of Jining Yifa Garlic Produce Co. Ltd., Shenzhen Bainong Co., Ltd., and Yantai Jinyan Trading Inc.'' (Decision Memorandum), dated concurrently with this notice and hereby adopted by this notice. A list of the issues raised in the briefs and addressed in the Decision Memorandum is appended to this notice. The Decision Memorandum is a public document on file in the Central Records Unit (CRU) main Commerce building, Room 7046, and is also accessible directly on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Decision Memorandum are identical in content. The Department has made the transition to an electronic filing system, IA ACCESS; CRU will continue to maintain the official record in paper form for those documents that were filed prior to the implementation of IA ACCESS. *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263, 39264 (July 6, 2011).

Cash Deposit Requirements

Effective upon publication of the final rescission of the NSRs of Jining Yifa, Shenzhen Bainong, and Yantai Jinyan, the Department will instruct CBP to discontinue the option of posting a bond or security in lieu of a cash deposit for entries of subject merchandise by Jining Yifa, Shenzhen Bainong, and Yantai Jinyan. Cash deposits will be required for exports of subject merchandise by Jining Yifa, Shenzhen Bainong, and Yantai Jinyan entered, or withdrawn from warehouse, for consumption on or after the publication date at the per-unit PRC-wide rate, $4.71 per kilogram.

Assessment Instructions

As a result of the rescission of the NSR of Jining Yifa and Shenzhen Bainong, the entries of subject merchandise by Jining Yifa and Shenzhen Bainong covered by these NSRs will be assessed at the PRC-wide rate. Because these entries are also covered by the POR of the 2009–2010 administrative review currently being conducted (*see Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 75 FR 81565), we will issue liquidation instructions for Jining Yifa's and Shenzhen Bainong's entries upon completion of the administrative review. Upon completion of the administrative review, the Department will instruct CBP to assess antidumping duties on entries for Jining Yifa and Shenzhen Bainong at the PRC-wide rate pursuant to the final results of the 2009–2010 administrative review.

In addition, the Department has moved Yantai Jinyan's separate rate application from the record of this NSR to the record of the 2009–2010 administrative review, and, during the course of the administrative review, the Department will evaluate whether Yantai Jinyan's separate rate application establishes its eligibility for a separate rate. Upon completion of the administrative review, the Department will instruct CBP to assess antidumping duties on entries of subject merchandise by Yantai Jinyan now covered by the administrative review, at the appropriate rate pursuant to the final results of the 2009–2010 administrative review.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Return or Destruction of Proprietary Information

This notice serves as a reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(2)(B) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.214.

Dated: August 15, 2011.

Christian Marsh,

Acting Deputy Assistant Secretary for Import Administration.

Appendix I—List of Issues Addressed in the Decision Memorandum

Comment 1: Whether Yantai Jinyan's NSR Request Satisfied the Requirements for Initiation

Comment 2: Whether Yantai Jinyan Made Inaccurate Representations in Its NSR Request

Comment 3: Whether Yantai Jinyan's Sale to Its Unaffiliated Customer Should Be Reviewed Because the POR Was Expanded
Comment 4: Whether the Department Has the Discretion To Continue Yantai Jinyan's NSR or Initiate Another NSR
Comment 5: Yantai Jinyan's Cash Deposit and Assessment Rate
Comment 6: Whether the Department's Authority To Rescind Shenzhen Bainong's New Shipper Review Is Limited to a Sale That Is Unrepresentative and Extremely Distortive
Comment 7: Whether the Pricing of Shenzhen Bainong's Sale Is Commercially Reasonable
Comment 8: Whether the Quantity of Shenzhen Bainong's Sale Is Commercially Reasonable
Comment 9: Whether the Department's Concerns Regarding Shenzhen Bainong's Importer as Legitimate Ongoing Business Concern Are Justified
Comment 10: Whether Shenzhen Bainong's Importer Behaved in a Commercially Reasonable Manner

[FR Doc. 2011–21377 Filed 8–19–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Northwest Region Vessel Identification Requirements

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 October 21, 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 Becky Renko, (206) 526–6110 or *becky.renko@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The success of fisheries management programs depends significantly on regulatory compliance. The vessel identification requirement is essential to facilitate enforcement. The ability to link fishing or other activity to the vessel owner or operator is crucial to enforcement of regulations issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. A vessel's official number is required to be displayed on the port and starboard sides of the deckhouse or hull, and on a weather deck. It identifies each vessel and should be visible at distances at sea and in the air. Vessels that qualify for particular fisheries are readily identified, gear violations are more readily prosecuted, and this allows for more cost-effective enforcement. Cooperating fishermen also use the number to report suspicious activities that they observe. Regulation-compliant fishermen ultimately benefit as unauthorized and illegal fishing is deterred and more burdensome regulations are avoided.

II. Method of Collection

Fishing vessel owners physically mark vessel with identification numbers in three locations per vessel.

III. Data

OMB Control Number: 0648–0355.
Form Number: None.
Type of Review: Regular submission (extension of a currently approved information collection).
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 1,693.
Estimated Time per Response: 45 minutes (15 minutes per marking).
Estimated Total Annual Burden Hours: 1,247.
Estimated Total Annual Cost to Public: $66,520 in recordkeeping/reporting costs.

IV. Request for Comments

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

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

Dated: August 16, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–21309 Filed 8–19–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA641

Marine Mammals; File No. 16553

Correction

In notice document 2011–21001 appearing on page 51002 in the issue of August 17, 2011, make the following correction:

On page 51002, in the second column, under the **DATES** heading, in the third line, ''August 17, 2011'' should read ''September 16, 2011''.

[FR Doc. C1–2011–21001 Filed 8–19–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA647

Endangered and Threatened Species; Recovery Plans

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Availability.

SUMMARY: The National Marine Fisheries Service (NMFS) announces the adoption of an Endangered Species Act (ESA) recovery plan for the Upper Willamette Chinook salmon *(Oncorhynchus tshawytscha)* Evolutionarily Significant Unit (ESU) and the Upper Willamette River steelhead *(Oncorhynchus mykiss)* Distinct Population Segment (DPS), which spawn and rear in tributaries to the Willamette River in western Oregon. The Final Upper Willamette River Conservation and Recovery Plan for Chinook Salmon and Steelhead (Final Recovery Plan) and our summary of and

responses to public comments are now available.

ADDRESSES: Electronic copies of the Final Recovery Plan and a summary of and response to public comments on the Proposed Recovery Plan (Proposed Plan) are available online at *http://www.nwr.noaa.gov/Salmon-Recovery-Planning/Recovery-Domains/Willamette-Lower-Columbia/Index.cfm.* A CD–ROM of these documents can be obtained by emailing a request to rob.*walton@noaa.gov* or by writing to NMFS Protected Resources Division, 1201 NE., Lloyd Blvd., Portland, OR 97202.

FOR FURTHER INFORMATION CONTACT: Rob Walton, National Marine Fisheries Service, (503) 231–2285.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*) requires that we develop and implement recovery plans for the conservation and survival of threatened and endangered species under our jurisdiction, unless it is determined that such plans would not result in the conservation of the species. We designated Upper Willamette Chinook salmon as threatened on in the **Federal Register** on June 28, 2005 (70 FR 37160) and steelhead as threatened on January 5, 2006 (71 FR 834).

We published a Notice of Availability of the Proposed Plan in the **Federal Register** on October 22, 2010 (75 FR 65299) and held four public meetings to obtain comments on the Proposed Plan. We received over 30 comments on the Proposed Plan and summarized the public comments, prepared responses, and identified the public comments that prompted revisions for the Final Recovery Plan. We revised the Proposed Plan based on the comments received, and this final version now constitutes the Upper Willamette River Conservation and Recovery Plan for Chinook Salmon and Steelhead.

The Final Recovery Plan

The ESA requires that recovery plans incorporate, to the extent practicable: (1) Objective, measurable criteria which, when met, would result in a determination that the species is no longer threatened or endangered; (2) site-specific management actions necessary to achieve the plan's goals; and (3) estimates of the time required and costs to implement recovery actions. Our goal is to restore the threatened Upper Willamette Chinook salmon and steelhead to the point where they are again secure, self-sustaining members of their ecosystems and no longer need the protections of the ESA.

The Final Recovery Plan provides background on the natural history of Upper Willamette Chinook salmon and steelhead, population trends and the potential threats to their viability. The Final Recovery Plan lays out a recovery strategy to address the potential threats based on the best available science and includes goals that incorporate objective, measurable criteria which, when met, would result in a determination that the species be removed from the list. The Final Recovery Plan is not regulatory, but presents guidance for use by agencies and interested parties to assist in the recovery of Upper Willamette salmon and steelhead. The Final Recovery Plan identifies substantive actions needed to achieve recovery by addressing the threats to the species. The strategy for recovery includes a linkage between management actions and an active research and monitoring program intended to fill data gaps and assess effectiveness. The Final Recovery Plan incorporates an adaptive management framework by which management actions and other elements will evolve and adapt as we gain information through research and monitoring and it describes the agency guidance on time lines for reviews of the status of species and recovery plans. To address threats related to the species, the Final Recovery Plan references many of the significant efforts already underway to restore salmon and steelhead access to high quality habitat and to improve habitat previously degraded.

We expect the Final Recovery Plan to help us and other Federal agencies take a consistent approach to section 7 consultations under the ESA and to other ESA decisions. For example, the Final Recovery Plan will provide information on the biological context for the effects that a proposed action may have on the listed ESU and DPS. The best available information in the Final Recovery Plan on the natural history, threats, and potential limiting factors, and priorities for recovery can be used to help assess risks. Consistent with the adoption of this Final Recovery Plan for Upper Willamette salmon and steelhead, we will implement relevant actions for which we have authority, work cooperatively on implementation of other actions, and encourage other Federal and state agencies to implement recovery actions for which they have responsibility and authority.

Recovery of Upper Willamette salmon and steelhead will require a long-term effort in cooperation and coordination with Federal, state, tribal and local government agencies, and the community.

Conclusion

NMFS has reviewed the Plan for compliance with the requirements of the ESA section 4(f), determined that it does incorporate the required elements and is therefore adopting it as the Final Recovery Plan for Upper Willamette salmon and steelhead.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: August 16, 2011.

Therese Conant,

Deputy Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–21383 Filed 8–19–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

U.S. Coral Reef Task Force Public Meeting and Public Comment

AGENCY: National Ocean Service, NOAA, Department of Commerce.

ACTION: Notice of public meeting, Notice of public comment.

SUMMARY: Notice is hereby given of a public meeting of the U.S. Coral Reef Task Force. The meeting will be held in Ft. Lauderdale, Florida. This meeting, the 26th bi-annual meeting of the U.S. Coral Reef Task Force, provides a forum for coordinated planning and action among federal agencies, state and territorial governments, and nongovernmental partners. Please register in advance by visiting the Web site listed below. This meeting has time allotted for public comment. All public comment must be submitted in written format. A written summary of the meeting will be posted on the Web site within two months of its occurrence.

DATES: The meeting will be held Friday, October 21, 2011. Additional workshops will be held in advance of the meeting on Tuesday, October 18, and Wednesday, October 19, and field trips on Thursday, October 20. Registration is requested for all events associated with the meeting. Advance public comments can be submitted to the email, fax, or mailing address listed below from Monday, September 26–Friday, October 7.

Location: The meeting will be held at the Marriott Harbor Beach Hotel, 3030 Holiday Drive, Ft. Lauderdale, Florida 33316.

FOR FURTHER INFORMATION CONTACT: Beth Dieveney, NOAA USCRTF Steering

Committee Point of Contact, NOAA Coral Reef Conservation Program, 1305 East-West Highway, N/OCRM, Silver Spring, MD 20910 (phone: 301–713–3155 x129; fax: 301–713–4389; *e-mail: Beth.Dieveney@noaa.gov*); or Liza Johnson, USCRTF Executive Secretary, U.S. Department of the Interior, MS–3530–MIB, 1849 C Street, NW., Washington, DC 20240 (phone: 202–208–1378; fax: 202–208–4867; *e-mail:* (*Liza_M_Johnson@ios.doi.gov*); or visit the USCRTF Web site at *http://www.coralreef.gov.*

SUPPLEMENTARY INFORMATION: Established by Presidential Executive Order 13089 in 1998, the U.S. Coral Reef Task Force mission is to lead, coordinate, and strengthen U.S. government actions to better preserve and protect coral reef ecosystems. Co-chaired by the Departments of Commerce and Interior, Task Force members include leaders of 12 federal agencies, seven U.S. states and territories, and three freely associated states. For more information about the meeting, registering, and submitting public comment go to *http://www.coralreef.gov.*

Public Comments: Comments may address the meeting, the role of the USCRTF, or general coral reef conservation issues.

Public Availability of Comments: Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 12, 2011.

Donna Wieting,

Director, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic Atmospheric Administration.

[FR Doc. 2011–21372 Filed 8–19–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

0648–XA487

Taking and Importing of Marine Mammals

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

ACTION: Notice; affirmative finding renewal.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, (Assistant Administrator) has renewed the affirmative finding for the Government of Spain under the Marine Mammal Protection Act (MMPA). This affirmative finding will allow yellowfin tuna harvested in the eastern tropical Pacific Ocean (ETP) in compliance with the International Dolphin Conservation Program (IDCP) by Spanish-flag purse seine vessels or purse seine vessels operating under Spanish jurisdiction to be imported into the United States. The affirmative finding was based on review of documentary evidence submitted by the Government of Spain and obtained from the Inter-American Tropical Tuna Commission (IATTC).

DATES: The affirmative finding annual renewal is effective from April 1, 2011, through March 31, 2012.

FOR FURTHER INFORMATION CONTACT: Sarah Wilkin, Southwest Region, NMFS, phone 562–980–3230; fax 562–980–4027.

SUPPLEMENTARY INFORMATION: The MMPA, 16 U.S.C. 1361 *et seq.,* allows the entry into the United States of yellowfin tuna harvested by purse seine vessels in the ETP under certain conditions. If requested by the harvesting nation, the Assistant Administrator will determine whether to make an affirmative finding based upon documentary evidence provided by the government of the harvesting nation, the IATTC, or the Department of State.

The affirmative finding process requires that the harvesting nation is meeting its obligations under the IDCP and obligations of membership in the IATTC. Every 5 years, the government of the harvesting nation must request an affirmative finding and submit the required documentary evidence directly to the Assistant Administrator. On an annual basis, NMFS reviews the affirmative finding and determine whether the harvesting nation continues to meet the requirements. A nation may provide information related to compliance with IDCP and IATTC measures directly to NMFS on an annual basis or may authorize the IATTC to release the information to NMFS to annually renew an affirmative finding determination without an application from the harvesting nation.

An affirmative finding will be terminated, in consultation with the Secretary of State, if the Assistant Administrator determines that the requirements of 50 CFR 216.24(f) are no longer being met or that a nation is consistently failing to take enforcement actions on violations, thereby diminishing the effectiveness of the IDCP.

As a part of the affirmative finding process set forth in 50 CFR 216.24(f), the Assistant Administrator considered documentary evidence submitted by the Government of Spain and obtained from the IATTC and has determined that Spain has met the MMPA's requirements to receive an affirmative finding annual renewal.

After consultation with the Department of State, the Assistant Administrator issued an affirmative finding annual renewal to Spain, allowing the continued importation into the United States of yellowfin tuna and products derived from yellowfin tuna harvested in the ETP by Spanish-flag purse seine vessels or purse seine vessels operating under Spanish jurisdiction through March 31, 2012. Spain's five-year affirmative finding will remain valid through March 31, 2015, subject to subsequent annual reviews by NMFS.

Dated: August 17, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Services, National Marine Fisheries Service.

[FR Doc. 2011–21385 Filed 8–19–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Federal Advisory Committee Meeting Notice; Threat Reduction Advisory Committee

AGENCY: Office of the Under Secretary of Defense (Acquisition, Technology and Logistics), Department of Defense.

ACTION: Federal Advisory Committee Meeting Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine Act of 1976 (5 U.S.C. 552b, as amended) the Department of Defense announces the following Federal advisory committee meeting of the Threat Reduction Advisory Committee (Hereafter referred to as ''the Committee'').

DATES: Tuesday, September 7, 2011, from 8:30 a.m. to 3 p.m.

ADDRESSES: TASC Lorton Office, Conference Room 111, 8211 Terminal Road, Suite 1000, Lorton, VA 22079.

FOR FURTHER INFORMATION CONTACT: Mr. William Hostyn, Defense Threat Reduction Agency/SP–ACP, 8725 John J. Kingman Road, MS 6201, Fort Belvoir, VA 22060–6201. E-mail: *william.hostyn@dtra.mil,* Phone: (703) 767–4453, Fax: (703) 767–5701.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To obtain, review and evaluate classified information related to the Committee's mission to advise on technology security, combating weapons of mass destruction (WMD), counter terrorism and counter proliferation.

Agenda: Beginning at 8:30 a.m. through the end of the meeting, the Committee will present SECRET-level Working Group findings throughout the duration of the meeting. The TRAC will also hold classified discussions on WMD related national security matters.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, the Department of Defense has determined that the meeting shall be closed to the public. The Under Secretary of Defense for Acquisition, Technology and Logistics, in consultation with the DoD FACA Attorney, has determined in writing that this meeting be closed to the public because the discussions fall under the purview of 5 U.S.C. 552b(c)(1) and are inextricably intertwined with the unclassified material which cannot reasonably be segregated into separate discussions without disclosing secret material.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the membership of the Committee at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Committee's Designated Federal Officer; the Designated Federal Officer's contact information can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

Written statements that do not pertain to a scheduled meeting of the Committee may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all committee members.

Dated: August 15, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–21314 Filed 8–19–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2011–OS–0092]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, Department of Defense (DoD).

ACTION: Notice to add a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on September 21, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 12, 2011, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 15, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DHA 23

SYSTEM NAME:

Pharmacy Data Transaction Service (PDTS).

SYSTEM LOCATION:

Primary: Emdeon Business Services, LLC, 2045 Midway Drive, Twinsburg, OH 44087–1933.

Alternate: Emdeon Business Services, LLC, 3993 Suite B, Crowfarn Drive, Memphis, TN 38118–7326.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the uniformed services (and their dependents) and retired military members (and their dependents), contractors participating in military deployments or related operations, DoD civilian employees (to include non-appropriated fund employees), and other individuals who receive or have received drug prescriptions dispensed and/or filled at military treatment facilities, via TRICARE mail-order, the TRICARE retail pharmacy network, and commercial pharmacies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Electronic data extracted from an individual's pharmacy and prescription records.

PATIENT DATA:

Name, Social Security Number (SSN)and/or DoD Identification (ID) Number (or foreign identification number), visit date and time, date of birth, mailing address, home telephone number, family member prefix (if appropriate), relationship to policy holder, and service branch classification.

SPONSOR DATA:

This includes name, SSN and/or DoD ID Number, date of birth, relationship to policy holder, gender, insurance policy holder name, and data on Health Care Delivery Program Plan coverage.

EMPLOYER DATA:

Employer's name, address, and telephone number.

OTHER DATA:

Primary care manager, primary care manager network provider, copayment factor, primary care manager region, and pharmacy coverage, if applicable; ancillary information related to an individual's prescriptions, including prior authorizations and certificates of medical necessity; Medicare and Medicaid coverage data; and data on enrollment in various health care programs within the DoD and contracted health care programs provided through commercial prescription benefit managers and through Medicare Part D.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. chapter 55, Medical and Dental Care; 32 CFR 199.17, TRICARE Program; 45 CFR part 160, Health and Human Services, General Administrative Requirements; 45 CFR part 164, Security & Privacy; DoD Instruction 6015.23, Delivery of Healthcare at Military Treatment Facilities; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To establish a central repository for coordination of benefits of pharmacy records pertaining to prescriptions dispensed and/or filled at military treatment facilities, via TRICARE mail-order, the TRICARE retail pharmacy network, and privately owned pharmacies.

To improve efficiency and patient safety by reducing the likelihood of drug adverse reactions and abuse involving prescription medications and to discourage prescription shopping.

To provide data necessary to conduct Prospective Drug Utilization Review on inbound dispensing transactions and returns alerts when encountering drug/drug interactions, therapeutic duplication, or other clinical circumstances as defined by system requirements.

To provide a data warehouse component to support operational, clinical, and economic studies of TRICARE prescription activity.

Information may also be used as a management tool for statistical analysis, tracking, reporting, evaluating program effectiveness, and conducting research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Centers for Medicare and Medicaid Services and to the Department of Veterans Affairs for coordination of benefits.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices apply to this system.

Note 1: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R), issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974, as amended, or mentioned in this system of records notice.

Note 2: Personal identity, diagnosis, prognosis or treatment information of any patient maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States is, except as per 42 U.S.C. 290dd–2, treated as confidential and disclosed only for the purposes and under the circumstances expressly authorized under 42 U.S.C. 290dd–2.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Records are retrieved by patient's name, SSN and/or DoD ID Number, date of birth, family member prefix or dependent suffix; or sponsor's name, Social Security Number (SSN) and/or DoD ID Number.

SAFEGUARDS:

Records are maintained in a controlled area accessible only to authorized personnel. Entry is further restricted to personnel with a valid requirement and authorization. Physical entry is restricted by the use of locks and passwords and administrative procedures which are changed periodically.

This system collects and distributes records on a system-to-system basis that does not require end-user direct interaction. However, in the rare instances when a record must be retrieved by a qualified individual, such access is through the system's Pharmacy Operations Center. Access to personally identifiable information in this system of records is restricted to those who require the data in the performance of the official duties, and have received proper training relative to the Privacy Act of 1974, as amended, 45 CFR part 160, Health and Human Services, General Administrative Requirements; and 45 CFR part 164, Security & Privacy, and DoD Information Assurance Regulations.

AUDITING:

Audit trail records from all available sources are enabled and available for review at all times for indications of inappropriate or unusual activity. Suspected violations of information assurance policies are analyzed and reported in accordance with DoD and Military Health System/TRICARE Management Activity specific information system information assurance procedures.

RETENTION AND DISPOSAL:

Records are retained for two years and then deleted.

SYSTEM MANAGER(S) AND ADDRESS:

Director, DoD Pharmacy Informatics, TRICARE Management Activity, Pharmaceutical Operations Directorate, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3201.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: TMA Privacy Officer, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3206.

Requests should contain the full names of the beneficiary and sponsor, sponsor's SSN and/or DoD ID Number, sponsor's service, beneficiary's date of birth, beneficiary's gender, and treatment facility(ies) that have provided care.

If requesting health information of a minor (or legally incompetent person), the request must be made by that individual's parent, guardian, or person acting in loco parentis. Written proof of the capacity of the requestor may be required.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to TRICARE Management Activity, Attention: Freedom of Information Act Requester

Service Center, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

Requests should contain the full names of the beneficiary and sponsor, sponsor's SSN and/or DoD ID Number, sponsor's service, beneficiary date of birth, beneficiary gender, and treatment facility(ies) that have provided care, the name and number of this system of records notice and be signed.

If requesting health information of a minor (or legally incompetent person), the request must be made by that individual's parent, legal guardian, or person acting in loco parentis. Written proof of the capacity of the requestor may be required.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311, or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from Military Departments' medical treatment facilities, commercial healthcare providers under contract to the Military Health System, the Defense Enrollment Eligibility Reporting System, the Uniformed Service Treatment Facility Managed Care System, commercial pharmacies, and the Department of Veterans Affairs.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–21285 Filed 8–19–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2011–OS–0093]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, Department of Defense (DoD).

ACTION: Notice to delete a System of Records.

SUMMARY: The Office of the Secretary of Defense (Office of Assistant General Counsel, Manpower and Health Affairs) is deleting systems of records notice from its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 21, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Cindy Allard, Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The Office of the Secretary of Defense proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 15, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion:
DGC 06

Attorney and Summer Intern Position Applications (February 22, 1993, 58 FR 10227).

REASON:

Based on a recent review of DGC 06, Attorney and Summer Intern Position Applications by the Office of the Assistant General Counsel (Manpower and Health Affairs), it has been determined that DGC 06 is duplicative of OPM/GOVT–5 Recruiting, Examining, and Placement Records (June 19, 2006, 71 FR 35351), and can therefore be deleted. Records in this system will not be destroyed until the National Archives and Records Administration (NARA) retention has been fulfilled.

[FR Doc. 2011–21286 Filed 8–19–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability for Exclusive, Non-Exclusive, or Partially-Exclusive Licensing of an Invention Concerning a Device and Method for Evaluating Manual Dexterity

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Announcement is made of the availability for licensing of the invention set forth in U.S. Provisional Patent Application Serial No. 61/505,424, entitled ''Device and Method for Evaluating Manual Dexterity,'' filed on July 7, 2011. The United States Government, as represented by the Secretary of the Army, has rights to this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, *Attn:* Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research and Technology Applications (ORTA), (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The invention relates to manual dexterity assessment in general, and in particular to devices for measuring manual dexterity and methods of use thereof.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2011–21375 Filed 8–19–11; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance: Hearing

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of an Open Meeting/Hearing.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting/hearing of the

Advisory Committee on Student Financial Assistance. This notice also describes the functions of the Advisory Committee. Notice of this hearing is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

Date and Time: Friday, September 30, 2011, beginning at 9:00 a.m. and ending at approximately 5:00 p.m.

ADDRESSES: Washington Court Hotel, Atrium Ballroom, 525 New Jersey Avenue, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Ms. Janet Chen, Associate Director of Special Analyses, Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington, DC 20202–7582; (202) 219–2099.

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

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under Section 491 of the *Higher Education Act* of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee serves as an independent source of advice and counsel to the Congress and the Secretary of Education on student financial aid policy. Since its inception, the congressional mandate requires the Advisory Committee to conduct objective, nonpartisan, and independent analyses on important aspects of the student assistance programs under Title IV of the *Higher Education Act.* In addition, Congress expanded the Advisory Committee's mission in the *Higher Education Opportunity Act* of 2008 to include several important areas: access, Title IV modernization, early information and needs assessment, and review and analysis of regulations. Specifically, the Advisory Committee is to review, monitor, and evaluate the Department of Education's progress in these areas and report recommended improvements to Congress and the Secretary.

The one-day hearing will consist of two sessions. The first will be a discussion among representatives from the higher education community regarding the Advisory Committee's preliminary findings report on the *Higher Education Regulations Study* (HERS) to be released at the hearing. The second session will be a discussion among experts regarding the best practices of states and institutions to improve degree and certificate completion among nontraditional students.

Individuals who will need accommodations for a disability in order to attend the meeting/hearing (*i.e.,* interpreting services, assistive listening devices, and/or materials in alternative format) should notify the Advisory Committee no later than Friday, September 16, 2011, by contacting Ms. Tracy Jones at (202) 219–2099 or via e-mail at *tracy.deanna.jones@ed.gov.* We will attempt to meet requests after that date, but cannot guarantee availability of the requested accommodation. The meeting/hearing site is accessible to individuals with disabilities.

Interested parties who wish to comment on one or both of the above topics may submit a written statement to the Advisory Committee. To provide written comment, please e-mail *ACSFA@ed.gov* indicating in the subject line one or both of the hearing topics. Send comments as an attached file, either .doc, .docx, or .pdf. Comments may also be mailed to: ACSFA, 80 F Street, NW., Suite 413, Washington, DC 20202–7582. Comments must be received on or before September 21, 2011.

Space for the hearing is limited and you are encouraged to register early. You may register on the Advisory Committee's Web site, *http://www2.ed.gov/ACSFA* or by sending an e-mail to the following address: *ACSFA@ed.gov* or *Tracy.Deanna.Jones@ed.gov*. Please include your name, title, affiliation, mailing and e-mail addresses, and telephone and fax numbers. If you are unable to register electronically, you may fax your registration information to the Advisory Committee staff office at (202) 219–3032. The registration deadline is Wednesday, September 21, 2011.

Records are kept for Advisory Committee proceedings, and are available for inspection at the Office of the Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW.—Suite 413, Washington, DC between the hours of 9:00 a.m. and 5:30 p.m. Monday through Friday, except Federal holidays. Information regarding the Advisory Committee is available on the Committee's Web site, *http://www2.ed.gov/ACSFA.*

Electronic Access to This Document: You may view this document, as well as other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html.*

To use PDF you must have Adobe Acrobat Reader, which is available free at the **Federal Register** Web site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: August 17, 2011.

William J. Goggin,

Executive Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 2011–21351 Filed 8–19–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings; Filings Instituting Proceedings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11–2365–000.
Applicants: Cheyenne Plains Gas Pipeline Company, L.L.C.
Description: Cheyenne Plains Gas Pipeline Company, L.L.C. submits tariff filing per 154.402: ACA Filing effective 10–1–11 to be effective 10/1/2011.
Filed Date: 08/11/2011.
Accession Number: 20110811–5090.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 23, 2011.

Docket Numbers: RP11–2366–000.
Applicants: Colorado Interstate Gas Company.
Description: Colorado Interstate Gas Company submits tariff filing per 154.402: ACA Filing—effective 10–1–11 to be effective 10/1/2011.
Filed Date: 08/11/2011.
Accession Number: 20110811–5091.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 23, 2011.

Docket Numbers: RP11–2367–000.
Applicants: El Paso Natural Gas Company.
Description: El Paso Natural Gas Company submits tariff filing per 154.402: ACA Filing—effective 10–1–11 to be effective 10/1/2011.
Filed Date: 08/11/2011.
Accession Number: 20110811–5092.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 23, 2011.

Docket Numbers: RP11–2368–000.
Applicants: Mojave Pipeline Company, LLC.

Description: Mojave Pipeline Company, LLC submits tariff filing per 154.402: ACA Filing—effective 10–1–11 to be effective 10/1/2011.
Filed Date: 08/11/2011.
Accession Number: 20110811–5093.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 23, 2011.

Docket Numbers: RP11–2369–000.
Applicants: Wyoming Interstate Company, L.L.C.
Description: Wyoming Interstate Company, L.L.C. submits tariff filing per 154.402: ACA Filing—effective 10–1–11 to be effective 10/1/2011.
Filed Date: 08/11/2011.
Accession Number: 20110811–5094.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 23, 2011.

Docket Numbers: RP11–2370–000.
Applicants: Young Gas Storage Company, Ltd.
Description: Young Gas Storage Company, Ltd. submits tariff filing per 154.402: ACA Filing—effective 10–1–11 to be effective 10/1/2011.
Filed Date: 08/11/2011.
Accession Number: 20110811–5095.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 23, 2011.

Docket Numbers: RP11–2371–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: Transcontinental Gas Pipe Line Company, LLC submits tariff filing per 154.204: Revisions to GT&C Section 25 and Section 37 to be effective 9/11/2011.
Filed Date: 08/11/2011.
Accession Number: 20110811–5100.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 23, 2011.

Docket Numbers: RP11–2372–000.
Applicants: Southern Natural Gas Company, L.L.C.
Description: Southern Natural Gas Company, L.L.C. submits tariff filing per 154.402: ACA Surcharge Filing to be effective 10/1/2011.
Filed Date: 08/12/2011.
Accession Number: 20110812–5038.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 24, 2011.

Docket Numbers: RP11–2373–000.
Applicants: Southern LNG Company, L.L.C.
Description: Southern LNG Company, L.L.C. submits tariff filing per 154.402: ACA Surcharge Filing to be effective 10/1/2011.
Filed Date: 08/12/2011.
Accession Number: 20110812–5039.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 24, 2011.

Docket Numbers: RP11–2374–000.
Applicants: Big Sandy Pipeline, LLC.
Description: Petition for Temporary Waiver and Request for Expedited Action and Shortened Comment Period of Big Sandy Pipeline, LLC.
Filed Date: 08/11/2011.
Accession Number: 20110811–5141.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 17, 2011.

Docket Numbers: RP11–2375–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Creditworthiness to be effective 9/12/2011.
Filed Date: 08/12/2011.
Accession Number: 20110812–5063.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 24, 2011.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 12, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–21281 Filed 8–19–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP11–2360–000.
Applicants: Northwest Pipeline GP.
Description: Northwest Pipeline GP submits tariff filing per 154.402: ACA Fiscal Year 2011 Filing to be effective 10/1/2011.
Filed Date: 08/09/2011.
Accession Number: 20110809–5022.
Comment Date: 5 p.m. Eastern Time on Monday, August 22, 2011.

Docket Numbers: RP11–2361–000.
Applicants: Black Marlin Pipeline Company.
Description: Black Marlin Pipeline Company submits tariff filing per 154.203: NAESB Version 1.9–Third Compliance Filing to be effective 8/10/2011.
Filed Date: 08/10/2011.
Accession Number: 20110810–5028.
Comment Date: 5 p.m. Eastern Time on Monday, August 22, 2011.

Docket Numbers: RP11–2362–000.
Applicants: Northern Natural Gas Company.
Description: Northern Natural Gas Company submits tariff filing per 154.204: 20110810 Carlton Flow Obligations to be effective 11/1/2011.
Filed Date: 08/10/2011.
Accession Number: 20110810–5049.
Comment Date: 5 p.m. Eastern Time on Monday, August 22, 2011.

Docket Numbers: RP11–2363–000.
Applicants: Texas Eastern Transmission, LP.
Description: Texas Eastern Transmission, LP submits tariff filing per 154.204: AMDDO Election to be effective 10/1/2011.
Filed Date: 08/11/2011.
Accession Number: 20110811–5041.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 23, 2011.

Docket Numbers: RP11–2364–000.
Applicants: LA Storage, LLC.
Description: LA Storage, LLC submits tariff filing per 154.202: LA Storage, LLC FERC Gas Tariff to be effective 10/11/2011.
Filed Date: 08/11/2011.
Accession Number: 20110811–5042.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 23, 2011.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP11–1823–002.
Applicants: Public Utilities Commission of Nevada an.
Description: Tuscarora Gas Transmission Company—2011 Cost and Revenue Study.
Filed Date: 08/09/2011.
Accession Number: 20110809–5115.
Comment Date: 5 p.m. Eastern Time on Monday, August 22, 2011.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the

Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 11, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–21282 Filed 8–19–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–4303–000.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: NYISO filing re: Voltage Support Service to be effective 10/11/2011.
Filed Date: 08/12/2011.
Accession Number: 20110812–5170.
Comment Date: 5 p.m. Eastern Time on Friday, September 02, 2011.

Docket Numbers: ER11–4304–000.
Applicants: Golden Spread Electric Cooperative, Inc.
Description: Golden Spread Electric Cooperative, Inc. submits tariff filing per 35.1: Initial Tariff Filing to be effective 10/12/2011.
Filed Date: 08/12/2011.
Accession Number: 20110812–5171.
Comment Date: 5 p.m. Eastern Time on Friday, September 02, 2011.

Docket Numbers: ER11–4305–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 08–12–11 ITC Attachment FF Correction to be effective 7/28/2010.
Filed Date: 08/12/2011.
Accession Number: 20110812–5172.
Comment Date: 5 p.m. Eastern Time on Friday, September 02, 2011.

Docket Numbers: ER11–4306–000.
Applicants: Ameren Illinois Company.
Description: Ameren Illinois Company submits tariff filing per 35.15: Cancellation of Rate Schedule 113 to be effective 12/31/9998.
Filed Date: 08/12/2011.
Accession Number: 20110812–5173.
Comment Date: 5 p.m. Eastern Time on Friday, September 02, 2011.

Docket Numbers: ER11–4307–000.
Applicants: Green Mountain Energy Company.
Description: Green Mountain Energy Company submits tariff filing per 35.12: Green Mountain Energy Company Application for Market-Based Rate Authority to be effective 10/11/2011.
Filed Date: 08/12/2011.
Accession Number: 20110812–5180.
Comment Date: 5 p.m. Eastern Time on Friday, September 02, 2011.

Docket Numbers: ER11–4308–000.
Applicants: Reliant Energy Northeast LLC.
Description: Reliant Energy Northeast LLC submits tariff filing per 35.12: Reliant Energy Northeast Application for Market-Based Rate Authority to be effective 10/11/2011.
Filed Date: 08/12/2011.
Accession Number: 20110812–5189.
Comment Date: 5 p.m. Eastern Time on Friday, September 02, 2011.

Docket Numbers: ER11–4309–000.
Applicants: Troy Energy, LLC.
Description: Troy Energy, LLC submits tariff filing per 35: Revisions to Market-Based Rate Tariff of Troy Energy to be effective 8/16/2011.
Filed Date: 08/15/2011.
Accession Number: 20110815–5052.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 06, 2011.

Take notice that the Commission received the following electric reliability filings.

Docket Numbers: RD11–9–000.
Applicants: North American Electric Reliability Corporation.
Description: Petition of the North American Electric Reliability Corporation for Approval of an Interpretation to Requirement R10 of Reliability Standard TOP–002–2a—Normal Operations Planning.
Filed Date: 04/15/2011.
Accession Number: 20110415–5289.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 14, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 15, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–21355 Filed 8–19–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–4308–000]

Reliant Energy Northeast LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Reliant Energy Northeast LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 6, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor

must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 16, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–21354 Filed 8–19–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–4307–000]

Green Mountain Energy Company; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Green Mountain Energy Company's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 6, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 16, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–21352 Filed 8–19–11; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewals; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 renewal of an existing information collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments on renewal of the information collection described below.

DATES: Comments must be submitted on or before October 21, 2011.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *E-mail: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Room F–1084, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta G. Gregorie, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collections of information:

1. *Title:* Notification of Performance of Bank Services.

OMB Number: 3064–0029.

Form Number: FDIC 6120/06.

Frequency of Response: On occasion.

Affected Public: Business or other financial institutions.

Estimated Number of Respondents: 412.

Estimated Time per Response: ½ hour.

Total Annual Burden: 206 hours.

General Description of Collection: Insured state nonmember banks are required to notify the FDIC, under section 7 of the Bank Service Corporation Act (12 U.S.C. 1867), of the relationship with a bank service corporation. Form FDIC 6120/06 (Notification of Performance of Bank Services) may be used by banks to satisfy the notification requirement.

2. *Title:* Account Based Disclosures in Connection with Federal Reserve Regulations E, CC, and DD.

OMB Number: 3064–0084.

Frequency of Response: On occasion.

Affected Public: State chartered banks that are not members of the Federal Reserve System.

Estimated Number of Respondents: 5,192.

Annual Burden: Regulation E—29,404 hours; Regulation CC—528,513 hours; and Regulation DD—302,434 hours.

Total Estimated Burden: 860,351 hours.

General Description of Collection: This FDIC information collection provides for the application of Regulations E (Electronic Fund Transfers), CC (Availability of Funds), and DD (Truth in Savings) to State nonmember banks. Regulations E, CC, and DD are issued by the Federal Reserve Board of Governors (FRB) to ensure, among other things, that consumers are provided adequate disclosures regarding accounts, including electronic fund transfer services, availability of funds, and fees and annual percentage yield for deposit accounts. Generally, the Regulation E disclosures are designed to ensure consumers receive adequate disclosure of basic terms, costs, and rights relating to electronic fund transfer (EFT) services provided to them so that they can make informed decisions. Institutions offering EFT services must disclose to consumers certain information, including: initial and updated EFT terms, transaction information, the consumer's potential liability for unauthorized transfers, and error resolution rights and procedures. Like Regulation E, Regulation CC has consumer protection disclosure requirements. Specifically, Regulation CC requires depository institutions to make funds deposited in transaction accounts available within specified time periods, disclose their availability policies to customers, and begin accruing interest on such deposits promptly. The disclosures are intended to alert customers that their ability to use deposited funds may be delayed, prevent unintentional (and costly) overdrafts, and allow customers to compare the policies of different institutions before deciding at which institution to deposit funds. Depository institutions must also provide an awareness disclosure regarding substitute checks. The regulation also requires notice to the depositary bank and to a customer of nonpayment of a check. Regulation DD also has similar consumer protection disclosure requirements that are intended to assist consumers in comparing deposit accounts offered by institutions, principally through the disclosure of fees, the annual percentage yield, and other account terms. Regulation DD requires depository institutions to disclose yields, fees, and other terms concerning deposit accounts to consumers at account opening, upon request, and when changes in terms occur. Depository institutions that provide periodic statements are required to include information about fees imposed, interest earned, and the annual percentage yield (APY) earned during those statement periods. It also contains rules about advertising deposit accounts. Although the FRB regulations require institutions to retain evidence of compliance with the disclosure requirements, the regulations do not specify the types of records that must be retained.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC this 16th day of August 2011.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–21280 Filed 8–19–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 6004, Superior Bank, FSB, Hinsdale, IL

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for Superior Bank, FSB, (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of Superior Bank, FSB on July 27, 2001. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to:

Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 8.1, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Federal Deposit Insurance Corporation.

Dated: August 16, 2011.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–21277 Filed 8–19–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10004, Hume Bank; Hume, MO

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for Hume Bank, (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of Hume Bank on March 7, 2008. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 8.1, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this timeframe.

Federal Deposit Insurance Corporation.

Dated: August 17, 2011.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–21324 Filed 8–19–11; 8:45 am]

BILLING CODE 6714–01–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 September 16, 2011.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *American State Bancshares, Inc.,* Great Bend, Kansas; to acquire 100 percent of the voting shares of Rose Hill Bancorp, Inc., and thereby indirectly acquire voting shares of Rose Hill Bank, both in Rose Hill, Kansas.

Board of Governors of the Federal Reserve System, August 17, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–21339 Filed 8–19–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[CFDA 93.019]

Single Source Cooperative Agreement Award for the Gorgas Memorial Institute of Health Studies

AGENCY: Office of Policy and Planning (OPP), Office of the Assistant Secretary for Preparedness and Response (ASPR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In FY2011, HHS/ASPR/OPP plans to provide a Single Source Cooperative Agreement Award to GMI to strengthen Panama's laboratory diagnostic capacity for emerging infectious disease threats including select bio-terrorism agents and novel influenza viruses. The amount of Single Source award is $200,000. The project period is: September 30, 2011 to September 29, 2012.

SUPPLEMENTARY INFORMATION:

ASPR will exercise sole administrative oversight of this cooperative agreement. ASPR will also collaborate with HHS–Centers for Disease Control and Prevention (CDC) to coordinate the provision of technical expertise needed for GMI to become a member of the LRN. GMI will then implement critical laboratory diagnostic capacities, including personnel training and infrastructure improvement to meet the standards to become an international affiliate of LRN.

This collaboration seeks to expand the laboratory diagnostic capacity of Panama and the Central American Region as GMI is a national and regional reference laboratory for several infectious diseases. The work will be performed to support the implementation of the World Health Organization (WHO)'s International Health Regulations [IHR (2005)] in Panama and in the context of Article 44 of the IHR (2005), which directs State Parties to collaborate with each other to detect, assess, and respond to events, and to develop, strengthen, and maintain core capacities for disease surveillance and response to public health emergencies.

Single Source Justification

GMI is a public health institution within the Ministry of Health of Panama which provides research, public health services and advice on public health policy development. It was created in 1928 and was primarily funded by the United State Government (USG) until 1991. GMI was named after General William Crawford Gorgas, the U.S. Army physician who managed control efforts of yellow fever, malaria and other diseases during the building of the Panama Canal. GMI contributes to improve the health of the population of Panama and Central America by acting as a national reference public health laboratory to diagnose diseases like yellow fever, malaria, measles, tuberculosis, arbovirus febrile illness, viral encephalitidies, influenza, dengue, hantavirus cardiopulmonary syndrome, and all endemic viral and bacterial diseases. Most recently GMI became a World Bank-Pan-American Health Organization reference laboratory for human immunodeficiency virus (HIV) for the Central American region. GMI has well-established laboratories of virology, parasitology, immunology, genomics, entomology and food and water chemistry. GMI also has departments of epidemiology and biostatistics, chronic disease studies, health policy, and health and human reproduction studies. This infrastructure positions GMI as a key institution in Panama's national research and public health systems.

In 2006, GMI signed a Memorandum of Understanding (MOU) with HHS to identify joint opportunities to improve preparedness for and response to infectious diseases, placing specific emphasis on influenza and other respiratory diseases. To further the goals of the MOU, GMI was awarded two cooperative agreements by HHS–ASPR to increase its virology diagnostic capacity and strengthen the surveillance of influenza virus in Panama and Central American, and to develop a Regional Health Care Training Center (RHCTC) for health care workers of the Central American and Caribbean region. These cooperative agreements helped to establish the first country-wide sentinel influenza surveillance network, and a BSL–3 laboratory virology suite that was built and inaugurated in 2010. In addition, complementary epidemiological and laboratory training efforts took place at the RHCTC benefitting more than 5,000 professionals from Panama, Belize, Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, and Dominican Republic. Based on the capacities developed under these projects, the GMI was designated as Panama's ''National Influenza Center'' by the World Health Organization (WHO).

By supporting GMI to become a qualified member of the LRN, the USG will increase its international network of laboratories that are fully equipped to detect, assess and report the outbreak of emerging infectious diseases including

novel influenza viruses and biological agents that pose a threat to global public health. Through this international collaboration ASPR will capitalize on GMI's influential position as an important regional partner on disease surveillance efforts and public health emergency preparedness. This new cooperative agreement will help to further strengthen laboratory diagnostic capacity in Panama and other countries in the region. GMI's strong collaborative relationships with neighboring governments, as well as its training capabilities, and laboratory infrastructure will be critical for the viability of this partnership. In addition, this collaboration will support overall HHS efforts to continue building capacity abroad with the ultimate intent of detecting, stopping, slowing or otherwise limiting the threat or actual spread of bio-terrorism agents or a pandemic to the United States, thereby enhancing the health security of the American population.

ADDITIONAL INFORMATION: The agency program contact is Dr. Maria Julia Marinissen, who can be contacted at 202–205–4214 or *Maria.Marinissen@hhs.gov*.

Statutory Authority: Sections 301, 307, 1701 and 2811 of the Public Health Service Act, 42 U.S.C. 241, 242l, 300u, 300hh–10.

Dated: August 15, 2011.

Nicole Lurie,

Assistant Secretary for Preparedness and Response.

[FR Doc. 2011–21294 Filed 8–19–11; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Advisory Board on Radiation and Worker Health, Department of Health and Human Services, has been renewed for a 2-year period through August 3, 2013.

For information, contact Mr. Theodore Katz, Designated Federal Officer, Advisory Board on Radiation and Worker Health, Department of Health and Human Services, 1600 Clifton Road, M/S E20, Atlanta, Georgia 30341, telephone 404/498–2533, or fax 404/498–2570.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: August 12, 2011.

Elizabeth Millington,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–21413 Filed 8–19–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–11–11KA]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Catina Conner, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Use of Evidence-Based Practices for Comprehensive Cancer Control—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

There have been increasing calls in the fields of public health generally and cancer control specifically for the dissemination, adoption, and implementation of evidence-based practices (EBPs). EBPs are public health practices (interventions, programs, strategies, policies, procedures, processes, and/or activities) that have been tested or evaluated and shown to be effective. However, while the development, review, and compilation of EBPs has steadily increased over time, there is concern that the adoption and implementation of those practices, including among cancer control planners and practitioners, has not kept pace. Given the gap between the development of EBPs and their use, public health and cancer control organizations need to place greater emphasis on the promotion and dissemination of these practices among those who can use them to improve population health.

While efforts to promote cancer control EBPs have increased, questions remain whether these efforts will result in widespread adoption and implementation of EBPs in the context of comprehensive cancer control (CCC) in the states, Tribes, and U.S. Associated Pacific Island Jurisdictions and territories. National Comprehensive Cancer Control Program (NCCCP) grantees may face a number of challenges to incorporating EBPs into CCC efforts in their jurisdictions. In order to address these barriers effectively and better promote the use of EBPs for cancer control, CDC would like to understand (1) how evidence-based approaches are currently being used to develop CCC plans; (2) how CCC programs identify EBPs; (3) what EBPs have been adopted by CCC programs; and (4) what challenges and unintended consequences have been encountered in their implementation.

CDC plans to conduct a new, one-time study to examine CCC planners' use of scientific and practice-based information to inform development of their CCC plans. Information collection will consist of two Web-based surveys involving key CCC stakeholders in the NCCCP-funded states, Tribes, and U.S. Associated Pacific Island Jurisdictions and territories. Respondents for the first survey will be Directors of the 66 NCCCP-funded programs, who will also have the opportunity to participate in a follow-up telephone call. Respondents for the second survey will be key

program partners/collaborators identified by each Program Director (1–2 partners per Director) as instrumental to the selection and implementation of cancer control EBPs. The survey results will help CDC enhance existing NCCCP efforts by identifying new strategies for promoting the use of evidence-based approaches to comprehensive cancer control. The surveys will also identify technical assistance needs of NCCCP-funded awardees related to selection and implementation of EBPs, and will contribute to CDC's efforts to build the capacities of states, Tribes, and Pacific Island Jurisdictions and territories toward more effective efforts in cancer prevention and control. Finally, the results may lead to new insights and questions that can be addressed in future studies. CDC's authorization to conduct the study is provided by Section 301 of the Public Health Service Act (42 U.S.C. 241).

OMB approval will be requested for one year. Participation in the study is voluntary. There are no costs to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of Respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total response burden (in hours)
CCC Program Directors	Survey Scheduling Script	66	1	15/60	17
	Program Directors Web Survey Questionnaire.	66	1	0.5	33
	Program Directors Telephone Interview Guide and Script.	66	1	20/60	22
CCC Program Partners	Program Partners Web Survey Questionnaire.	132	1	0.5	66
Total					138

Catina Conner,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–21400 Filed 8–19–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Member Conflict Review, Program Announcement (PA) 07–318, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 1 p.m.–3 p.m., November 9, 2011 (Closed).

Place: National Institute for Occupational Safety and Health (NIOSH), CDC, 1095 Willowdale Road, Morgantown, West Virginia 26506, *Telephone:* (304) 285–6143.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Member Conflict Review, PA 07–318.''

Contact Person for More Information: Bernadine Kuchinski, PhD, Scientific Review Officer, Office of Extramural Programs, NIOSH, CDC, Robert A. Taft Laboratories, 4676 Columbia Parkway, MS C–7, Cincinnati, Ohio 45226, *Telephone:* (513) 533–8511.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: August 12, 2011.

Elizabeth Millington,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–21420 Filed 8–19–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Times and Dates:

8 a.m.–5 p.m., October 18, 2011 (Closed).

8 a.m.–5 p.m., October 19, 2011 (Closed).

Place: Embassy Suites, 1900 Diagonal Road, Alexandria, Virginia 22314, *Telephone:* (703) 684–5900, *Fax:* (703) 684–0653.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Purpose: The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) received in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health, and allied areas.

It is the intent of NIOSH to support broad-based research endeavors in keeping with the Institute's program goals. This will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects, which will lead to improvements in the delivery of occupational safety and health services, and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

Matters To Be Discussed: The meeting will convene to address matters related to the conduct of Study Section business and for the study section to consider safety and occupational health-related grant applications.

These portions of the meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, Centers for Disease Control and Prevention, pursuant to Section 10(d) Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Price Connor, PhD, NIOSH Health Scientist, 1600 Clifton Road, NE., Mailstop E–20, Atlanta, Georgia 30333, Telephone (404) 498–2511, Fax (404) 498–2571.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: August 12, 2011.

Elizabeth Millington,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–21410 Filed 8–19–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Annual Report/ACF 204 (State MOE)—1 collection.

OMB No.: 0970–0248.

Description

The Administration for Children and Families (ACF) is requesting a three-year extension of the ACF–204 (Annual MOE Report). The report is used to collect descriptive program characteristics information on the programs operated by States and Territories in association with their Temporary Assistance for Needy Families (TANF) programs. All State and Territory expenditures claimed toward States and Territories MOE requirements must be appropriate, i.e., meet all applicable MOE requirements. The Annual MOE Report provides the ability to learn about and to monitor the nature of State and Territory expenditures used to meet States and Territories MOE requirements, and it is an important source of information about the different ways that States and Territories are using their resources to help families attain and maintain self-sufficiency. In addition, the report is used to obtain State and Territory program characteristics for ACFs annual report to Congress, and the report serves as a useful resource to use in Congressional hearings about how TANF programs are evolving, in assessing State the Territory MOE expenditures, and in assessing the need for legislative changes.

Respondents

The 50 States of the United States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–204	54	1	128	6,912

Estimated Total Annual Burden Hours: 6,912.

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 Planning, Research and Evaluation, 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 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.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–21317 Filed 8–19–11; 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: State Plan for the Temporary Assistance for Needy Families (TANF).

OMB No.: 0970–0145.

Description

The State plan is a mandatory statement submitted to the Secretary of the Department of Health and Human Services by the State. It consists of an outline specifying how the state's TANF program will be administered and operated and certain required certifications by the State's Chief Executive Officer. It is used to provide the public with information about the program.

Authority to require States to submit a State TANF plan is contained in section 402 of the Social Security Act, as amended by Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. States are required to submit new plans periodically (*i.e.,* within a 27-month period).

We are proposing to continue the information collection without change.

Respondents

The 50 States of the United States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden
Title Amendments	18	1	3	54
State TANF plan	18	1	30	540

Estimated Total Annual Burden Hours: 594.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 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.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–21316 Filed 8–19–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0591]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Data To Support Communications Usability Testing, as Used by the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by September 21, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–New and title: ''Data to Support Communications Usability Testing, as Used by the Food and Drug Administration.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Juanmanuel Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7651, *Juanmanuel.vilela@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Data To Support Communications Usability Testing, as Used by the Food and Drug Administration—(OMB Control Number 0910–New)

FDA plans to use the data collected under this generic clearance to inform its communications campaigns on a variety of topics related to products that FDA regulates. FDA expects the data to help staff message developers achieve FDA communication objectives. FDA also plans to use the data to help tailor print, broadcast, and electronic media communications in order for them to have powerful and desired impacts on target audiences. The data will not be used for the purposes of making policy or regulatory decisions.

The information collected will serve two major purposes. First, as formative research it will provide the critical knowledge needed about target audiences. FDA must explore audiences' beliefs, perceptions, and decisionmaking processes on specific topics in order to meet the basic objectives of its risk communication campaigns. Such knowledge will provide the needed target audience understanding to design effective communication strategies, messages, and product labels. These communications will aim to improve public understanding of the risks and benefits of using various FDA-regulated products by providing users with a better context in which to place risk information more completely.

Second, as pretesting, it will give FDA some information about the potential effectiveness of messages and materials in reaching and successfully communicating with their intended audiences. Testing messages with a sample of the target audience will allow FDA to refine messages while still in the developmental stage. Respondents may be asked to give their reaction to the messages in person or on-line.

FDA's Centers and Offices will use this mechanism to test the usability of messages about FDA-regulated products for consumers, patients, industry representatives, or health care professionals. The data will not be used for the purposes of making policy or regulatory decisions.

In the **Federal Register** of June 10, 2011 (76 FR 34083), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Survey type	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
In-Person Surveys	7,500	1	7,500	1	7,500
Remote Online Surveys	67,000	1	67,000	30/60	33,500
Screener Only [2]	500	1	500	5/60	42
Total					41,042

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] These participants take the screener (which will be comprised of *Demographic* and/or *Introductory Questions,* attachments 5 and 6) but are not selected for the full survey.

There will be two lengths of surveys conducted, depending on whether the survey is in-person or remote and online. An in-person survey will last an average of 60 minutes and take place at an FDA computer or at a nongovernmental location; a remote survey will last approximately 30 minutes and take place at the participant's computer. These estimates were determined through analysis of times from previous usability surveys using similar questions, a survey of usability professionals to ascertain average times for users to perform tasks, and a pilot survey of 10 internal users comprised of staff from the Centers for Disease Control and Prevention (CDC) and CDC contractors. Some remote surveys will take much less time. The majority of usability surveys conducted at CDC were done remotely; thus FDA estimates that in the future more surveys will be done remotely rather than in person.

Estimate of survey respondents was based on an estimate of the ideal number of usability surveys that FDA would conduct over a 3-year period. Factored in were initial surveys and subsequent followup surveys utilizing a satisfactory level of participants. Because FDA has not conducted these types of surveys at the level needed previously, it is anticipated that most of FDA's communications will require some sort of usability survey. Additionally, FDA anticipates conducting a number of important baseline surveys for its home Web page and other highly trafficked subsites in order to redesign these pages as part of FDA's priority to more effectively utilize its Web site.

Annually, FDA projects about 125 studies using the variety of test methods listed previously. FDA is requesting this burden so as not to restrict the Agency's ability to gather information on public sentiment for its proposals in its regulatory and communications programs.

Dated: August 17, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–21379 Filed 8–19–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0553]

Agency Information Collection Activities; Proposed Collection; Comment Request; Tobacco Product Reporting Violation Form

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 and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information contained in FDA's Tobacco Product Reporting Violation Form.

DATES: Submit either electronic or written comments on the collection of information by October 21, 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: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: 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 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.

Tobacco Product Reporting Violation Form (OMB Control Number 0910–NEW)

On June 22, 2009, the President signed the Family Smoking Prevention and Tobacco Control Act (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) (21 U.S.C. 321 *et seq.*) 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.

FDA is requesting OMB approval for a new collection of information to accept consumer and other stakeholder feedback and notification of potential violations of the FD&C Act, as amended by the Tobacco Control Act.

As part of its enforcement strategy, FDA created a Tobacco Call Center (with a toll-free number: 1–877–CTP–1373) to accept information from the public about violations of the Tobacco Control Act. Callers are able to report potential violations of the Tobacco Control Act and FDA will conduct targeted followup investigation based on information received. When callers report a violation, the caller will be asked to provide as much certain information as they can recall, including: The date the potential violation happened, the product type (*e.g.*, cigarette, smokeless, roll-your-own, *etc.*), tobacco brand, type of potentially violative promotional materials, potential violation type, who potentially violated, and the name, address, phone number, and e-mail address of the potential violator. The caller will also be asked to list the potential violator's Web site (if available), describe the potential violation, and provide any additional files or information pertinent to the potential violation. FDA has developed a form that will be used to solicit this information from the caller (FDA Form 3779, Tobacco Product Violations Reporting), which is expected to eventually replace current form FDA Form 3734 for Cigarette Flavor Ban Violations. This new form will be posted on FDA's Web site, and information may be submitted by filling out the form online (or the public can request a copy of Form 3779 by contacting the Center for Tobacco Products (CTP)). In addition, FDA has developed a smartphone application for use with iPhones, Android, etc. to allow consumers to report potential violations to FDA via their smartphone. Others may simply choose to send a letter to FDA with their information. In summary, the public will be able to report information regarding possible violations of the Tobacco Control Act through the following methods: calling the Tobacco Call Center using CTP's toll-free number; using a fill-able form found on FDA's Web site; using FDA's tobacco violation reporting smartphone application, and sending a letter to FDA's Center for Tobacco Products.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity and FDA Form 3779	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Reporting violations of the FD&C Act, as amended by the Tobacco Control Act by telephone, Internet form, smartphone application, or mail	1,000	1	1,000	0.167	167

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates that submitting the information (by phone, Internet form, smartphone application, or mail) will take 10 minutes. Since a similar type of reporting went into effect for the cigarette flavor ban, FDA has received several reports via the Internet or e-mail. Judging from the rate of reporting for the cigarette flavor ban, FDA estimates the number of respondents will be 1,000 who will submit 1 report each annually by phone, Internet form, smartphone application, or mail. Because of the variety of products regulated by FDA under the authority of the FD&C Act, as amended by the Tobacco Control Act, FDA expects the rate of calls and reports received to remain steady over the next 3 years.

Dated: August 17, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–21381 Filed 8–19–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Arthritis Advisory Committee; Notice of Postponement of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is postponing the Arthritis Advisory Committee meeting scheduled for September 13, 2011. This meeting was announced in the **Federal Register** of July 19, 2011 (76 FR 42715). The postponement is due to the fact that the Agency recently received submissions from some of the investigational new drug (IND) application holders for anti-nerve growth factor (Anti-NGF) antibody drug products that contain large quantities of new information that will require additional time for Agency review prior to the advisory committee meeting.

FOR FURTHER INFORMATION CONTACT: Philip A. Bautista, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX 301–827–8533, *e-mail: AAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting.

Dated: August 17, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–21380 Filed 8–19–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Free Clinics FTCA Program Application (OMB No. 0915–0293)—[Revision]

Under 42 U.S.C. 233(o) and HRSA BPHC Policy Information Notice 2011–02, ''Free Clinics Federal Tort Claims Act (FTCA) Program Policy Guide,'' the FTCA Free Clinic Program requires free clinics to submit annual, renewal, and supplemental applications for the process of deeming qualified health care professionals, board members, officers, and contractors for FTCA malpractice insurance coverage. It is proposed that the application forms be modified to comply with the Patient Protection and Affordable Care Act section 10608, amending 42 U.S.C. 233(o)(1), as well as upgrade the application to provide for an electronic submission. The modifications include: (1) Inclusion of board members, officers, employees, and contractors into one comprehensive application, and (2) a fully electronic application that can be submitted electronically via email or the internet. It is anticipated that these modifications will decrease the time and effort required by the current OMB approved FTCA application forms.

The annual estimate of burden is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Free Clinics FTCA Program Application	200	1	200	14	2800
Total	200		200		2800

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of the date of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: August 16, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–21428 Filed 8–19–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Committee on Rural Health and Human Services; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September 2011.

The National Advisory Committee on Rural Health will convene its sixty-ninth meeting in the time and place specified below:

Name: National Advisory Committee on Rural Health and Human Services.

Dates and Time:

September 26, 2011, 12:30 p.m.–5 p.m.
September 27, 2011, 8:45 a.m.–4 p.m.
September 28, 2011, 8:45 a.m.–10:30 a.m.

Place: Forrest General Hospital, 6051 US Highway 40, Hattiesburg, Mississippi 39401.

Phone: (601) 288–7000.

The meeting will be open to the public.

Purpose: The National Advisory Committee on Rural Health and Human Services provides advice and recommendations to the Secretary with respect to the delivery, research, development, and administration of health and human services in rural areas.

Agenda: Monday morning, at 12:30 p.m., the meeting will be called to order by the Chairperson of the Committee, the Honorable Ronnie Musgrove. The first two presentations will be overviews of rural Mississippi and the Mississippi State Office of Rural Health. The remainder of the day the Committee will hear presentations on the three chosen Subcommittee topics. The first panel will focus on Health Disparities in Rural Communities. The second panel is Physician Payment Value Modifier. The final panel of the day is Care Transition and Aging and Disability Resource Center Program (ADRC). After the panel discussions, the Committee Chair will give an overview of the site visits. This will be followed by a call for public comment. The Monday meeting will close at 5 p.m.

Tuesday morning, at 8:45 a.m., Steve Hirsch, Executive Secretariat for the NACRHHS, will provide a Departmental Update. At 9:15 a.m., the Committee will break into Subcommittees and depart to the site visits. The Health Disparities Subcommittee will visit a Federally Qualified Healthcare Center in New Augusta, Perry County; and the Physician Payment Value Modifier Subcommittee will visit the Covington County Hospital in Collins, Mississippi. The Care Transitions and ADRC Subcommittee will visit Forrest General Hospital in Hattiesburg, Mississippi. The Subcommittees will return to the Forrest General Hospital in Hattiesburg at 3:30 p.m. Transportation to the site visits will not be provided to the public. The Tuesday meeting will close at 4 p.m.

The final session will be convened on Wednesday morning at 8:45 a.m. The meeting will open with a review of the Subcommittee site visits. The Chair of the Committee will lead a Working Session to discuss development of the Report to the Secretary. The Committee will draft a letter to the Secretary and discuss the agenda for the February 2012 meeting. The meeting will be adjourned at 10:30 a.m.

For Further Information Contact: Steve Hirsch, MSLS, Executive Secretary, National Advisory Committee on Rural Health and Human Services, Health Resources and Services Administration, Parklawn Building, Room 5A–05, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–0835, Fax (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Aaron Wingad at the Office of Rural Health Policy (ORHP) via Telephone at (301) 443–0835 or by e-mail at *awingad@hrsa.gov*. The Committee meeting agenda will be posted on ORHP's Web site: *http://frwebgate.access.gpo.gov/cgi-in/leaving.cgi?from=leavingFR.htm l&log=linklog&to=http://www.ruralhealth.hrsa.gov*.

Dated: August 16, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–21432 Filed 8–19–11; 8:45 am]

BILLING CODE 4165–15–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: Epidemiology.

Date: September 7, 2011.

Time: 11 a.m. to 1 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: Denise Wiesch, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892. (301) 435–0684. *wieschd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Mechanisms of Excitability, Pain and Infection in the CNS.

Date: September 26–27, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting.)

Contact Person: Suzan Nadi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892. 301–435–1259. *nadis@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Neurotransporters, Receptors, and Calcium Signaling Study Section.

Date: September 26–27, 2011.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Peter B. Guthrie, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7850, Bethesda, MD 20892. (301) 435–1239. *guthriep@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: August 16, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–21367 Filed 8–19–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2011–0737; OMB Control Numbers: 1625–0032, 1625–0094 and 1625–0096]

Information Collection Requests to Office of Management and Budget

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 Information Collection Requests (ICRs) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of revisions to the following collections of information: 1625–0032, Vessel Inspection Related Forms and Reporting Requirements Under Title 46 U.S. Code; 1625–0094, Ships Carrying Bulk Hazardous Liquids; and 1625–0096, Report of Oil or Hazardous Substance Discharge; and Report of Suspicious Maritime Activity. Our ICRs describe the information we seek to collect from the public. Before submitting these ICRs to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before October 21, 2011.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2011–0737] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT). To avoid duplicate submissions, please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

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

(4) *Fax:* 202–493–2251. To ensure your comments are received in a timely manner, mark the fax, to attention Desk Officer for the Coast Guard.

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.*

Copies of the ICRs are available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are 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: Contact Ms. Kenlinishia Tyler, Office of Information Management, telephone 202–475–3652, 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

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collections. There is one ICR for each Collection.

The Coast Guard invites comments on whether these ICRs should be granted based on the Collections 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. In response to your comments, we may revise these ICRs or decide not to seek approval for the Collections. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2011–0737], and must be received by October 21, 2011. 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–2011–0737], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (*via http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. 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. To submit your comment online, go to *http://www.regulations.gov,* and type ''USCG-2011-0737'' in the ''Keyword'' box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing comments and documents: To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–0737'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of 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 a Privacy Act statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information Collection Requests

1. *Title:* Vessel Inspection Related Forms and Reporting Requirements Under Title 46 U.S. Code.

OMB Control Number: 1625–0032.

Summary: This collection of information requires owners, operators, agents or masters of certain inspected vessels to obtain and/or post various forms as part of the Coast Guard's Commercial Vessel Safety Program.

Need: The Coast Guard's Commercial Vessel Safety Program regulations are found in 46 CFR, including parts 2, 26, 31, 71, 91, 107, 115, 126, 169, 176 and 189, as authorized in Title 46 U.S. Code. A number of reporting and recordkeeping requirements are contained therein.

Forms: CG–841, CG–854, CG–948, CG–949, CG–950, CG–950A, CG–2832.

Respondents: Owners, operators, agents and masters of vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden has decreased from 1,686 hours to 1,601 hours a year.

2. *Title:* Ships Carrying Bulk Hazardous Liquids.

OMB Control Number: 1625–0094.

Summary: This information is needed to ensure the safe transport of bulk hazardous liquids on chemical tank vessels and to protect the environment from pollution.

Need: Under 46 U.S.C. 3703, the Coast Guard is authorized to prescribe regulations for protection against hazards to life, property, and navigation and vessel safety, and protection of the marine environment. The regulations for the safe transport by vessel of certain bulk dangerous cargoes are contained in 46 CFR part 153.

Forms: CG–4602B, CG–5148, CG–5148A, CG–5148B and CG–5461.

Respondents: Owners and operators of chemical tank vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 3,410 hours to 5,291 hours a year.

3. *Title:* Report of Oil or Hazardous Substance Discharge; and Report of Suspicious Maritime Activity.

OMB Control Number: 1625–0096.

Summary: Any discharge of oil or a hazardous substance must be reported to the National Response Center (NRC) so that the pre-designated on-scene coordinator can be informed and appropriate spill mitigation action carried out. The NRC also receives suspicious activity reports from the public and disseminates this information to appropriate entities.

Need: Titles 33 CFR 153.203, 40 CFR 263.30 and 264.56, and 49 CFR 171.15 mandate that the NRC be the central place for the public to report all pollution spills. Title 33 CFR 101.305 mandates that owners or operators of those vessels or facilities required to have security plans, report activities that may result in a Transportation Security Incident (TSI) or breaches of security to the NRC. Voluntary reports are also accepted.

Forms: None.

Respondents: Persons-in-charge of a vessel or onshore/offshore facility; owners or operators of vessels or facilities required to have security plans; and the public.

Frequency: On occasion.

Burden Estimate: The estimated burden has decreased from 13,017 hours to 12,098 hours a year.

Dated: August 15, 2011.

R.E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2011–21330 Filed 8–19–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2011–0750]

Information Collection Request to Office of Management and Budget

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) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of revisions to the following collection of information: 1625–0006, Shipping Articles. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before October 21, 2011.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2011–0750] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT). To avoid duplicate submissions, please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

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

(4) *Fax:* 202–493–2251. To ensure your comments are received in a timely manner, mark the fax, to attention Desk Officer for the Coast Guard.

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, copies are available from: Commandant (CG–611), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2nd Street, SW., STOP 7101, Washington, DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Kenlinishia Tyler, Office of Information Management, telephone 202–475–3652, 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

This Notice relies on the authority of the paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

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 Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise this ICR or decide not to seek approval of revisions of the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2011–0750], and must be received by October 21, 2011. 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–2011–0750], indicate the specific section of the document to which each comment applies, providing a reason for each comment. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. 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 hand delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov,* and type ''USCG–2011–0750'' in the ''Keyword'' box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–0750'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of 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 a Privacy Act statement regarding Coast Guard public dockets in

the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information Collection Request

Title: Shipping Articles.

OMB Control Number: 1625–0006.

Summary: Title 46 United States Code §§ 10302 and 10502 and Title 46 Code of Federal Regulations (CFR) 14.201 require applicable owners, charterers, managing operators, masters, or individuals in charge to make a shipping agreement in writing with each seaman before the seaman commences employment. Additionally, 46 CFR 14.313 requires shipping companies to submit Shipping Articles to the Coast Guard: Three years after the article was generated; upon going out of business or merger with another company; or upon request by the Coast Guard. Upon receipt and acceptance, Shipping Articles are transferred and archived at the Federal Records Center in Suitland, Maryland.

Need: This collection provides verification, identification, location and employment information of U.S. merchant mariners: (1) To Federal, state and local law enforcement agencies for use in criminal or civil law enforcement purposes, (2) to shipping companies, (3) to labor unions, (4) to seaman's authorized representatives, (5) to seaman's next of kin, and (6) whenever the disclosure of such information would be in the best interest of the seaman or his/her family.

Forms: CG–705A.

Respondents: Shipping companies.

Frequency: On occasion.

Burden Estimate: The estimated burden is 18,000 hours a year.

Dated: August 16, 2011.

R.E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2011–21342 Filed 8–19–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Petition for Remission or Mitigation of Forfeitures and Penalties Incurred

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security

ACTION: 30-Day notice and request for comments; Extension of an existing information collection.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Petition for Remission or Mitigation of Forfeitures and Penalties Incurred (Form 4609). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This information collection was previously published in the **Federal Register** (76 FR 34245) on June 13, 2011, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before September 21, 2011

ADDRESSES: Interested persons are invited to submit written comments on this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components 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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Petition for Remission or Mitigation of Forfeitures and Penalties Incurred.

OMB Number: 1651–0100.

Form Number: CBP Form 4609.

Abstract: CBP Form 4609, *Petition for Remission of Forfeitures and Penalties Incurred,* is completed and filed with the CBP Port Director by individuals who have been found to be in violation of one or more provisions of the Tariff Act of 1930, or other laws administered by the CBP. Persons who violate the Tariff Act are entitled to file a petition seeking mitigation of any statutory penalty imposed or remission of a statutory forfeiture incurred. This petition is submitted on CBP Form 4609. The information provided on this form is used by CBP personnel as a basis for granting relief from forfeiture or penalty. CBP Form 4609 is authorized by 19 U.S.C. 1618 and provided for by 19 CFR 171.11. It is accessible at *http://forms.cbp.gov/pdf/CBP_Form_4609.pdf.*

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information being collected.

Type of Review: Extension (without change).

Affected Public: Businesses, Travelers.

Estimated Number of Respondents: 28,000.

Estimated Total Annual Responses: 28,000.

Estimated Time per Respondent: 14 minutes.

Estimated Total Annual Burden Hours: 6,500.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

Dated: August 17, 2011.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2011–21409 Filed 8–19–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5554–N–01]

Additional Waiver Granted for the State of New York's CDBG Disaster Recovery Grants—The Drawing Center

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice advises the public of an additional waiver applicable to the Community Development Block Grant (CDBG) disaster recovery grants provided to the State of New York for the purpose of assisting in the recovery from the September 11, 2001, terrorist attacks on New York City. As described in the **SUPPLEMENTARY INFORMATION** section of this notice, HUD is authorized by statute and regulations to waive statutory and regulatory requirements and specify alternative requirements for this purpose upon the request of the grantee. HUD previously published **Federal Register** notices applicable to these grants on January 28, 2002, February 7, 2002, March 18, 2002, May 22, 2002, May 16, 2003, and April 12, 2004.

DATES: Effective Date: August 29, 2011.

FOR FURTHER INFORMATION CONTACT: Scott Davis, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street, SW., Room 7286, Washington, DC 20410, telephone number 202–708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339. Facsimile inquiries may be sent to Mr. Davis at 202–401–2044. (Except for the ''800'' number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Authority To Grant Waivers

The three grants covered by this Notice are governed by the fifth proviso under the 2001 Emergency Supplemental Appropriations Act for Recovery from and Response to Terrorist Attacks on the United States (Pub. L. 107–38, approved September 18, 2001); by section 434 of title IV of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002 (Pub. L. 107–73, approved November 26, 2001 (Fiscal Year (FY) 2002 HUD Appropriations Act); by chapter 13 of division B of the Department of Defense and Emergency Supplemental Appropriations for Recovery From and Response to Terrorist Attacks on the United States Act, 2002 (Pub. L. 107–117, approved January 10, 2002) (FY 2002 Department of Defense Appropriation); and by chapter 13 of title II of the 2002 Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the United States (Pub. L. 107–206, approved August 2, 2002) (FY 2002 Recovery and Response to Terrorist Attacks Supplemental).

The third proviso of section 434 of the FY 2002 HUD Appropriations Act and the fourth proviso of the FY 2002 Recovery and Response to Terrorist Attacks Supplemental authorize the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or use by the recipient of these grant funds, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment, upon a finding that such waiver is required to facilitate the use of such funds.

Waiver Justification

Upon a request from the State of New York, this notice waives 42 U.S.C. 5305(a)(2) to the extent necessary to allow for an additional eligible activity: retirement of short-term debt service for costs incurred in the amount not to exceed $2,000,000, by The Drawing Center, a Lower Manhattan-based nonprofit organization, for the expansion of its site at 35 Wooster Street, New York, NY 10013. With this waiver, the short-term debt will not be forgiven, but will be fully retired. No portion of this debt was incurred prior to the supplemental appropriation to the State of New York under the Community Development Block Grant Disaster Recovery Program. When the space adjacent to The Drawing Center's existing facility recently became available, the organization purchased it with a short-term commercial loan. Due to the extraordinarily fast and competitive nature of the Lower Manhattan real estate market and the cost savings experienced with expansion of the existing facility into an adjacent site rather than relocation or new construction at a new site, HUD has considered this request and finds that the retirement of the short-term debt presents a cost savings versus the alternative of expansion into a new facility that is not adjacent to the existing facility. Further, the expanded facility would provide space for educational and public programs and expand gallery space which provides for public benefit. The following waiver (together with previously granted waivers and alternative requirements) is necessary to facilitate the use of these funds. HUD also agrees that it is consistent with the overall purposes of the Housing and Community Development Act of 1974 and the Cranston-Gonzalez National Affordable Housing Act, as amended.

Applicable Rules, Statutes, Waivers, and Alternative Requirements

1. *Expiration of waivers and alternative requirements.* In **Federal Register** notices published on January 28, 2002 (67 FR 4164), February 7, 2002 (67 FR 5845), March 18, 2002 (67 FR 12042), May 22, 2002 (67 FR 36017), May 16, 2003 (68 FR 26640), and April 12, 2004 (69 FR 19211), the Department promulgated waivers and alternative requirements necessary to facilitate the use of $700 million in disaster recovery funds awarded to New York's Empire State Development Corporation and $2.0 billion and $783 million awarded to New York's Lower Manhattan Development Corporation. In combination with today's waiver, these waivers and alternative requirements will be in effect until all CDBG disaster recovery funds have been expended and the grants have been officially closed.

2. *Applicability of State CDBG requirements.* Except for those waivers and alternative requirements published in prior notices and this notice, statutory and regulatory provisions governing the Community Development Block Grant program for states, including those at 24 CFR subpart I, shall apply to the use of these funds.

3. *Retirement of short-term debt service.* 42 U.S.C. 5305(a)(2) and the implementing regulation at 24 CFR 570.482(a) are waived to the extent necessary to allow for an additional eligible activity: retirement of short-term debt service for costs incurred by The Drawing Center, for the expansion of its site at 35 Wooster Street, New York, NY 10013.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this notice are as follows: 14.218; 14.228.

Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The FONSI is available for public inspection

between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 7th Street, SW., Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

Dated: July 29, 2011.

Mercedes Márquez,

Assistant Secretary, Community Planning and Development.

[FR Doc. 2011–21418 Filed 8–19–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974, as amended; Notice of a New System of Records

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of Creation of a New Privacy Act System of Records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Interior is issuing a public notice of its intent to create the Office of the Secretary ''Debarment and Suspension Program'' system of records. The system contains information including, but not limited to, names and addresses of business entities, organizations and individuals covered by the system of records, evidence and information obtained in support of Action Referral Memoranda and Case Closure Memoranda, action determinations, administrative agreements, and monitoring reviews of debarment or suspension administrative agreements. This newly established system will be included in the Department of the Interior's inventory of record systems.

DATES: Comments must be received by October 3, 2011. This new system will be effective October 3, 2011.

ADDRESSES: Any person interested in commenting on this notice may do so by: submitting comments in writing to the OS/NBC Privacy Act Officer, Office of the Secretary, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Mail Stop 116 SIB, Washington, DC 20240; hand-delivering comments to the OS/NBC Privacy Act Officer, Office of the Secretary, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Mail Stop 116 SIB, Washington, DC 20240; or e-mailing comments to *privacy@nbc.gov.*

FOR FURTHER INFORMATION CONTACT: Karen Burke, OS/NBC Privacy Act Officer, Office of the Secretary, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Mail Stop 116 SIB, Washington, DC 20240.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of the Interior (DOI) maintains the Debarment and Suspension Program system of records. The primary purpose of this system of records is to assist DOI in conducting and documenting debarment and suspension proceedings to ensure that Federal procurements and Federal discretionary assistance, loans, and benefits are awarded to presently responsible business entities, organizations, and individuals. Additional purposes of the system are: to promote understanding of the case decision path and concerns addressed by the debarring and suspending official in reaching a decision; to promote the submission of relevant arguments in contested cases; to educate the public as to the kinds of mitigating factors and remedial measures that demonstrate present responsibility; and to enhance the transparency of decision making.

The system will be effective as proposed at the end of the comment period (the comment period will end forty (40) days after the publication of this notice in the **Federal Register)** unless comments are received which would require a contrary determination. DOI will publish a revised notice if changes are made based upon a review of the comments received.

II. Privacy Act

The Privacy Act of 1974, as amended, embodies fair information principles in a statutory framework governing the means by which Federal Agencies collect, maintain, use, and disseminate individuals' personal information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act defines an individual as a United States citizen or lawful permanent resident. As a matter of policy, DOI extends administrative Privacy Act protections to all individuals. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DOI by complying with DOI Privacy Act Regulations, 43 CFR part 2.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses of their records, and to assist individuals to more easily find such records within the agency. Below is the description of the DOI Debarment and Suspension Program system of records.

In a notice of proposed rulemaking, which is published separately in the **Federal Register**, DOI is proposing to exempt records maintained in this system from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2) and (k)(5).

In accordance with 5 U.S.C. 552a(r), DOI has provided a report of this system of records to the Office of Management and Budget and to Congress.

III. Public Disclosure

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made public 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: August 11, 2011.

Karen Burke,

OS/NBC Privacy Act Officer.

SYSTEM NAME:

Debarment and Suspension Program, DOI–11

SYSTEM LOCATION:

Office of Acquisition and Property Management, U.S. Department of the Interior, 1849 C Street, NW., Mail Code 2607–MIB,Washington, DC 20240.

Records may also be located in files maintained by the Office of the Solicitor, Mail Code 6456–MIB, 1849 C Street, NW., Washington, DC 20240, and the Office of Inspector General, Recovery and Oversight Office, Acquisition Integrity Unit, Department of the Interior, 1849 C Street, NW., Mail Stop 4428–MIB, Washington, DC 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been suspended, proposed for debarment, or debarred from Federal procurement and assistance programs, individuals who have been the subject of Department inquiries to determine whether they should be debarred and/or suspended from Federal procurement and nonprocurement programs, and other individuals whose names appear in the files such as witnesses and investigators.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include information on business entities, organizations and individuals excluded or considered for exclusion from Federal procurement and nonprocurement programs as a result of suspension or debarment proceedings initiated by DOI. Such information includes, but is not limited to, names and addresses of business entities, organizations, and individuals, evidence obtained in support of Action Referral Memoranda and Case Closure Memoranda, action notices and determinations, tape recordings of oral presentations of matters in opposition in contested actions, administrative agreements entered into resolving debarment or suspension actions, and monitoring reviews of debarment or suspension administrative agreements. Examples of evidence contained in files include correspondence, inspection reports, interview reports, contracts, assistance agreements, indictments, judgment and conviction orders, plea agreements, and other judicial action related documents, and corporate information. Records may include documents containing individuals' names, Social Security Numbers and dates of birth. Computer generated records include data regarding categories and status of cases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Property and Administrative Services Act of 1949, 41 U.S.C. 251 *et seq.;* Office of Federal Procurement Policy Act, 41 U.S.C. 401 *et seq.*; Executive Order 12549 (February 18, 1986); Executive Order 12689 (August 16, 1989); 48 CFR subpart 9.4; 48 CFR 1409.4 *et seq.*; 2 CFR Part 180; and 2 CFR 1400.137 *et seq.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary purpose of the records in this system of records is to assist DOI in assembling information on, conducting, and documenting, debarment and suspension proceedings to ensure that Federal contracts and Federal assistance, loans, and benefits, are awarded only to presently responsible business entities, organizations, and individuals. Additional purposes of the system are: to promote understanding of the case decision path; promote understanding of the concerns addressed by the debarring and suspending official in reaching a decision; promote the submission of relevant arguments in contested cases; educate the public and private bar as to the kinds of mitigating factors and remedial measures that demonstrate present responsibility; and enhance the transparency of decision making.

The system includes case files and computer generated records developed in connection with initiating and conducting suspension and debarment proceedings under Federal Acquisition Regulation (FAR) 48 CFR subpart 9.4, and part 1409 (procurement) and 2 CFR parts 180 and 1400 (nonprocurement), and in rendering interim and final decisions in such proceedings. Case files are comprised of: (1) The official administrative record maintained by the DOI Office of Acquisition and Property Management (PAM); (2) files compiled by the case representative(s) in the Acquisition Integrity Unit of the DOI Office of the Inspector General, Recovery and Oversight Office, the DOI Office of the Solicitor, or DOI Bureaus in support of suspension and debarment actions; and (3) files developed by DOI to provide documentation for suspension and debarment actions and to conduct monitoring of administrative agreements entered to resolve debarment or suspension actions. Computer generated records include data regarding categories and status of actions. This system of records contains records retrievable by a case docketing system consisting of an assigned sequential case numerical identifier and the name of the business entity, organization, or individual subject to suspension and/or debarment action.

DISCLOSURES OUTSIDE DOI MAY BE MADE WITHOUT THE CONSENT OF THE INDIVIDUAL TO WHOM THE RECORD PERTAINS UNDER THE ROUTINE USES LISTED BELOW:

(1) (a) To any of the following entities or individuals, when the circumstances set forth in paragraph (b) are met:

(i) The U.S. Department of Justice (DOJ);

(ii) A court or an adjudicative or other administrative body;

(iii) A party in litigation before a court or an adjudicative or other administrative body; or

(iv) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(b) When:

(i) One of the following is a party to the proceeding or has an interest in the proceeding:

(A) DOI or any component of DOI;

(B) Any other Federal agency appearing before the Office of Hearings and Appeals;

(C) Any DOI employee acting in his or her official capacity;

(D) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(E) The United States, when DOJ determines that DOI is likely to be affected by the proceeding; and

(ii) DOI deems the disclosure to be:

(A) Relevant and necessary to the proceeding; and

(B) Compatible with the purpose for which the records were compiled.

(2) To a congressional office in response to a written inquiry that an individual covered by the system, or the heir of such individual if the covered individual is deceased, has made to the office.

(3) To any criminal, civil, or regulatory law enforcement authority (whether Federal, state, territorial, local, Tribal or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

(4) To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains, or when coordinating on a debarment and suspension action of mutual interest.

(5) To Federal, state, territorial, local, Tribal, or foreign agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee or contractor, or the issuance of a security clearance, license, contract, grant or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

(6) To representatives of the National Archives and Records Administration to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

(7) To state and local governments and Tribal organizations to provide

information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

(8) To an expert, consultant, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system.

(9) To appropriate agencies, entities, and persons when:

(a) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; and

(b) The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interest, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and

(c) The disclosure is made to such agencies, entities and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(10) To the Office of Management and Budget during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A–19.

(11) To the Department of the Treasury to recover debts owed to the United States.

(12) To the news media and the public, upon request, but such disclosures shall be limited to debarment and suspension action case determinations and administrative agreements.

(13) To a consumer reporting agency if the disclosure requirements of the Debt Collection Act, as outlined at 31 U.S.C. 3711(e)(1), have been met.

(14) To the General Services Administration (GSA) to compile and maintain the ''Excluded Parties List System'' in accordance with FAR 9.404 and 2 CFR part 180, and Federal Awardee Performance and Integrity Information System (FAPIIS).

(15) To business entities, organizations, or individuals suspended, proposed for debarment, or debarred in DOI proceedings and to the legal, or otherwise designated, representatives of such entities, organizations or individuals.

(16) To DOI and other Federal Department or agency contractors, grantees, or volunteers who have been engaged to assist the Government in the performance of a contract, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform the activity.

(17) To representatives of other Federal debarring and suspending agencies to promote understanding and enhanced, consistent, analysis of common issues and arguments, and utilization of best practices for action documents.

(18) To publishers of computerized legal research systems, but such disclosures shall be limited to debarment and suspension action case determinations and administrative agreements.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are contained in file folders stored in file cabinets; electronic records are contained in removable drives, computers, e-mail and electronic databases.

RETRIEVABILITY:

Records are retrieved by name and by assigned sequential official case file numbers.

SAFEGUARDS:

The records contained in this system are safeguarded in accordance with applicable DOI security rules and policies. Records are accessible only by authorized DOI employees. Paper records are secured in file cabinets in areas which are locked during non-duty hours. The DOI server storing this information is located in a secured DOI facility. Access to data in computers is password protected and restricted to suspension and debarment personnel and other DOI employees with an official need for such information. DOI administers annual training on privacy, records management, data security and protection.

RETENTION AND DISPOSAL:

A debarment and suspension case files records retention schedule has been submitted to NARA for scheduling and is pending approval. The disposition is temporary, and the retention will be cut off when the debarment or voluntary exclusion expires or all provisions of the compliance agreement have been completed. Destruction occurs 6 years and 3 months after cut-off.

Paper record disposition methods include burning, pulping, shredding, etc. in accordance with DOI 384 Departmental Manual (DM) 1. Electronic records disposition includes erasing and degaussing in accordance with DOI 384 DM 1.

SYSTEM MANAGER AND ADDRESSES:

Director, Office of Acquisition and Property Management, U.S. Department of the Interior, Mail Code 2607–MIB, 1849 C Street, NW., Washington, DC 20240.

NOTIFICATION PROCEDURES:

The Department of the Interior is proposing to exempt portions of this system from the notification, access, and amendment procedures of the Privacy Act pursuant to sections (k)(2) and (k)(5). DOI will make notification determinations on a case by case basis.

An individual requesting notification of the existence of records on himself or herself should send a signed, written inquiry to the System Manager identified above. The request envelope and letter should both be clearly marked ''PRIVACY ACT INQUIRY.'' A request for notification must meet the requirements of 43 CFR 2.60.

RECORDS ACCESS PROCEDURES:

The Department of the Interior is proposing to exempt portions of this system from the notification, access, and amendment procedures of the Privacy Act pursuant to sections (k)(2) and (k)(5). DOI will make access determinations on a case by case basis.

An individual requesting records on himself or herself should send a signed, written inquiry to the System Manager identified above. The request should describe the records sought as specifically as possible. The request envelope and letter should both be clearly marked ''PRIVACY ACT REQUEST FOR ACCESS.'' A request for access must meet the requirements of 43 CFR 2.63.

CONTESTING RECORDS PROCEDURES:

The Department of the Interior is proposing to exempt portions of this system from the notification, access, and amendment procedures of the Privacy Act pursuant to sections (k)(2) and (k)(5). DOI will make amendment determinations on a case by case basis.

An individual requesting corrections or the removal of material from his or her records should send a signed, written request to the System Manager identified above. A request for corrections or removal must meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Records in the system are obtained from DOI and other Federal officials, state and local officials, private parties,

businesses and other entities, and individuals who may have information relevant to an inquiry, and individuals who have been suspended, proposed for debarment or debarred, and their legal representatives.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Privacy Act (5 U.S.C. 552a(k)(2) and (k)(5)) provides general exemption authority for some Privacy Act systems. In accordance with that authority, the Department of the Interior adopted regulations, 43 CFR 2.79(a–b).

Pursuant to exemptions 5 U.S.C. 552a (k)(2) and (k)(5) of the Privacy Act, portions of this system of records are exempt from the following subsections of the Privacy Act (as found in 5 U.S.C. 552a): subsections (c)(3), (d), (e)(1), (e)(4)(G) through (e)(4)(I), and (f) of the Privacy Act.

[FR Doc. 2011–21307 Filed 8–19–11; 8:45 am]

BILLING CODE 4310–RF–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

Notice of Availability of the Proposed Notice of Sale (NOS) for Outer Continental Shelf (OCS) Oil and Gas Lease Sale 218 in the Western Planning Area (WPA) in the Gulf of Mexico (GOM)

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Department of the Interior.

ACTION: Notice of Availability of the Proposed NOS for Proposed Sale 218.

SUMMARY: BOEMRE announces the availability of the proposed NOS for proposed Sale 218 in the WPA. This Notice is published pursuant to 30 CFR 256.29(c) as a matter of information to the public. With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, provides the affected states the opportunity to review the proposed Notice. The proposed Notice sets forth the proposed terms and conditions of the sale, including minimum bids, royalty rates, and rentals.

DATES: Comments on the size, timing, or location of proposed Sale 218 are due from the affected states within 60 days following their receipt of the proposed Notice. The final NOS will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is currently scheduled for December 14, 2011.

SUPPLEMENTARY INFORMATION: The proposed NOS for Sale 218 and a ''Proposed Notice of Sale Package'' containing information essential to potential bidders may be obtained from the Public Information Unit, Gulf of Mexico Region, Bureau of Ocean Energy Management, Regulation and Enforcement, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Telephone: (504) 736–2519. For Sale 218, BOEMRE will be issuing leases with a revised lease form which is scheduled to be approved October 2011. The table identifying all the changes between the previous lease form and the new lease form will be issued in October 2011 and can be found at *http://www.gomr.boemre.gov/homepg/lsesale/218/wgom218.html*.

Dated: August 4, 2011.

Michael R. Bromwich,

Director, Bureau of Ocean Energy Management, Regulation and Enforcement.

[FR Doc. 2011–21384 Filed 8–19–11; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–ES–2011–N164; 50120–1112–0000–F2]

Application for an Incidental Take Permit for the Madison Cave Isopod From Dominion Virginia Power; Low-Effect Habitat Conservation Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

SUMMARY: Pursuant to the Endangered Species Act (ESA) and the National Environmental Policy Act (NEPA), the U.S. Fish and Wildlife Service (Service or ''we'') announces the availability of an application for an Incidental Take Permit (ITP) and a proposed Low-Effect Habitat Conservation Plan (LEHCP) from Dominion Virginia Power for public review and comment. We received the permit application from Dominion Virginia Power for incidental take of the Madison Cave isopod during construction of a new natural gas-fired combined-cycle power station in Warren County, Virginia, extending over the next 9 years, until 2020. Our preliminary determination is that the Habitat Conservation Plan (HCP) qualifies as a low-effect plan under NEPA. To make this determination, we used our LEHCP Screening Form/Environmental Action Statement (EAS), which is also available for review.

We provide this notice to (1) seek public comments on the proposed HCP and application; (2) seek public comments on our preliminary determination that the HCP qualifies as a low-effect plan and is therefore eligible for a categorical exclusion under NEPA; and (3) advise other Federal and State agencies, affected Tribes, and the public of our intent to issue an ITP.

DATES: The draft HCP and preliminary EAS are being made available during a 30-day public review period. To ensure consideration, we must receive your written comments by September 21, 2011.

ADDRESSES: Send comments by U.S. mail to Sumalee Hoskin, U.S. Fish and Wildlife Service, Virginia Field Office, 6669 Short Lane, Gloucester, VA 23061; by fax at (804) 693–9032; or by electronic mail at *sumalee_hoskin@fws.gov*. In the subject line of your letter, fax, or electronic mail, include the document identifier ''Warren County Power Station HCP.''

FOR FURTHER INFORMATION CONTACT: Sumalee Hoskin, Fish and Wildlife Biologist, Virginia Field Office (VAFO) (see **ADDRESSES**); telephone (804) 693–6694; *electronic mail: sumalee_hoskin@fws.gov*.

SUPPLEMENTARY INFORMATION: We received a permit application from Dominion Virginia Power for incidental take of the federally listed Madison Cave isopod over the next 9 years during construction of a new natural gas-fired combined-cycle power station in Warren County, Virginia. A conservation program to minimize and mitigate for the incidental take would be implemented by Dominion Virginia Power as described in the proposed Dominion Virginia Power LEHCP.

We prepared a preliminary EAS to comply with NEPA. The Service will evaluate whether the proposed action and issuance of an ITP to Dominion Virginia Power are adequate to support a categorical exclusion. This notice is provided pursuant to section 10(c) of the ESA and NEPA regulations (40 CFR 1506.6).

We are requesting comments on the proposed HCP and our preliminary determination that the HCP qualifies as low-effect under NEPA.

Availability of Documents

The proposed LEHCP and preliminary EAS are available on the VAFO's Web site at: *http://www.fws.gov/northeast/virginiafield/*. Copies of the proposed LEHCP and preliminary EAS will be available for public review during regular business hours at the VAFO (see **ADDRESSES**). Those who do not have access to the Web site or cannot visit our office can request copies by

telephone at (804) 693–6694 or by letter to the VAFO (see **ADDRESSES**).

Background

Section 9 of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations prohibit the ''take'' of animal species listed as endangered or threatened. Take is defined under the ESA as to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct'' (16 U.S.C. 1538). However, under section 10(a) of the ESA, we may issue permits to authorize incidental take of listed species. ''Incidental take'' is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing ITPs for threatened and endangered species are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32, respectively.

Dominion Virginia Power is seeking a permit for the incidental take of the federally listed threatened Madison Cave isopod during construction activities and post-construction monitoring period extending for a total term of 9 years, until 2020. Permit coverage does not include plant operational activities, as these are not anticipated to cause take of the Madison Cave isopod. Dominion Virginia Power proposes to construct a natural gas-fired combined-cycle power station that is anticipated to be one of the most efficient power plants in the nation once operational. Incidental take of the Madison Cave isopod may occur from disturbance of the subterranean karst, which is habitat the species occupies, during construction. Additional information can be found in the proposed LEHCP and on our Web site.

The LEHCP's proposed conservation strategy is designed to avoid, minimize, and mitigate the impacts of covered activities on the covered species. The biological goals and objectives are to protect high-quality habitat for a known Madison Cave isopod population.

The Proposed Action consists of the issuance of an ITP and implementation of the proposed LEHCP. Three alternatives to the proposed action were considered in the LEHCP: A no-project alternative, alternative sites, and alternative construction procedures. These three alternatives were deemed impracticable by Dominion Virginia Power because of logical, law enforcement, and wildlife management reasons.

The plant will be fueled by natural gas delivered to the site through gas pipelines regulated by the Federal Energy Regulatory Commission. These pipelines are undergoing independent analysis under the ESA, NEPA, and other environmental regulations.

National Environmental Policy Act

We have made a preliminary determination that the Dominion Virginia Power's proposed LEHCP, including the proposed avoidance, minimization, and mitigation measures, will have a minor or negligible effect on the species covered in the HCP, and that the HCP qualifies as a ''low-effect'' HCP as described in the U.S. Fish and Wildlife Service Habitat Conservation Planning Handbook (November 1996).

As further explained in our preliminary EAS, included for public review, we preliminarily determine that the HCP qualifies as a LEHCP based on the following three reasons:

1. Implementation of the HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats;

2. Implementation of the plan would result in minor or negligible effects on other environmental values or resources; and

3. Impacts of the plan, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant.

Based on these reasons, the incidental take permit also, therefore, qualifies for a categorical exclusion under NEPA, as provided by the Department of the Interior's NEPA implementing regulations (43 CFR 46.205, 46.210 and 46.215) and the Departmental Manual (516 DM 2 Appendix 1 and 516 DM 8). Based on our review of public comments that we may receive in response to this notice, we may revise this preliminary determination.

Next Steps

We will evaluate the draft HCP and preliminary LEHCP Screening Form/EAS and comments we receive to determine whether the permit application meets the requirements of section 10(a) of the ESA and qualifies as a ''low-effect'' HCP and for a categorical exclusion under NEPA. We will also evaluate whether issuance of a section 10(a)(1)(B) permit would comply with section 7 of the ESA by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether to issue an ITP. If the requirements are met, we will issue the ITP to the applicant.

Public Comments

The Service invites the public to comment on the proposed HCP and preliminary EAS during a 30-day public review period (see **DATES**). Comments can be submitted to VAFO (see **ADDRESSES**). All comments received, including names and addresses, will become part of the administrative record and may be made available to the public. Before including your address, phone number, email 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 may request at the top of your document that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 10, 2011.

Kenneth D. Elowe,

Acting Regional Director, Northeast Region.

[FR Doc. 2011–21425 Filed 8–19–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–FHC–2011–N168; 81331–1334–8TWG–W4]

Trinity Adaptive Management Working Group

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Trinity Adaptive Management Working Group (TAMWG) affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River (California) restoration efforts to the Trinity Management Council (TMC). The TMC interprets and recommends policy, coordinates and reviews management actions, and provides organizational budget oversight. This notice announces a TAMWG meeting, which is open to the public.

DATES: TAMWG will meet from 10 a.m. to 5 p.m. on Monday, September 12, 2011.

ADDRESSES: The meeting will be held at the Trinity County Library, 351 Main Street, Weaverville, CA 96093.

FOR FURTHER INFORMATION CONTACT: *Meeting Information:* Randy A. Brown, TAMWG Designated Federal Officer, U.S. Fish and Wildlife Service, 1655 Heindon Road, Arcata, CA 95521; telephone: (707) 822–7201. *Trinity River*

Restoration Program (TRRP)
Information: Robin Schrock, Executive Director, Trinity River Restoration Program, P.O. Box 1300, 1313 South Main Street, Weaverville, CA 96093; telephone: (530) 623–1800; e-mail: *rschrock@usbr.gov.*

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), this notice announces a meeting of the TAMWG. The meeting will include discussion of the following topics:

- High flow event results,
- Process and schedule for review of Phase 1 channel rehabilitation projects,
- FY 2012 TRRP budget and program of work,
- Roles and responsibilities of Program participants,
- Hatchery study,
- Watersheds work program,
- Public outreach efforts,
- TRRP science program,
- Klamath River conditions and possible supplemental water release,
- Executive Director's report,
- TMC chair report, and
- Designated Federal Officer topics.

Completion of the agenda is dependent on the amount of time each item takes. The meeting could end early if the agenda has been completed.

Dated: August 16, 2011.

Randy A. Brown,

Deputy Field Supervisor, Arcata Fish and Wildlife Office, Arcata, CA.

[FR Doc. 2011–21333 Filed 8–19–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK963000–L14300000–ET–P: F–81469, F–81490]

Public Land Order No. 7760; Extension of Public Land Order No. 6839; Alaska; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: The Bureau of Land Management published Public Land Order No. 7760 in the **Federal Register** on April 1, 2011 (76 FR 18244), extending PLO No. 6839 for another 20-year period. Public Land Order No. 7760 contains incorrect acreages for the encumbered land.

FOR FURTHER INFORMATION CONTACT: Robert L. Lloyd, BLM Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Public Land Order 6839 used a metes and bounds land description for the encumbered land. Public Land Order 6839 as extended by Public Land Order No. 7760 corrected the land description to align with the dependent resurvey of U.S. Survey No. 5253, Alaska, officially filed July 14, 2010. This resurvey established lots 13 and 16 of U.S. Survey No. 5253, within T. 23 N. R. 18 W., Umiat Meridian as the lands encumbered by the National Oceanic and Atmospheric Administration facility, and lots 14 and 15, of U.S. Survey No. 5253, within T. 23 N., R. 18 W., Umiat Meridian as the land encumbered by the United States Geological Survey facility. Further review revealed that an error had been made in the statement of acreage in Public Land Order No. 7760. This notice corrects that error.

Correction

Public Land Order No. 7760, published in the **Federal Register** on April 1, 2011 (76 FR 18244), on page 18245, in the first column, Paragraph 1, under the heading ''Order,'' which currently reads:

''The National Oceanic and Atmospheric Administration facility encumbers 171 acres for the Barrow Base Line Observatory. The United States Geological Survey facility encumbers 45 acres for the Barrow Magnetic Observatory.'' is hereby corrected to read: ''The National Oceanic and Atmospheric Administration facility encumbers 115 acres for the Barrow Base Line Observatory. The United States Geological Survey facility encumbers 101 acres for the Barrow Magnetic Observatory.''

Robert L. Lloyd,

Supervisor, Lands, Realty and Title Transfer Program, Division of Alaska Lands.

[FR Doc. 2011–21297 Filed 8–19–11; 8:45 am]

BILLING CODE 1410–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR936000–L14300000–ET0000; HAG–11–0194; WAOR–16905]

Public Land Order No. 7775; Extension of Public Land Order No. 6870; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order extends the duration of the withdrawal created by Public Land Order No. 6870 for an additional 20-year period. The extension is necessary to continue protection of the scientific and ecological research values at the Steamboat Mountain Research Natural Area, which would otherwise expire on August 27, 2011.

DATES: *Effective Date:* August 28, 2011.

FOR FURTHER INFORMATION CONTACT: Charles R. Roy, Bureau of Land Management, Oregon/Washington State Office, 503–808–6189, or Dianne Torpin, United States Forest Service, Pacific Northwest Region, 503–808–2422. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to reach the BLM contact during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The purpose for which the withdrawal was first made requires this extension to continue protection of the scientific and ecological research values at the Steamboat Mountain Research Natural Area. The withdrawal extended by this order will expire on August 27, 2031, unless as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be further extended.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

Public Land Order No. 6870 (56 FR 42541 (1991)), which withdrew approximately 1,400 acres of National Forest System land from location and entry under the United States mining

laws (30 U.S.C. chapter 2), but not from leasing under the mineral leasing laws, to protect the Steamboat Mountain Research Natural Area, is hereby extended for an additional 20-year period until August 27, 2031.

Authority: 43 CFR 2310.4.

Dated: August 11, 2011.

Rhea S. Suh,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 2011–21300 Filed 8–19–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR936000–14300000–ET0000; HAG–11–0195; OROR–16124]

Public Land Order No. 7774; Extension of Public Land Order No. 6868; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order extends the duration of the withdrawal created by Public Land Order No. 6868 for an additional 20-year period. The extension is necessary to continue protection of the major anadromous fish spawning beds at the Steamboat Creek Tributaries Streamside Zone and Steamboat Creek Roadside and Streamside Zones.

DATES: *Effective Date:* August 14, 2011.

FOR FURTHER INFORMATION CONTACT: Charles R. Roy, Bureau of Land Management, Oregon/Washington State Office, 503–808–6189, or Dianne Torpin, United States Forest Service, Pacific Northwest Region, 503–808–2422. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to reach the BLM contact during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The purpose for which the withdrawal was first made requires this extension to continue protection of the major anadromous fish spawning beds at the Steamboat Creek Tributaries Streamside Zone and Steamboat Creek Roadside and Streamside Zones. The withdrawal extended by this order will expire on August 13, 2031, unless as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be further extended.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

Public Land Order No. 6868 (56 FR 40263 (1991)), which withdrew approximately 2,400 acres of National Forest System land from location and entry under the United States mining laws (30 U.S.C. chapter 2), but not from leasing under the mineral leasing laws, to protect the Steamboat Creek Tributaries Streamside Zone and Steamboat Creek Roadside and Streamside Zones, is hereby extended for an additional 20-year period until August 13, 2031.

Authority: 43 CFR 2310.4.

Dated: August 11, 2011.

Rhea S. Suh,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 2011–21301 Filed 8–19–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR936000–14300000–ET0000; HAG–11–0193; OROR–1202]

Public Land Order No. 7776; Extension of Public Land Order No. 6875; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order extends the duration of the withdrawal created by Public Land Order No. 6875 for an additional 20-year period. The extension is necessary to continue protection of the rare botanical specimens and the unique natural environment located within the Babyfoot and Big Craggies Botanical Areas, which would otherwise expire on August 27, 2011.

DATES: *Effective Date:* August 28, 2011.

FOR FURTHER INFORMATION CONTACT: Charles R. Roy, Bureau of Land Management, Oregon/Washington State Office, 503–808–6189, or Dianne Torpin, United States Forest Service, Pacific Northwest Region, 503–808–2422. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact either of the above individuals during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with either of the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The purpose for which the withdrawal was first made for requires this extension to continue the protection of rare botanical specimens and the unique natural environment located within the Babyfoot and Big Craggies Botanical Areas. The withdrawal extended by this order will expire on August 27, 2031, unless as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be further extended.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

Public Land Order No. 6875 (56 FR 42539 (1991)), which withdrew approximately 1,050 acres of National Forest System lands from location and entry under the United States mining laws (30 U.S.C. chapter 2), but not from leasing under the mineral leasing laws, to protect the Babyfoot and Big Craggies Botanical Areas, is hereby extended for an additional 20-year period until August 27, 2031.

Authority: 43 CFR 2310.4.

Dated: August 11, 2011.

Rhea S. Suh,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 2011–21299 Filed 8–19–11; 8:45 am]

BILLING CODE 3410–11–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 Electronic Devices with Communication Capabilities Components Thereof, and Related Software,* DN 2841; the Commission is

soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint filed on behalf of HTC Corp. on August 16, 2011. 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 electronic devices with communication capabilities components thereof, and related software. The complaint names as respondent Apple, Inc. of CA.

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. 2841'') 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.

Issued: August 16, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–21304 Filed 8–19–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–798]

Certain Light-Emitting Diodes and Products Containing Same; Corrected Notice of Institution of Investigation; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 15, 2011, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Samsung LED Co., Ltd. of Korea and Samsung LED America, Inc. of Atlanta, Georgia. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain light-emitting diodes and products containing same by reason of infringement of certain claims of U.S. Patent No. 6,551,848 (''the '848 patent''); U.S. Patent No. 7,268,372 (''the '372 patent''); U.S. Patent No. 7,282,741 (''the '741 patent''); U.S. Patent No. 7,771,081 (''the '081 patent''); U.S. Patent No. 7,893,443 (''the '443 patent''); U.S. Patent No. 7,838,315 (''the '315 patent''); U.S. Patent No. 7,959,312 (''the '312 patent''); and U.S. Patent No. 7,964,881 (''the '881 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at

http://www.usitc.gov. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Dockets Services, U.S. International Trade Commission, telephone (202) 205–1802.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2011).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 12, 2011, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain light-emitting diodes and products containing same that infringe one or more of claims 1, 3, 5–10, and 13–16 of the '848 patent; claims 1–9 of the '372 patent; claims 1 and 5–9 of the '741 patent; claims 1, 2, 4, 6–8, 10, and 11 of the '081 patent; claims 1, 4, 5, and 7–14 of the '443 patent; claims 1–4, 6, and 9–13 of the '312 patent; claims 1–5 of the '315 patent; and claims 1–12 of the '881 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Samsung LED Co., Ltd., 314, Maetan 3-Dong, Yeongtong-gu, Suwon City, Gyeonggi-Do 443–743, Korea.

Samsung LED America, Inc., 6 Concourse Parkway NE., Atlanta, GA 30328.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

OSRAM GmbH, Hellabrunner Strasse 1, 81543 Munich, Germany.

OSRAM Opto Semiconductors GmbH, Leibnizstr 4, 93055 Regensburg, Germany.

OSRAM Opto Semiconductors Inc., 1150 Kifer Road Suite 100, Sunnyvale, CA 94086.

OSRAM Sylvania Inc., 100 Endicott Street, Danvers, MA 01923.

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: August 16, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–21308 Filed 8–19–11; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Advisory Committees on Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure and the Federal Rules of Evidence

AGENCY: Advisory Committees on Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure, and the Federal Rules of Evidence, Judicial Conference of the United States.

ACTION: Notice of Proposed Amendments and Open Hearings.

SUMMARY: The Advisory Committees on Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure, and Rules of Evidence have proposed amendments to the following rules:

Appellate Rules: 13, 14, 24, 28, and 28.1, and Form 4;

Bankruptcy Rules: 1007, 3007, 5009, 9006, 9013, and 9014, and Official Forms 6C, 7, 22A, and 22C.

Civil Rules: 37 and 45.

Criminal Rules: 11, 12, and 34.

Evidence Rule: 803.

The text of the proposed amendments and the accompanying committee notes can be found on the United States Federal courts' rulemaking Web site at *http://www.uscourts.gov/RulesAndPolicies/FederalRulemaking/Overview.aspx.*

The Judicial Conference Committee on Rules of Practice and Procedure submits these proposed amendments for public comment. All written comments and suggestions with respect to the proposed amendments must be received by the Secretary no later than February 15, 2012. They can be sent to any of the following: by mail to Peter G. McCabe, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, Washington, DC 20544; by electronic mail to <*Rules_Comments@ao.uscourts.gov*>; or by facsimile to Peter G. McCabe at (202) 502–1766. In accordance with established procedures, all comments submitted are available for public inspection.

Public hearings are scheduled to be held on the amendments to:

- Appellate Rules in Columbus, Ohio, on January 31, 2012, and in Washington, DC, on February 3, 2012;
- Bankruptcy Rules in Washington, DC, on January 13, 2012, and in Chicago, Illinois, on February 10, 2012;
- Civil Rules in Washington, DC, on November 7, 2011, in Phoenix, Arizona, on January 4, 2012, and in Chicago, Illinois, on January 27, 2012;
- Criminal Rules in Phoenix, Arizona, on January 6, 2012, and in Washington, DC, on February 6, 2012; and
- Evidence Rules in Phoenix, Arizona, on January 7, 2012, and in Washington, DC, on January 17, 2012.

Those wishing to testify should contact the Committee Secretary at the above address in writing at least 30 days before the hearing.

FOR FURTHER INFORMATION CONTACT: Peter G. McCabe, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, Washington, DC 20544, Telephone (202) 502–1820.

Dated: August 16, 2011.

Peter G. McCabe,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 2011–21332 Filed 8–19–11; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on August 15, 2011, a proposed Consent Decree in *United States and State of Montana* v. *Soco West, Inc.,* Civil Action No. 1:11–cv–00088, was lodged with the United States District Court for the District of Montana.

In this settlement, Soco West, Inc. (''Soco'') has agreed to perform the remedial action at Operable Unit 2 of the Lockwood Solvent Groundwater Plume Superfund Site (the ''Site'') in Billings, Yellowstone County, Montana, as well as certain Site-wide remedial obligations. The Consent Decree also requires Soco to pay $750,000 for past costs of removal and remedial action incurred by the United States in connection with the release or threatened release of hazardous substances at the Site, and the United States and Montana's future costs related to overseeing Soco's remedial action as well. The settlement resolves the United States and Montana's claims against Soco under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9607(a), and the United States' claims under Section 106 of CERCLA, 42 U.S.C. 9606, and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and the State of Montana* v. *Soco West, Inc.,* D.J. Ref. 90–11–2–08777.

Commenters may request an opportunity for a public hearing in the affected area, in accordance with Section 7003(d) of RCRA.

During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $168.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by e-mail or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–21364 Filed 8–19–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1564]

Vehicular Digital Multimedia Evidence Recording System (VDMERS) Standard, Certification Program Requirements, and Selection and Application Guide

AGENCY: National Institute of Justice, Justice.

ACTION: Notice and Request for Comments.

SUMMARY: In an effort to obtain comments from interested parties, the U.S. Department of Justice, Office of Justice Programs, National Institute of Justice (NIJ) will make available to the general public three draft documents related to Vehicular Digital Multimedia Evidence Recording Systems (VDMERSs) used by law enforcement agencies:

1. Draft *VDMERS Standard for Law Enforcement.*
2. Draft *Law Enforcement VDMERS Certification Program Requirements.*
3. Draft *Law Enforcement VDMERS Selection and Application Guide.*

The opportunity to provide comments on these documents is open to industry technical representatives, law enforcement agencies and organizations, research, development and scientific communities, and all other stakeholders and interested parties. Those individuals wishing to obtain and provide comments on the draft documents under consideration are directed to the following Web site: *http://www.justnet.org.*

DATES: The comment period will be open until September 21, 2011.

FOR FURTHER INFORMATION CONTACT: Casandra Robinson, by telephone at 202–305–2596 [**Note:** this is not a toll-free telephone number], or by e-mail at *casandra.robinson@usdoj.gov.*

Thomas E. Feucht,

Executive Senior Science Advisor, National Institute of Justice.

[FR Doc. 2011–21347 Filed 8–19–11; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0181]

Coke Oven Emissions Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Standard on Coke Oven Emissions (29 CFR 1910.1029).

DATES: Comments must be submitted (postmarked, sent, or received) by October 21, 2011.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2011–0181, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express

mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number (OSHA–2011–0181) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov*. For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The information collection requirements in the Coke Oven Emissions Standard provide protection for workers from the adverse health effects associated with exposure to coke oven emissions. In this regard, the Coke Oven Emissions Standard requires employers to monitor workers' exposure to coke oven emissions, monitor worker health, and provide workers with information about their exposures and the health effects of exposure to coke oven emissions.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting an adjustment increase of 1,543 burden hours (from 52,698 hours to 54,241). The adjustment is primarily the result of identifying three additional coke oven batteries. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Coke Oven Emissions Standard (29 CFR 1910.1029).

OMB Number: 1218–0128.

Affected Public: Business or other for-profits.

Number of Respondents: 20.

Frequency of Response: On occasion; quarterly; annually.

Average Time per Response: Varies from 5 minutes (.08 hour) to provide information to the examining physician to 1 hour to conduct exposure monitoring.

Estimated Total Burden Hours: 54,241.

Estimated Cost (Operation and Maintenance): $839,680.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2011–0181). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link.

Contact the OSHA Docket Office for information about materials not available through the Web site and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational

Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2010 (75 FR 55355).

Signed at Washington, DC, on August 17, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health

[FR Doc. 2011–21373 Filed 8–19–11; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Proposed Renewal of Existing Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs is soliciting comments concerning the proposed collection: Agreement and Undertaking (OWCP–1). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before October 21, 2011.

ADDRESSES: Mr. Vincent Alvarez, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0372, fax (202) 693–2447, E-mail *Alvarez.Vincent@dol.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION

I. Background: Coal mine operators desiring to be self-insurers are required by law (30 U.S.C. 933 BL) to produce security by way of an indemnity bond, security deposit, a letter of credit, or 501(c)(21) trust. Once a company's application to become self-insured is reviewed by the Division of Coal Mine Workers' Compensation (DCMWC) and it is determined the company is potentially eligible, an amount of security is determined to guarantee the payment of benefits required by the Act. The OWCP–1 form is executed by the self-insurer who agrees to abide by the Department's rules and authorizes the Secretary, in the event of default, to file suit to secure payment from a bond underwriter or in the case of a Federal Reserve account, to sell the securities for the same purpose. A company cannot be authorized to self-insure until this requirement is met. Regulations establishing this requirement are at 20 CFR 726.110 for Black Lung. This information collection is currently approved for use through October 31, 2011.

II. Review Focus: The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
* Enhance the quality, utility and clarity of the information to be collected; and
* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions: The Department of Labor seeks the approval of the extension of this currently approved information collection in order to determine if a coal mine company is potentially eligible to become self-insured. The information is reviewed to insure that the correct amounts of negotiable securities are deposited or indemnity bond is purchased and that in a case of default OWCP has the authority to utilize the securities or bond. If this Agreement and Undertaking were not required, OWCP would not be empowered to utilize the company's security deposit to meet its financial responsibilities for the payment of black lung benefits in case of default.

Type of Review: Extension.

Agency: Office of Workers' Compensation Programs.

Title: Agreement and Undertaking.

OMB Number: 1240–0039.

Agency Number: OWCP–1.

Affected Public: Businesses or other for-profit.

Total Respondents: 20.

Total Responses: 20.

Time per Response: 15 minutes.

Estimated Total Burden Hours: 5.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $9.

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

Dated: August 17, 2011.

Vincent Alvarez,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2011–21382 Filed 8–19–11; 8:45 am]

BILLING CODE 4510–CR–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting; Notice

DATE AND TIME: The Legal Services Corporation's Board of Directors will meet telephonically on August 25, 2011. The meeting will commence at 10:30 a.m., Eastern Standard Time, and will continue until the conclusion of the Board's agenda.

LOCATION: F. William McCalpin Conference Center, Legal Services Corporation, 3333 K Street, NW., Washington, DC 20007.

PUBLIC OBSERVATION: Members of the public who are unable to attend but wish to listen to the public proceeding may do so by following the telephone call-in directions provided below but are asked to keep their telephones muted to eliminate background noises. From time to time the Chairmana may solicit comments from the public.

CALL-IN DIRECTIONS FOR OPEN SESSIONS:

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348
- When connected to the call, please immediately ''MUTE'' your telephone.

STATUS OF MEETING: Open.

Matters To Be Considered

1. Approval of Agenda.

2. Consider and act on the Finance Committee's recommendation regarding LSC's FY 2013 appropriation request.
3. Public comment.
4. Consider and act on other business.
5. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

ACCESSIBILITY: LSC complies with the American's with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals who need other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: August 18, 2011.

Victor M. Fortuno,

Vice President & General Counsel.

[FR Doc. 2011–21551 Filed 8–19–11; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL SCIENCE FOUNDATION

Assumption Buster Workshop: ''Current Implementations of Cloud Computing Indicate a New Approach to Security''

AGENCY: The National Coordination Office (NCO) for the Networking and Information Technology Research and Development (NITRD) Program, National Science Foundation.

ACTION: Call for participation.

FOR FURTHER INFORMATION CONTACT: *assumptionbusters@nitrd.gov.*

DATES: Workshop: October 21, 2011; Deadline: September 21, 2011. Apply via e-mail to *assumptionbusters@nitrd.gov.* Travel expenses will be paid for selected participants who live more than 50 miles from Washington, DC, up to the limits established by Federal Government travel regulations and restrictions.

SUMMARY: The NCO, on behalf of the Special Cyber Operations Research and Engineering (SCORE) Committee, an interagency working group that coordinates cyber security research activities in support of national security systems, is seeking expert participants in a day-long workshop on the pros and cons of the Security of Distributed Data Schemes. The workshop will be held October 21, 2011 in Gaithersburg, MD. Applications will be accepted until 5 p.m. EST September 21, 2011. Accepted participants will be notified by October 1, 2011.

SUPPLEMENTARY INFORMATION:

Overview: This notice is issued by the National Coordination Office for the Networking and Information Technology Research and Development (NITRD) Program on behalf of the SCORE Committee.

Background: There is a strong and often repeated call for research to provide novel cyber security solutions. The rhetoric of this call is to elicit new solutions that are radically different from existing solutions. Continuing research that achieves only incremental improvements is a losing proposition.

We are lagging behind and need technological leaps to get, and keep, ahead of adversaries who are themselves rapidly improving attack technology. To answer this call, we must examine the key assumptions that underlie current security architectures. Challenging those assumptions both opens up the possibilities for novel solutions and provides an even stronger basis for moving forward on those assumptions that are well-founded. The SCORE Committee is conducting a series of four workshops to begin the assumption buster process. The assumptions that underlie this series are as follows: Cyber space is an adversarial domain; the adversary is tenacious, clever, and capable; and re-examining cyber security solutions in the context of these assumptions will result in key insights that will lead to the novel solutions we desperately need. To ensure that our discussion has the requisite adversarial flavor, we are inviting researchers who develop solutions of the type under discussion, and researchers who exploit these solutions. The goal is to engage in robust debate of topics generally believed to be true to determine to what extent that claim is warranted. The adversarial nature of these debates is meant to ensure the threat environment is reflected in the discussion in order to elicit innovative research concepts that will have a greater chance of having a sustained positive impact on our cyber security posture.

The fourth topic to be explored in this series is cloud computing. The workshop on this topic will be held in Gaithersburg, MD on October 21, 2011.

Assertion: ''Current implementations of cloud computing indicate a new approach to security''

Implementations of cloud computing have provided new ways of thinking about how to secure data and computation. Cloud is a platform upon which we leverage various opportunities to improve the way in which we think about and implement the practices and technology needed to secure the things that matter most to us. Current implementations of cloud computing security take advantage of the unique capabilities and architectures of cloud computing (*e.g.* scale).

Working from this assertion, we want researchers and cloud implementers to submit, as part of your application to participate in the October 21st Assumption Buster Workshop, a one-page paper stating your opinion of the assertion and outlining your key thoughts on the topic. Below are some additional areas to explore stated specifically in strong language supportive of the assertion.

—Controls on provider side, controls on the subscribe-side, and controls of the shared space in cloud implementations can be defined in ways that allow for a comprehensive view of the cloud security landscape to displayed and managed.
—A common security risk model can be leveraged when assessing cloud computing services and products, and use of this model provides a consistent baseline for Cloud based technologies.
—Cloud computing security is a natural fit when examined against the Federal cybersecurity research themes focused on designed-in-security, tailored trustworthy spaces, moving target, and cyber economic incentives. These themes will be best demonstrated using Cloud Computing.
—Opportunities exist to create existence proofs for specific security improvements such as minimal kernels that can be formally verified which could provide a stronger basis for virtual machines.
—We can establish a trust boundary remote-control that allows a cloud customer to directly control system boundaries.
—Credible explications of security priorities are possible thus enabling customers to obtain a complete picture and insight into the security offered by their cloud implementation.
—Cloud customers are able to measure the strength of the logical separation

of their cloud data from the other customers.

In this workshop, we will explore whether, or in what circumstances, this confidence is warranted.

How To Apply

If you would like to participate in this workshop, please submit (1) a resume or curriculum vita of no more than two pages which highlights your expertise in this area and (2) a one-page paper stating your opinion of the assertion and outlining your key thoughts on the topic. The workshop will accommodate no more than 60 participants, so these brief documents need to make a compelling case for your participation.

Applications should be submitted electronically via e-mail to *assumptionbusters@nitrd.gov* no later than 5 p.m. EST on September 21, 2011.

Selection and Notification: The SCORE committee will select an expert group that reflects a broad range of opinions on the assertion. Accepted participants will be notified by e-mail no later than October 1, 2011. We cannot guarantee that we will contact individuals who are not selected, though we will attempt to do so unless the volume of responses is overwhelming.

Dated: August 17, 2011.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2011–21350 Filed 8–19–11; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for operation of a field research camp located in ASPA #149–Cape Shirreff, Livingston Island by the Antarctic Marine Living Resources (AMLR) Program, Southwest Fisheries Science Center, La Jolla, CA. The application is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application within September 21, 2011. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Dr. Polly A. Penhale at the above address or (703) 292–8030.

SUPPLEMENTARY INFORMATION: NSF's Antarctic Waste Regulation, 45 CFR part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for operation of remote research field camp at ASPA #149 Cape Shirreff, Livingston Island. The camp consists of four structures on the beach between Llano Point and Sphinx Hill which has been in use during the summer since 1977. The camp is used to house researchers (typically 6 people), provide a base of research operations, and allow laboratory studies. Biological investigation of seabirds and pinnipeds is the primary research conducted from the camp.

Designated pollutants would be associated with camp operations [typically air emissions and waste water (urine, grey-water, and human solid waste)] and scientific activities (typically research materials). All wastes would be packaged and removed from the site for proper disposal in Chile or the U.S. under approved guidelines prior to the end of each season.

In addition, the AMLR Program conducts 30–90 days of vessel operations in the Antarctic Peninsula region. The vessel follows a standardized survey grid, and depending on the focus any given year, additional smaller sections of the region are surveyed. During annual surveys, the Program deploys drifters and expendable bathythermographs (XBT's) to collect hydrographic data. In addition to drifters and XBT's, the AMLR Program also deploys and recovers a variety of gear that are not intentionally released into the environment:

(1) Conductivity-Temperature-Depth profilers (CTD's) are lowered to collect water in attached PCV bottles. Due to storms or heavy waves the bottles can be broken and release plastic into the ocean.

(2) Fishing nets: (a) Plankton nets come in a variety of configurations and sizes. The Program has lost a net ad frame once every 3–5 years. (B) Commercial bottom trawl nets are deployed every two to three years. Due to the submarine terrain being volcanic, ice scoured and highly variable in makeup, trawls can be lost if the trawl is snagged on boulders or rock outcroppings.

(3) Other gears: Towed or undulating instruments (*e.g.* Continuous plankton recorder, Winged Optical Particle Counters, towed Current profilers) can be lost. In many cases these instruments, if lost are buoyant, and can be recovered. In other cases, the instruments are heavy, and made of mostly metal and sink in the rather deep water surrounding the Antarctic Continent.

The permit applicant is: George Watters, Director, US AMLR Program, Southwest Fisheries Service, NOAA, 8604 La Jolla Shores Drive, La Jolla, CA 92037 Permit application No. 2012 WM–001.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 2011–21295 Filed 8–19–11; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 21, 2011. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Polly A. Penhale at the above address or (703) 292–7420.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as

directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

Permit Application: 2012–006

1. *Applicant:* Jeff Bowman, University of Washington, Box 357940, Seattle, WA 98105–7940.

Activity for Which Permit Is Requested

Enter an Antarctic Specially Protected Area. The applicant plans to enter the Antarctic Specially Protect Area at Cape Royds, Ross Island (ASPA 121) to collect sea ice and seawater for microbial analysis.

Location

ASPA 121—Cape Royds, Ross island.

Dates

August 27, 2011 to November 2, 2011.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 2011–21296 Filed 8–19–11; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0278]

NUREG–1482, Revision 2, ''Guidelines for Inservice Testing at Nuclear Power Plants, Draft Report for Comment''

AGENCY: Nuclear Regulatory Commission.

ACTION: Announcement of issuance for public comment, availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued for public comment a document entitled: NUREG–1482, Revision 2, ''Guidelines for Inservice Testing at Nuclear Power Plants, Draft Report for Comment,'' and subtitled ''Inservice Testing of Pumps and Valves, and Inservice Examination and Testing of Dynamic Restraints (Snubbers) at Nuclear Power Plants''.

(Note that this document was submitted previously for public comments as draft NUREG–1946. Based on public comments, draft NUREG–1482 is being updated as Revision 2 and is being issued to incorporate all comments received for draft report NUREG–1946).

DATES: Please submit comments by December 20, 2011. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Please include Docket ID NRC–2010–0278 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see ''Submitting Comments and Accessing Information'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0278. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

SUPPLEMENTARY INFORMATION:

Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this document using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The NUREG–1482, Revision 2, ''Guidelines for Inservice Testing at Nuclear Power Plants, Draft Report for Comment,'' and subtitled ''Inservice Testing of Pumps and Valves, and Inservice Examination and Testing of Dynamic Restraints (Snubbers) at Nuclear Power Plants'' is available electronically under ADAMS Accession Number ML112231412.
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2010–0278.

FOR FURTHER INFORMATION CONTACT: Gurjendra S. Bedi, Division of Component Integrity, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1393, e-mail: *Gurjendra.Bedi@nrc.gov.*

NUREG–1482, Revision 2, ''Guidelines for Inservice Testing at Nuclear Power Plants, Draft Report for Comment'' provides updated information on applicable regulations for testing of pumps and valves, and inservice examination and testing of snubbers. The information in NUREG–1482, ''Guidelines for Inservice Testing at Nuclear Plants,'' Revision 0, issued April 1995, and Revision 1, issued January 2005, has described these topics in the past.

This NUREG report replaces Revision 0 and Revision 1 of NUREG–1482, and is applicable, unless stated otherwise, to all editions and addenda of the American Society of Mechanical Engineers (ASME) Code of Operation and Maintenance of Nuclear Power Plants (OM Code), which Title 10 of the Code of Federal Regulations (10 CFR) 50.55a(b) incorporates by reference (76 FR 36232–36279), dated June 21, 2011. Note that the draft NUREG–1482, Revision 2, is a substantial re-write from issuance of draft NUREG–1946 (ADAMS

Accession Number: ML102100236). This draft NUREG–1482, Revision 2, incorporates all the public comments received for draft NUREG–1946, because based on public comments, NUREG–1482, Revision 1, is revised and updated instead of issuing the new NUREG–1946. The NRC staff evaluation and resolution of public comments for draft NUREG–1946, including Inservice Testing Owner Group comments, are documented in ADAMS Accession Number: ML112092872. Most of the draft NUREG–1946 included in the main text of draft NUREG–1482, Revision 2, Appendix A, to this NUREG–1482, Revision 2, contains guidance provided in Revision 1 to NUREG–1482 for pumps and valves that has been updated for the development of inservice testing programs at nuclear power plants. Appendix B to this NUREG contains guidance related to inservice examination and testing of dynamic restraints (snubbers), which is included for the first time in the draft NUREG–1482, Revision 2.

The guidelines and recommendations provided in this NUREG and its Appendices A and B do not supersede the regulatory requirements specified in 10 CFR 50.55a. Further, this NUREG does not authorize the use of alternatives to, or grant relief from, the ASME Code requirements for inservice testing of pumps and valves, or inservice examination and testing of dynamic restraints (snubbers), incorporated by reference in 10 CFR 50.55a. In addition, the NUREG discusses other inservice test program topics such as the NRC process for review of the OM Code, conditions on the use of the OM Code, and interpretations of the OM Code.

Dated at Rockville, Maryland, this 11th day of August 2011.

For the Nuclear Regulatory Commission.

Anthony C. McMurtray,

Chief, Component Performance and Testing Branch, Division of Component Integrity, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–21357 Filed 8–19–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0188; Docket No. 50–315]

Indiana Michigan Power Company, Donald C. Cook Nuclear Plant, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an exemption and an amendment to Renewed Facility Operating License No. NPF–58 issued to Indiana Michigan Power Company (the licensee), for operation of Donald C. Cook Nuclear Plant, Unit 1 (DCCNP–1), located in Berrien County, Michigan, in accordance with Title 10 of the Code of Federal Regulations (10 CFR) part 50, § 50.90. In accordance with 10 CFR 51.21, the NRC performed an environmental assessment documenting its findings. The NRC concluded that the proposed actions would have no significant environmental impact.

Environmental Assessment

Identification of the Proposed Actions

The proposed actions would issue an exemption from 10 CFR 50.46 regarding fuel cladding material, and revise the Technical Specifications document, which is part of the Renewed Facility Operating Licenses, to permit use of Optimized ZIRLO™ fuel to a peak road average burnup limit of 62 gigawatt-days per metric ton uranium (GWD/MTU).

The proposed actions are in accordance with the licensee's application dated December 16, 2010.

The Need for the Proposed Actions

The proposed actions to issue an exemption to the fuel cladding requirement of 10 CFR 50.46, and to amend the Technical Specifications to permit use of Optimized ZIRLO™ fuel to a peak rod average burnup limit of 62 GWD/MTU would allow for more effective fuel management. If the exemption and amendment are not approved, the licensee will not be provided the opportunity to use Optimized ZIRLO™ fuel design with a peak rod average burnup as high as 62 GWD/MTU; the licensee would thus lose fuel management flexibility.

Environmental Impacts of the Proposed Actions

In this environmental assessment regarding the impacts of the use of Optimized ZIRLO™ fuel with the possible burnup up to 62 GWD/MTU, the Commission is relying on the results of the updated study conducted for the NRC by the Pacific Northwest National Laboratory (PNNL), entitled ''Environmental Effects of Extending Fuel Burnup Above 60 GWD/MTU'' (NUREG/CR–6703, PNNL–13257, January 2001). Environmental impacts of high burnup fuel up to 75 GWD/MTU were evaluated in the study, but some aspects of the review were limited to evaluating the impacts of the extended burnup up to 62 GWD/MTU, because of the need for additional data on the effect of extended burnup on gap release fractions. All the aspects of the fuel-cycle were considered during the study, from mining, milling, conversion, enrichment and fabrication through normal reactor operation, transportation, waste management, and storage of spent fuel.

The amendment and exemption would allow DCCNP–1 to use Optimized ZIRLO™ fuel up to a burnup limit of 62 GWD/MTU. The NRC staff has completed its evaluation of the proposed actions and concludes that such changes would not adversely affect plant safety, and would have no adverse effect on the probability of any accident. For the accidents that involve damage or melting of the fuel in the reactor core, fuel rod integrity has been shown to be unaffected by extended burnup under consideration; therefore, the probability of an accident will not be affected by fuel burnup to 62 GWD/MTU. For the accidents in which the reactor core remains intact, the increased burnup may slightly change the mix of fission products that could be released in the event of a serious accident, but because the radionuclides contributing most to the dose are short-lived, increased burnup would not have an effect on the consequences of a serious accident beyond the consequences of previously evaluated accident scenarios. Thus, there will be no significant increase in projected dose consequences of postulated accidents associated with fuel burnup up to 62 GWD/MTU, and doses will remain well below regulatory limits.

Regulatory limits on radiological effluent releases are independent of burnup. The requirements of 10 CFR part 20, 10 CFR 50.36a, and Appendix I to 10 CFR part 50 ensure that routine releases of gaseous, liquid or solid radiological effluents to unrestricted areas is kept ''As Low As is Reasonably Achievable.'' Therefore, the NRC staff concludes that during routine operations, there would be no significant increase in the amount of gaseous radiological effluents released into the environment as a result of the proposed actions, nor will there be a significant increase in the amount of liquid radiological effluents or solid radiological effluents released into the environment.

The proposed actions will not change normal plant operating conditions (*i.e.,* no changes are expected in the fuel handling, operational, or storing processes). The fuel storage and handling, radioactive waste, and other systems which may contain radioactivity are designed to assure adequate safety under normal

conditions. There will be no significant changes in radiation levels during these evolutions, and no significant increase in the allowable individual or cumulative occupational radiation exposure is expected to occur.

The use of Optimized ZIRLO™ fuel with a burnup limit of 62 GWD/MTU will not change the potential environmental impacts of incident-free transportation of spent nuclear fuel or the accident risks associated with spent fuel transportation if the fuel is cooled for 5 years after being discharged from the reactor. A PNNL report for the NRC (NUREG/CR–6703, January 2001) concluded that doses associated with incident-free transportation of spent fuel with burnup to 75 GWD/MTU are bound by the doses given in 10 CFR 51.52, Table S–4 for all regions of the country, based on the dose rates from the shipping casks being maintained within regulatory limits. Increased fuel burnup will decrease the annual discharge of fuel to the spent fuel pool which will postpone the need to remove spent fuel from the pool.

NUREG/CR–6703 determined that no increase in environmental effects of spent fuel transportation accidents is expected as a result of increasing fuel burnup to 75 GWD/MTU.

Based on the nature of the amendment, the proposed actions do not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity or the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Stevens Act are expected. There are no impacts to the air or ambient air quality. There are no impacts to historic and cultural resources. There would be no noticeable effect on socioeconomic conditions in the region. Therefore, no changes or different types of non-radiological environmental impacts are expected as a result of the proposed actions. Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed actions.

For more detailed information regarding the environmental impacts of extended fuel burnup, please refer to the study conducted by PNNL for the NRC, entitled ''Environmental Effects of Extending Fuel Burnup Above 60 GWD/MTU'' (NUREG/CR–6073, PNL–13257, January 2001, Agencywide Documents Access and Management System (ADAMS) Accession No. ML010310298). The details of the NRC staff's Safety Evaluation will be issued concurrently with the amendment.

Environmental Impacts of the Alternatives to the Proposed Actions

As an alternative to the proposed action, the NRC staff considered denial of the proposed actions (*i.e.,* the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. Thus, the environmental impacts of the proposed actions and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for Donald C. Cook Nuclear Plant, Unit 1, or the Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2—Final Report (NUREG–1437, Supplement 20), dated May 2005.

Agencies and Persons Consulted

In accordance with its stated policy, on July 14, 2011, the NRC staff consulted with the Michigan State official regarding the environmental impact of the proposed action. The State officials had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC staff concludes that the proposed actions will not have a significant effect on the quality of the human environment. Accordingly, the NRC staff determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed actions, see the licensee's letter dated October 29, 2009 (ADAMS Accession No. ML093140092). Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.*

Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 11th day of August, 2011.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Senior Project Manager, Plant Licensing Branch III–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–21340 Filed 8–19–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–278; NRC–2011–0178]

Exelon Generation Company, LLC; PSEG Nuclear, LLC; Peach Bottom Atomic Power Station, Unit 3; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing and Order Imposing Procedures for Document Access to Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of license amendment request, opportunity to comment, opportunity to request a hearing, and Commission order.

DATES: Submit comments by September 21, 2011. A request for a hearing must be filed by October 21, 2011. Any potential party as defined in Title 10 of the Code of Federal Regulations (10 CFR) 2.4 who believes access to Sensitive Unclassified Non-Safeguards Information and/or Safeguards Information is necessary to respond to this notice must request document access by September 1, 2011.

ADDRESSES: Please include Docket ID NRC–2011–0178 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in

their comments that they do not want publicly disclosed. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0178. Address questions about NRC dockets to Carol Gallagher, *telephone:* 301–492–3668; *e-mail: Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

You can access publicly available documents related to this document using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The application for amendment, dated June 8, 2011, contains proprietary information and, accordingly, those portions are being withheld from public disclosure. A redacted version of the application for amendment, dated June 8, 2011, is available electronically under ADAMS Accession Number ML111600180.
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0178.

FOR FURTHER INFORMATION CONTACT: John D. Hughey, Project Manager, Plant Licensing Branch 1–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. *Telephone:* 301–415–3204; *fax number:* 301–415–2102; *e-mail: John.Hughey@nrc.gov.*

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–56, issued to Exelon Generation Company, LLC, and PSEG Nuclear, LLC, (licensee) for operation of the Peach Bottom Atomic Power Station (PBAPS), Unit 3, located in York and Lancaster Counties, Pennsylvania.

The proposed amendment would revise the PBAPS, Unit 3, Technical Specification Section 2.1.1 to revise Safety Limit Minimum Critical Power Ratio (SLMCPR) values. The SLMCPR is established to assure that at least 99.9% of the fuel rods in the core do not experience boiling transition during normal operation and abnormal operating transients. The amendment application is dated June 8, 2011 (ADAMS Accession No. ML111600180).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The derivation of the cycle specific Safety Limit Minimum Critical Power Ratios (SLMCPRs) for incorporation into the Technical Specifications (TS), and their use to determine cycle specific thermal limits, has been performed using the methodology discussed in NEDE–2401 1–P–A, ''General Electric Standard Application for Reactor Fuel,'' Revision 18.

The basis of the SLMCPR calculation is to ensure that during normal operation and during abnormal operational transients, at least 99.9% of all fuel rods in the core do not experience transition boiling if the limit is not violated. The new SLMCPRs preserve the existing margin to transition boiling.

The MCPR safety limit is reevaluated for each reload using NRC-approved methodologies. The analyses for Peach Bottom Atomic Power Station (PBAPS), Unit 3, Cycle 19 have concluded that a two recirculation loop MCPR safety limit of ≥ 1.09, based on the application of Global Nuclear Fuel's NRC-approved MCPR safety limit methodology, will ensure that this acceptance criterion is met. For single recirculation loop operation, a MCPR safety limit of ≥ 1.12 also ensures that this acceptance criterion is met. The MCPR operating limits are presented and controlled in accordance with the PBAPS, Unit 3 Core Operating Limits Report (COLR).

The requested TS changes do not involve any plant modifications or operational changes that could affect system reliability or performance or that could affect the probability of operator error. The requested changes do not affect any postulated accident precursors, do not affect any accident mitigating systems, and do not introduce any new accident initiation mechanisms.

Therefore, the proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The SLMCPR is a TS numerical value, calculated to ensure that during normal operation and during abnormal operational transients, at least 99.9% of all fuel rods in the core do not experience transition boiling if the limit is not violated. The new SLMCPRs are calculated using NRC-approved methodology discussed in NEDE–24011–P–A, ''General Electric Standard Application for Reactor Fuel,'' Revision 18. The proposed changes do not involve any new modes of operation, any changes to setpoints, or any plant modifications. The proposed revised MCPR safety limits have been shown to be acceptable for Cycle 19 operation. The core operating limits will continue to be developed using NRC-approved methods. The proposed MCPR safety limits or methods for establishing the core operating limits do not result in the creation of any new precursors to an accident.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

There is no significant reduction in the margin of safety previously approved by the NRC as a result of the proposed change to the SLMCPRs. The new SLMCPRs are calculated using methodology discussed in NEDE–24011–P–A, ''General Electric Standard Application for Reactor Fuel,'' Revision 18. The SLMCPRs ensure that during normal operation and during abnormal operational transients, at least 99.9% of all fuel rods in the core do not experience transition boiling if the limit is not violated, thereby preserving the fuel cladding integrity.

Therefore, the proposed TS changes do not involve a significant reduction in the margin of safety previously approved by the NRC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received by September 21, 2011 will be considered in making any final determination. You may submit comments using any of the methods discussed under the **ADDRESSES** caption.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

II. Opportunity To Request a Hearing

Requirements for hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, ''Hearing requests, petitions to intervene, requirements for standing, and contentions.'' Interested persons should consult 10 CFR part 2, Section 2.309, which is available at the NRC's Public Document Room (PDR), located at O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 (or call the PDR at 800–397–4209 or 301–415–4737). NRC regulations are accessible electronically from the NRC Library on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.*

III. Petitions for Leave To Intervene

Any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the requestor/petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the requestor or petitioner and specifically explain the reasons why the intervention should be permitted with particular reference to the following factors: (1) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the requestor/petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the requestor/petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license amendment in response to the application. The petition must include a concise statement of the alleged facts or expert opinions which support the position of the requestor/petitioner and on which the requestor/petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for amendment that the requestor/petitioner disputes and the supporting reasons for each dispute, or, if the requestor/petitioner believes that the application for amendment fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requestor's/petitioner's belief. Each contention must be one which, if proven, would entitle the requestor/petitioner to relief.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Atomic Safety and Licensing Board (the Licensing Board) will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Non-timely petitions for leave to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the Licensing Board or a Presiding Officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A State, county, municipality, Federally-recognized Indian Tribe, or agencies thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by October 21, 2011. The petition must be filed in accordance with the filing instructions in section IV of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that State and Federally-recognized Indian Tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in a hearing as a nonparty pursuant to 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be

imposed by the Licensing Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by October 21, 2011.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) A digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at 866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First-class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the

adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from August 22, 2011. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Attorney for licensee: Mr. J. Bradley Fewell, Associate General Counsel, Exelon Generation Company LLC, 4300 Winfield Road, Warrenville, IL 60555.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention;

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff either after a determination on standing and need for access, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

It is so ordered.

Dated at Rockville, Maryland this 16th day of August 2011.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

Attachment 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information in this Proceeding

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no ''need'' or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2011–21346 Filed 8–19–11; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Revision of an Existing Information Collection, USAJOBS

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The U.S. Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revised information collection request (ICR) 3206–0219, USAJOBS. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), the Office of Management and Budget (OMB) is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on June 22, 2011 at Volume 76 FR No. 120 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. OMB is particularly interested in comments that:

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.

DATES: Comments are encouraged and will be accepted until September 21,

2011. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, *Attention:* Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, *Attention:* Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: USAJOBS is the official Federal Government source for Federal jobs and employment information. The Applicant Profile and Resume Builder are two components of the USAJOBS application system. USAJOBS reflects the minimal critical elements collected across the Federal Government to assess an applicant's qualifications for Federal jobs under the authority of sections 1104, 1302, 3301, 3304, 3320, 3361, 3393, and 3394 of title 5, United States Code. This revision proposes to in part, permit the migration of USAJOBS to a new platform. In addition, this revision proposes to:

(A) Discontinue the use of the Application for Federal Employment Optional Form 612. This action is being taken to facilitate a more seamless employment application process for both Federal agencies and job seekers, consistent with the goals of Federal hiring reform.

(B) Revise the collection of Demographic Information on Applicants by removing the sourcing question ''How did you learn about this position?'' along with the pre-populated answer choices provided for this question.

(C) Add basic eligibility questions to the Applicant Profile as well as optional questions to the Applicant Profile in USAJOBS that will allow applicants to self-identify (subject to subsequent verification by the appointing agency) as eligible for certain special hiring authorities. This is expected to streamline some hiring actions by allowing agencies to search for resumes of applicants who have volunteered information about their eligibility under special hiring authorities. Information volunteered by applicants about their potential eligibility under one or more special hiring authorities will be stored in USAJOBS and will only become visible to agencies that are considering filling a job using a special hiring authority. In that case, the hiring agency will be able to search USAJOBS for potential applicants who have chosen to indicate that they believe they are eligible to be selected under the special authority the agency seeks to use.

Applicants who do not choose to use this opportunity to volunteer information about their eligibility under a special hiring authority may still choose to apply for jobs, as they are announced, under any of these special hiring authorities for which they are eligible. If applicants volunteer to provide information through the Web site about the special hiring authorities for which they believe they are eligible, then agencies that are searching for potential applicants to hire under one of these authorities may be able to locate their resume through USAJOBS and invite them to apply. Otherwise, this information will be retained in the USAJOBS database and not disclosed.

We estimate it will take approximately 38 minutes to initially complete the Resume Builder, depending on the amount of information the applicant wishes to include, and approximately five minutes to initially complete the Applicant Profile. We estimate over 3,500,000 new USAJOBS accounts will be submitted annually. The total annual estimated burden is 2,508,333 hours.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–21398 Filed 8–19–11; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29755; File No. 812–13862]

Tortoise Power and Energy Infrastructure Fund, Inc. and Tortoise Capital Advisors, L.L.C.; Notice of Application

August 16, 2011.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 19(b) of the Act and rule 19b-1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit a registered closed-end investment company to make periodic distributions of long-term capital gains with respect to its common stock as frequently as monthly in any taxable year, and as frequently as distributions are specified by or in accordance with the terms of any outstanding preferred stock that such investment company may issue.

APPLICANTS: Tortoise Power and Energy Infrastructure Fund, Inc. (the ''Company'') and Tortoise Capital Advisors, L.L.C. (the ''Investment Adviser'').

FILING DATES: The application was filed on January 25, 2011, and amended on May 27, 2011, and August 15, 2011.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 9, 2011, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, 20549–1090; Applicants, 11550 Ash Street, Suite 300, Leawood, KS 66211.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 551–6879, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Applicants' Representations

1. The Company is a closed-end management investment company registered under the Act and organized

as a Maryland corporation.[1] The Company's investment objective is to provide a high level of current income, with a secondary objective of capital appreciation. The Company's common stock is listed on the New York Stock Exchange. As of December 31, 2010, the Company had not issued any preferred stock. Applicants believe that the common stockholders of a Fund are generally conservative, distribution sensitive investors who wish to have a predictable and consistent distribution stream.

2. The Investment Adviser, a Delaware limited liability company, is registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). The Investment Adviser acts as investment adviser to the Company. Any Investment Adviser to a Fund will be registered under the Advisers Act.

3. Applicants state that on June 22, 2009, the board of directors (the ''Board'') of the Company, including all of the directors who are not ''interested persons'' of the Company as defined in section 2(a)(19) of the Act (the ''Independent Directors''), reviewed information regarding the purpose and terms of a proposed distribution policy, the likely effects of such policy on the Company's long-term total return (in relation to market price and net asset value (''NAV'') per common share) and the relationship between the Company's distribution rate on its common stock under the policy and the Company's total return (in relation to NAV per share). Applicants state that the Independent Directors also considered what conflicts of interest the Investment Adviser and any affiliated persons of the Investment Adviser and the Company might have with respect to the adoption or implementation of such policy. Applicants further state that after considering such information, the Board, including the Independent Directors, approved a distribution policy with respect to the Company's common stock (the ''Distribution Policy'') and determined that such Policy is consistent with the Company's investment objective(s) and in the best interests of the Company's common stockholders.

4. Applicants state that the purpose of the Distribution Policy is to permit the Company to distribute over the course of each year, through periodic distributions as nearly equal as practicable and any required special distributions, an amount closely approximating the total taxable income of the Company during such year and, if so determined by its Board, all or a portion of the return of capital paid by portfolio companies to the Company during such year. Applicants note that under the Distribution Policy, the Company would distribute to its respective common stockholders a fixed monthly amount that may be adjusted from time to time. Applicants further state that the minimum annual distribution rate would be independent of the Company's performance during any particular period, but would be expected to correlate with the Company's performance over time. Applicants explain that except for extraordinary distributions and potential increases or decreases in the final dividend periods in light of the Company's performance for the entire calendar year and to enable the Company to comply with the distribution requirements of subchapter M of the Internal Revenue Code of 1986 (''Code'') for the calendar year, each distribution on the common stock would be at the amount then in effect.

5. Applicants state that the Board has adopted policies and procedures under rule 38a–1 under the Act that are reasonably designed to ensure that all notices required to be sent to Company stockholders pursuant to section 19(a) of the Act, rule 19a–1 under the Act, and condition 4 below (each a ''19(a) Notice'') comply with condition 2.a. below, and that all other written communications by the Company or its agents regarding distributions under the Distribution Policy include the disclosure required by condition 3.a. below. Applicants state that the Board also has adopted policies and procedures that require the Company to keep records that demonstrate its compliance with all of the conditions of the requested order and that are necessary for the Company to form the basis for, or demonstrate the calculation of, the amounts disclosed in its 19(a) Notices. Any future Fund would adopt similar policies and procedures before relying on the requested relief.

Applicants' Legal Analysis

1. Section 19(b) of the Act generally makes it unlawful for any registered investment company to make long-term capital gains distributions more than once every twelve months. Rule 19b–1 under the Act limits the number of capital gains dividends, as defined in section 852(b)(3)(C) of the Code (''distributions''), that a fund may make with respect to any one taxable year to one, plus a supplemental ''clean up'' distribution made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year, plus one additional capital gain dividend made in whole or in part to avoid the excise tax under section 4982 of the Code.

2. Section 6(c) of the Act provides that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants state that one of the concerns underlying section 19(b) and rule 19b–1 is that stockholders might be unable to differentiate between frequent distributions of capital gains and dividends from investment income. Applicants state, however, that rule 19a–1 effectively addresses this concern by requiring that a separate statement showing the sources of a distribution (*e.g.*, net investment income, net short-term capital gains, net long-term capital gains and/or return of capital) accompany any distributions (or the confirmation of the reinvestment of distributions) estimated to be sourced in part from capital gains or capital. Applicants also state that the same information is included in the Company's annual reports to stockholders and similar information is included on its IRS Form 1099–DIV, which is sent to each common and any preferred stockholder receiving distributions during a particular year (including stockholders who have sold shares during the year).

4. Applicants further state that the Company will make the additional disclosures required by the conditions set forth below, and has adopted compliance policies and procedures in accordance with rule 38a–1 under the Act to ensure that all required 19(a) Notices and disclosures are sent to stockholders. Applicants argue that by

[1] The Company is the only closed-end investment company that currently intends to rely on the order. Applicants request that the order also apply to each registered closed-end investment company that in the future is advised by the Investment Adviser (including any successor in interest) or by an entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with the Investment Adviser (such investment companies, together with the Company, the ''Funds''). Any Fund that relies on the order in the future will comply with the terms and conditions of the application and will satisfy each of the representations in the application, except that such representations will be made in respect of actions by the board of directors of such future Fund at a future time. A successor in interest is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

providing the information required by section 19(a) and rule 19a–1, and by complying with the procedures adopted under the Distribution Policy and the conditions listed below, the Company's stockholders would be provided sufficient information to understand that their periodic distributions are not tied to the Company's net investment income (which for this purpose is the Company's taxable income other than from capital gains) and realized capital gains to date, and may not represent yield or investment return. Applicants also state that compliance with the Company's compliance procedures and condition 3 set forth below will ensure that prospective stockholders and third parties are provided with the same information. Accordingly, applicants assert that continuing to subject the Company to section 19(b) and rule 19b–1 would afford stockholders no extra protection.

5. Applicants note that section 19(b) and rule 19b–1 also were intended to prevent certain improper sales practices, including, in particular, the practice of urging an investor to purchase shares of a fund on the basis of an upcoming capital gains dividend (''selling the dividend''), where the dividend would result in an immediate corresponding reduction in NAV and would be in effect a taxable return of the investor's capital. Applicants submit that the ''selling the dividend'' concern should not apply to closed-end investment companies, such as the Company, that do not continuously distribute shares. According to applicants, if the underlying concern extends to secondary market purchases of stock of closed-end funds that are subject to a large upcoming capital gains dividend, adoption of a periodic distribution plan actually helps minimize the concern by avoiding, through periodic distributions, any buildup of large end-of-the-year distributions.

6. Applicants also note that common stock of a closed-end fund often trades in the marketplace at a discount to the fund's NAV. Applicants believe that this discount may be reduced if the fund is permitted to pay relatively frequent dividends on its common stock at a consistent rate, whether or not those dividends contain an element of capital gain.

7. Applicants assert that the application of rule 19b–1 to a distribution policy actually could have an undesirable influence on portfolio management decisions. Applicants state that, in the absence of an exemption from rule 19b–1, the implementation of a periodic distribution plan imposes pressure on management (a) not to realize any net long-term capital gains until the point in the year that the fund can pay all of its remaining distributions in accordance with rule 19b–1, and (b) not to realize any long-term capital gains during any particular year in excess of the amount of the aggregate pay-out for the year (since as a practical matter excess gains must be distributed and accordingly would not be available to satisfy pay-out requirements in following years), notwithstanding that purely investment considerations might favor realization of long-term gains at different times or in different amounts. Applicants thus assert that by limiting the number of capital gain distributions that a fund may make with respect to any one year, rule 19b–1 may prevent the efficient operation of a periodic distribution plan whenever that fund's realized net long-term capital gains in any year exceed the total of the periodic distributions that may include such capital gains under the rule.

8. Applicants also assert that rule 19b–1 may cause fixed regular periodic distributions under a periodic distribution plan to be funded with returns of capital [2] (to the extent net investment income and realized short-term capital gains are insufficient to fund the distribution), even though realized net long-term capital gains otherwise could be available. To distribute all of a fund's long-term capital gains within the limits in rule 19b–1, the Company may be required to make total distributions in excess of the annual amount called for by its Distribution Policy, or to retain and pay taxes on the excess amount. Applicants thus assert that the requested order would minimize these effects of rule 19b–1 by enabling the Funds to realize long-term capital gains as often as investment considerations dictate without fear of violating rule 19b–1.

9. Applicants state that Revenue Ruling 89–81 under the Code requires that a fund that has both common stock and preferred stock outstanding designate the types of income, *e.g.*, investment income and capital gains, in the same proportion as the total distributions distributed to each class for the tax year. To satisfy the proportionate designation requirements of Revenue Ruling 89–81, whenever a fund has net realized long-term capital gains with respect to a given tax year, the fund must designate the required proportionate share of such capital gains to be included in common and preferred stock distributions. Applicants state that although rule 19b–1 allows a fund some flexibility with respect to the frequency of capital gains distributions, a fund might use all of the exceptions available under the rule for a tax year and still need to distribute additional capital gains allocated to the preferred stock to comply with Revenue Ruling 89–81.

10. Applicants assert that the potential abuses addressed by section 19(b) and rule 19b–1 do not arise with respect to preferred stock issued by a closed-end fund. Applicants assert that such distributions are fixed or determined in periodic auctions by reference to short-term interest rates rather than by reference to performance of the issuer, and Revenue Ruling 89–81 determines the proportion of such distributions that are comprised of the long-term capital gains.

11. Applicants also submit that the ''selling the dividend'' concern is not applicable to preferred stock, which entitles a holder to no more than a periodic dividend at a fixed rate or the rate determined by the market, and, like a debt security, is priced based upon its liquidation value, dividend rate, credit quality, and frequency of payment. Applicants state that investors buy preferred shares for the purpose of receiving payments at the frequency bargained for, and do not expect the liquidation value of their shares to change.

12. Applicants request an order under section 6(c) of the Act granting an exemption from section 19(b) of the Act and rule 19b–1 under the Act to permit the Company to distribute periodic capital gain dividends (as defined in section 852(b)(3)(C) of the Code) as often as monthly in any one taxable year with respect to its common stock and as frequently as distributions are specified by or in accordance with the terms of any outstanding preferred stock that the Company may issue.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. *Compliance Review and Reporting.* The Fund's chief compliance officer will: (a) report to the Fund's Board, no less frequently than once every three months or at the next regularly scheduled quarterly Board meeting, whether (i) the Fund and its Investment Adviser have complied with the conditions of the order, and (ii) a material compliance matter (as defined in rule 38–1(e)(2) under the Act) has occurred with respect to such conditions; and (b) review the adequacy of the policies and procedures adopted

[2] Returns of capital as used in the application means return of capital for financial accounting purposes and not for tax accounting purposes.

by the Board no less frequently than annually.

2. *Disclosures to Fund Stockholders.*

a. Each 19(a) Notice disseminated to the holders of the Fund's common stock, in addition to the information required by section 19(a) and rule 19a–1:

i. Will provide, in a tabular or graphical format:

(1) The amount of the distribution, on a per share basis, together with the amounts of such distribution amount, on a per share basis and as a percentage of such distribution amount, from estimated: (A) Net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(2) The fiscal year-to-date cumulative amount of distributions, on a per share basis, together with the amounts of such cumulative amount, on a per share basis and as a percentage of such cumulative amount of distributions, from estimated: (A) Net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(3) The average annual total return in relation to the change in NAV for the 5-year period (or, if the Fund's history of operations is less than five years, the time period commencing immediately following the Fund's first public offering) ending on the last day of the month ended immediately prior to the most recent distribution record date compared to the current fiscal period's annualized distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution record date; and

(4) The cumulative total return in relation to the change in NAV from the last completed fiscal year to the last day of the month prior to the most recent distribution record date compared to the fiscal year-to-date cumulative distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution record date. Such disclosure shall be made in a type size at least as large as and as prominent as the estimate of the sources of the current distribution; and

ii. Will include the following disclosure:

(1) ''You should not draw any conclusions about the Fund's investment performance from the amount of this distribution or from the terms of the Fund's Distribution Policy'';

(2) ''The Fund estimates that it has distributed more than its income and net realized capital gains; therefore, a portion of your distribution may be a return of capital. A return of capital may occur, for example, when some or all of the money that you invested in the Fund is paid back to you. A return of capital distribution does not necessarily reflect the Fund's investment performance and should not be confused with 'yield' or 'income' '';[3] and

(3) ''The amounts and sources of distributions reported in this 19(a) Notice are only estimates and are not being provided for tax reporting purposes. The actual amounts and sources of the amounts for tax reporting purposes will depend upon the Fund's investment experience during the remainder of its fiscal year and may be subject to changes based on tax regulations. The Fund will send you a Form 1099–DIV for the calendar year that will tell you how to report these distributions for Federal income tax purposes.'' Such disclosure shall be made in a type size at least as large as and as prominent as any other information in the 19(a) Notice and placed on the same page in close proximity to the amount and the sources of the distribution.

b. On the inside of the front cover of each report to stockholders under rule 30e–1 under the Act, the Fund will:

i. Describe the terms of the Distribution Policy (including the fixed amount or fixed percentage of the distributions and the frequency of the distributions);

ii. Include the disclosure required by condition 2.a.ii.(1) above;

iii. State, if applicable, that the Distribution Policy provides that the Board may amend or terminate the Distribution Policy at any time without prior notice to Fund stockholders; and

iv. Describe any reasonably foreseeable circumstances that might cause the Fund to terminate the Distribution Policy and any reasonably foreseeable consequences of such termination.

c. Each report provided to stockholders under rule 30e–1 under the Act and each prospectus filed with the Commission on Form N–2 under the Act, will provide the Fund's total return in relation to changes in NAV in the financial highlights table and in any discussion about the Fund's total return.

3. *Disclosure to Stockholders, Prospective Stockholders and Third Parties.*

a. The Fund will include the information contained in the relevant 19(a) Notice, including the disclosure required by condition 2.a.ii. above, in any written communication (other than a communication on Form 1099) about the Distribution Policy or distributions under the Policy by the Fund, or agents that the Fund has authorized to make such communication on the Fund's behalf, to any Fund stockholder, prospective stockholder or third-party information provider;

b. The Fund will issue, contemporaneously with the issuance of any 19(a) Notice, a press release containing the information in the 19(a) Notice and file with the Commission the information contained in such 19(a) Notice, including the disclosure required by condition 2.a.ii. above, as an exhibit to its next filed Form N–CSR;

c. The Fund will post prominently a statement on its (or the Investment Adviser's) Web site containing the information in each 19(a) Notice, including the disclosure required by condition 2.a.ii. above, and will maintain such information on such Web site for at least 24 months.

4. *Delivery of 19(a) Notices to Beneficial Owners.* If a broker, dealer, bank or other person (''financial intermediary'') holds common stock issued by the Fund in nominee name, or otherwise, on behalf of a beneficial owner, the Fund: (a) Will request that the financial intermediary, or its agent, forward the 19(a) Notice to all beneficial owners of the Fund's shares held through such financial intermediary; (b) will provide, in a timely manner, to the financial intermediary, or its agent, enough copies of the 19(a) Notice assembled in the form and at the place that the financial intermediary, or its agent, reasonably requests to facilitate the financial intermediary's sending of the 19(a) Notice to each beneficial owner of the Fund's shares; and (c) upon the request of any financial intermediary, or its agent, that receives copies of the 19(a) Notice, will pay the financial intermediary, or its agent, the reasonable expenses of sending the 19(a) Notice to such beneficial owners.

5. *Additional Board Determinations for Funds Whose Common Stock Trades at a Premium.*

If:

a. Each Fund's common stock has traded on the stock exchange that they primarily trade on at the time in question at an average premium to NAV equal to or greater than 10%, as determined on the basis of the average of the discount or premium to NAV of the Fund's common stock as of the close of each trading day over a 12-week rolling period (each such 12-week

[3] The disclosure in this condition 2(a)(ii)(2) will be included only if the current distribution or the fiscal year-to-date cumulative distributions are estimated to include a return of capital.

rolling period ending on the last trading day of each week); and

b. The Fund's annualized distribution rate for such 12-week rolling period, expressed as a percentage of NAV as of the ending date of such 12-week rolling period, is greater than the Fund's average annual total return in relation to the change in NAV over the 2-year period ending on the last day of such 12-week rolling period; then:

i. At the earlier of the next regularly scheduled meeting or within four months of the last day of such 12-week rolling period, the Board, including a majority of the Independent Directors:

(1) Will request and evaluate, and the Investment Adviser will furnish, such information as may be reasonably necessary to make an informed determination of whether the Distribution Policy should be continued or continued after amendment;

(2) Will determine whether continuation, or continuation after amendment, of the Distribution Policy is consistent with the Fund's investment objective(s) and policies and is in the best interests of the Fund and its stockholders, after considering the information in condition 5.b.i.(1) above; including, without limitation:

(A) Whether the Distribution Policy is accomplishing its purpose(s);

(B) The reasonably foreseeable material effects of the Distribution Policy on the Fund's long-term total return in relation to the market price and NAV of the Fund's common stock; and

(C) The Fund's current distribution rate, as described in condition 5.b. above, compared with the Fund's average annual taxable income or total return over the 2-year period, as described in condition 5.b., or such longer period as the Board deems appropriate; and

(3) Based upon that determination, will approve or disapprove the continuation, or continuation after amendment, of the Distribution Policy; and

ii. The Board will record the information considered by it, including its consideration of the factors listed in condition 5.b.i.(2) above, and the basis for its approval or disapproval of the continuation, or continuation after amendment, of the Distribution Policy in its meeting minutes, which must be made and preserved for a period of not less than six years from the date of such meeting, the first two years in an easily accessible place.

6. *Public Offerings.* The Fund will not make a public offering of the Fund's common stock other than:

a. A rights offering below NAV to holders of the Fund's common stock;

b. An offering in connection with a dividend reinvestment plan, merger, consolidation, acquisition, spin-off or reorganization of the Fund; or

c. An offering other than an offering described in conditions 6.a. and 6.b. above, provided that, with respect to such other offering:

i. The Fund's annualized distribution rate for the six months ending on the last day of the month ended immediately prior to the most recent distribution record date, expressed as a percentage of NAV per share as of such date,[4] is no more than 1 percentage point greater than the Fund's average annual total return for the 5-year period ending on such date;[5] and

ii. The transmittal letter accompanying any registration statement filed with the Commission in connection with such offering discloses that the Fund has received an order under section 19(b) to permit it to make periodic distributions of long-term capital gains with respect to its common stock as frequently as twelve times each year, and as frequently as distributions are specified by or determined in accordance with the terms of any outstanding preferred stock as such Fund may issue.

7. *Amendments to Rule 19b–1.* The requested order will expire on the effective date of any amendment to rule 19b–1 that provides relief permitting certain closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common stock as frequently as twelve times each year.

For the Commission, by the Division of Investment Management, under delegated authority.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–21323 Filed 8–19–11; 8:45 am]

BILLING CODE 8011–01–P

[4] If the Fund has been in operation fewer than six months, the measured period will begin immediately following the Fund's first public offering.

[5] If the Fund has been in operation fewer than five years, the measured period will begin immediately following the Fund's first public offering.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29756; 812–13794]

Golub Capital BDC, Inc., et al.; Notice of Application

August 16, 2011.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(a) and 61(a) of the Act.

Applicants: Golub Capital BDC, Inc. (the ''Company''), GC Advisors LLC (the ''Investment Adviser''), GC SBIC IV–GP, Inc. (the ''GP Managing Member''), GC SBIC IV–GP, LLC (the ''General Partner''), and GC SBIC IV, L.P. (''Golub SBIC'').

SUMMARY: *Summary of the Application:* The Company requests an order to permit it to adhere to a modified asset coverage requirement.

DATES: *Filing Dates:* The application was filed July 9, 2010 and amended on November 12, 2010, March 31, 2011 and June 14, 2011.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 12, 2011 and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants: David B. Golub, GC Advisors LLC, 150 South Wacker Drive, Suite 800, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, at (202) 551–6873, or Dalia Osman Blass, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's

Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Company, a Delaware corporation, is an externally managed, non-diversified, closed-end management investment company that has elected to be regulated as a business development company (''BDC'') under the Act.[1] The Company seeks to maximize the total return to its stockholders through both current income and capital appreciation through debt and minority equity investments. The Investment Adviser, a Delaware limited liability company, is the investment adviser to the Company. The Investment Adviser is registered under the Investment Advisers Act of 1940.

2. Golub SBIC, a Delaware limited partnership, is a small business investment company (''SBIC'') licensed by the Small Business Administration (''SBA'') to operate under the Small Business Investment Act of 1958 (''SBIA''). Golub SBIC is excluded from the definition of investment company by section 3(c)(7) of the Act. The Company directly owns 99% of Golub SBIC in the form of a limited partner interest. The General Partner owns 1% of Golub SBIC in the form of a general partner interest. The GP Managing Member, a Delaware corporation, is a wholly-owned subsidiary of the Company and serves as the managing member of the General Partner. The GP Managing Member and the Company are the sole members of the General Partner.

Applicants' Legal Analysis

1. The Company requests an exemption pursuant to section 6(c) of the Act from the provisions of sections 18(a) and 61(a) of the Act to permit it to adhere to a modified asset coverage requirement with respect to any direct or indirect wholly owned subsidiary of the Company that is licensed by the SBA to operate under the SBIA as a SBIC and relies on Section 3(c)(7) for an exemption from the definition of ''investment company'' under the 1940 Act (each, a ''SBIC Subsidiary'').[2] Applicants state that companies operating under the SBIA, such as the SBIC Subsidiary, will be subject to the SBA's substantial regulation of permissible leverage in their capital structure.

2. Section 18(a) of the Act prohibits a registered closed-end investment company from issuing any class of senior security or selling any such security of which it is the issuer unless the company complies with the asset coverage requirements set forth in that section. Section 61(a) of the Act makes section 18 applicable to BDCs, with certain modifications. Section 18(k) exempts an investment company operating as an SBIC from the asset coverage requirements for senior securities representing indebtedness that are contained in section 18(a)(1)(A) and (B).

3. Applicants state that the Company may be required to comply with the asset coverage requirements of section 18(a) (as modified by section 61(a)) on a consolidated basis because the Company may be deemed to be an indirect issuer of any class of senior security issued by Golub SBIC or another SBIC Subsidiary. Applicants state that applying section 18(a) (as modified by section 61(a)) on a consolidated basis generally would require that the Company treat as its own all assets and any liabilities held directly either by itself, by Golub SBIC, or by another SBIC Subsidiary. Accordingly, the Company requests an order under section 6(c) of the Act exempting the Company from the provisions of section 18(a) (as modified by section 61(a)), such that senior securities issued by each SBIC Subsidiary that would be excluded from the SBIC Subsidiary's asset coverage ratio by section 18(k) if it were itself a BDC would also be excluded from the Company's consolidated asset coverage ratio.

4. Section 6(c) of the Act, in relevant part, permits the Commission to exempt any transaction or class of transactions from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief satisfies the section 6(c) standard. Applicants contend that, because the SBIC Subsidiary would be entitled to rely on section 18(k) if it were a BDC itself, there is no policy reason to deny the benefit of that exemption to the Company.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

The Company shall not issue or sell any senior security, and the Company shall not cause or permit Golub SBIC or any other SBIC Subsidiary to issue or sell any senior security of which the Company, Golub SBIC or any other SBIC Subsidiary is the issuer except to the extent permitted by section 18 (as modified for BDCs by section 61) of the Act; provided that, immediately after the issuance or sale by any of the Company, Golub SBIC or any other SBIC Subsidiary of any such senior security, the Company, individually and on a consolidated basis, shall have the asset coverage required by section 18(a) of the Act (as modified by section 61(a)). In determining whether the Company has the asset coverage on a consolidated basis required by section 18(a) of the Act (as modified by section 61(a)), any senior securities representing indebtedness of Golub SBIC or another SBIC Subsidiary shall not be considered senior securities and, for purposes of the definition of ''asset coverage'' in section 18(h), shall be treated as indebtedness not represented by senior securities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–21322 Filed 8–19–11; 8:45 am]

BILLING CODE 8011–01–P

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in section 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[2] All existing entities that currently intend to rely on the order are named as applicants. Any other existing or future entity that may rely on the order in the future will comply with the terms and condition of the order.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on August 24, 2011 at 10 a.m., in the Auditorium, Room L–002, to hear oral argument in an appeal by Eric J. Brown, Matthew J. Collins, Kevin J. Walsh, and Mark W. Wells (collectively, ''Respondents'') and a cross-appeal by the Division of Enforcement from an initial decision of an administrative law judge.

Brown and Walsh were formerly associated with registered broker-dealer Prime Capital Services, Inc. (''Prime Capital''), and Collins and Wells are currently associated with Prime Capital.

The law judge found that, in sales of variable annuities to elderly customers, Respondents violated Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Exchange Act Rule 10b–5, and Exchange Act Section 17(a) and Exchange Act Rule 17a–3. The law judge also found that Collins failed to reasonably supervise Brown within the meaning of Exchange Act Sections 15(b)(4)(E) and 15(b)(6). For these violations, the law judge issued cease-and-desist orders against Respondents, ordered Respondents to disgorge commissions earned from selling certain variable annuities, barred Respondents from associating with a broker, dealer, or investment adviser, and imposed a third-tier civil monetary penalty of $130,000 against each Respondent.

Issues likely to be considered at oral argument include whether Respondents violated the above provisions and, if so, the extent to which, under the circumstances, sanctions are warranted.

For further information, please contact the Office of the Secretary at (202) 551–5400.

Dated: August 17, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–21463 Filed 8–18–11; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65138; File No. SR–NASDAQ–2011–112]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Customer Rebates in Penny Pilot Options

August 15, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 5, 2011, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Exchange Rule 7050 governing pricing for NASDAQ members using the NASDAQ Options Market (''NOM''), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, NOM proposes to modify pricing for the Penny Pilot[3] Options (''Penny Options'') with respect to the Customer Rebate to Add Liquidity.

The text of the proposed rule change is set forth below. Proposed new text is in *italics* and deleted text is in [brackets].

* * * * *

7050. NASDAQ Options Market

The following charges shall apply to the use of the order execution and routing services of the NASDAQ Options Market for all securities.

(1) Fees for Execution of Contracts on the NASDAQ Options Market

FEES AND REBATES

[per executed contract]

	Customer	Professional	Firm	Non-NOM market maker	NOM market maker
Penny Pilot Options:					
Rebate to Add Liquidity	◊ [$0.36]	$0.29	$0.10	$0.25	$0.30
Fee for Removing Liquidity	$0.45	$0.45	$0.45	$0.45	$0.45
NDX and MNX:					
Rebate to Add Liquidity	$0.10	$0.10	$0.10	$0.10	$0.20
Fee for Removing Liquidity	$0.50	$0.50	$0.50	$0.50	$0.40
All Other Options:					
Fee for Adding Liquidity	$0.00	$0.20	$0.45	$0.45	$0.30
Fee for Removing Liquidity	$0.45	$0.45	$0.45	$0.45	$0.45
Rebate to Add Liquidity	$0.20	$0.00	$0.00	$0.00	$0.00

◊ The Customer Rebate to Add Liquidity in Penny Pilot Options will be paid as follows:

	Monthly volume	*Rebate to add liquidity*
Tier 1	*0–499,999*	*$0.26*
Tier 2	*500,000–799,999*	*$0.32*
Tier 3	*800,000–1,199,999*	*$0.36*
Tier 4	*1,200,000 and up*	*$0.38*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through December 31, 2010. *See* Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR–NASDAQ–2008–026) (notice of filing and immediate effectiveness establishing Penny Pilot); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009) (SR–NASDAQ–2009–091) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009) (SR–NASDAQ–2009–097) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61455 (February 1, 2010), 75 FR 6239 (February 8, 2010) (SR–NASDAQ–2010–013) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); and 62029 (May 4, 2010), 75 FR 25895 (May 10, 2010) (SR–NASDAQ–2010–053) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot). *See also* Exchange Rule Chapter VI, Section 5.

(2)–(4) No Change

* These fees are applicable to orders routed to ISE that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See ISE's Schedule of Fees for the complete list of symbols that are subject to these fees.

** These fees are applicable to orders routed to PHLX that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See PHLX's Fee Schedule for the complete list of symbols that are subject to these fees.

* * * * *

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to modify Rule 7050 governing the rebates and fees assessed for option orders entered into NOM. Specifically, NASDAQ is proposing to modify pricing for the Customer Rebate to Add Liquidity in Penny Options to create monthly volume tiers. The Exchange believes the monthly volume thresholds will incentivize firms that route Customer orders to the Exchange to increase Customer order flow to the Exchange.

The Exchange currently pays a Customer Rebate to Add Liquidity of $0.36 per executed contract to members providing liquidity through NOM in Penny Options. The Exchange proposes to amend this rebate so that Customers will receive a Rebate to Add Liquidity based on their total number of Customer contracts that add liquidity in Penny Options in a given month. The Exchange proposes to pay a Customer Rebate to Add Liquidity in Penny Options based on four volume tiers as follows:

	Monthly volume	Rebate to add liquidity
Tier 1	0–499,999	$0.26
Tier 2	500,000–799,999	$0.32
Tier 3	800,000–1,199,999	$0.36
Tier 4	1,200,000 and up	$0.38

By way of example, the Exchange would pay a Rebate to Add Liquidity of $0.36 per contract to a NOM Participant that executed 900,000 Customer contracts that added liquidity in Penny Options in a given month. If the NOM Participant executed 1,500,000 Customer contracts that added liquidity in Penny Options in a given month, the Exchange would pay a Rebate to Add Liquidity of $0.38 per contract.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(4) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls.

The Exchange believes that the proposed monthly tier structure for Customer Rebates to Add Liquidity in Penny Options is equitable, reasonable and not unfairly discriminatory because by incentivizing broker-dealers acting as agent for Customer orders to select the Exchange as a venue to post Customer orders will attract Customer order flow and benefit all market participants. While the Exchange is lowering the current Rebate to Add Liquidity for Customers in tiers 1 and 2, the Exchange believes that broker-dealers acting as agent for Customer orders will in fact be incentivized to bring additional order flow to the Exchange and obtain higher rebates.

Furthermore, the Exchange believes that the proposed Customer monthly volume tier Rebates to Add Liquidity are equitable and not unfairly discriminatory because the Rebates to Add Liquidity are higher in tier levels 2, 3 and 4 for Customers as compared to all other market participants. With respect to tier level 1, the Exchange is proposing to pay a Customer a lower Rebate to Add Liquidity as compared to a Professional and NOM Market Maker. The Exchange believes that this proposal is equitable because the Customer has the opportunity to earn higher rebates with the tier structure as compared to a Professional, who will only receive a $0.29 per contract Rebate to Add Liquidity, and a NOM Market Maker, who will only receive a $0.30 per contract Rebate to Add Liquidity. Additionally, with respect to NOM Market Makers, the proposed fee structure is equitable because market makers have obligations to the market and regulatory requirements,[6] which normally do not apply to other market participants. Customers receive a higher Rebate to Add Liquidity for all tiers as compared to a Firm and Non-NOM Market Maker.[7]

The Exchange believes the proposed monthly tier structure for Customer Rebates to Add Liquidity in Penny Options is also reasonable because the amount of the rebate is similar to a tiered rebate offered by NYSE Arca, Inc. (''NYSE Arca''). NYSE Arca pays a per contract rate on all posted liquidity in Customer Penny Pilot Issues by aggregating total contracts executed that added liquidity in Penny Pilot Issues in a given month.[8]

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a market maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on NOM for all purposes under the Act or rules thereunder. *See* Chapter VII, Section 5.

[7] A Firm receives a $0.10 per contract Rebate to Add Liquidity and a Non-NOM Market maker receives a $0.25 per contract Rebate to Add Liquidity.

[8] *See* NYSE Arca's Fee Schedule.

The Exchange believes that the proposed monthly tier structure for Customer Rebates to Add Liquidity in Penny Options is equitable and not unfairly discriminatory because the Exchange would uniformly pay a Rebate to Add Liquidity to Customers executing Penny Options based on the monthly tiers proposed herein.

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which sophisticated and knowledgeable market participants can readily send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the proposed rebate structure and tiers are competitive and similar to other rebates and tiers in place on other exchanges. The Exchange believes that this competitive marketplace impacts the rebates present on the Exchange today and substantially influences the proposals set forth above.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [9] and paragraph (f)(2) of Rule 19b-4 [10] thereunder. 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–NASDAQ–2011–112 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–NASDAQ–2011–112. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2011–112 and should be submitted on or before September 12, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–21319 Filed 8–19–11; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65142; File No. SR–Phlx–2011–112]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Clarifying Amendments to the Rule Book

August 16, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on August 8, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rules 625, 3228 and Options Procedure Floor Advice (''OFPA'') F–10 to eliminate unnecessary text and correct cross-references in Rule text. The Exchange also proposes to eliminate an unnecessary title in the Rule Book.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to eliminate unnecessary text and correct cross-references in the Rule Book. The various amendments relate to cross-references and text in several Rules that were not deleted in connection with other rule filings. The Exchange proposes four amendments.

First, the Exchange proposes to amend language in Exchange Rule 625, entitled ''Training'' to remove a reference to a ''PAU.'' This reference relates to a term that was used in connection with XLE, the Exchange's former equity trading system, which is no longer utilized. The Exchange recently eliminated all references to XLE, including the definition of a Participant Authorized User of ''PAU.'' [3] The Exchange proposes to eliminate the reference to a PAU in Exchange Rule 625 as the term is no longer necessary.

Second, the Exchange proposes to amend a reference in Exchange Rule 3228, entitled ''Compliance with Rules and Registration Requirements.'' The Exchange recently amended Exchange Rule 3211 to move certain text in paragraphs (a) through (c) to a new Exchange Rule 911, entitled ''Member and Member Organization Participation.'' [4] The Exchange proposes to replace the reference to Exchange Rule 3211 with Exchange Rule 911 within Exchange Rule 3228 to reflect the current location of the referenced text.

Third, the Exchange also proposes to delete text in OFPA F–10, entitled ''Unusual Market Conditions.'' The Exchange previously filed a proposed rule change to delete Exchange Rule 1015, entitled ''Execution Guarantee'' and OFPA A–11, entitled ''Responsibility To Fill Customer Orders.'' [5] The Exchange deleted both Rule 1015 and OFPA A–11 because those rules were outdated due to the combination of the adoption of firm quote obligations in options and increased automation. The text of OFPA F–10 references both Exchange Rule 1015 and OFPA A–11 in the second paragraph. The Exchange is proposing to delete this paragraph as the text is no longer necessary and outdated.

Fourth, the Exchange is proposing a technical amendment to delete a reference to ''ITS Rules'' in the Rule Book. The Exchange previously removed references to the Intermarket Trading System (''ITS'') Plan and deleted Exchange Rules 2000–2002.[6] The Exchange proposes to delete this reference as it is unnecessary.

While changes pursuant to this proposal are immediately effective, the Exchange designates the amendment to Exchange Rule 3228 become operative on August 26, 2011.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Section 6(b)(5) of the Act [8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by amending the text of the Exchange Rules and OFPA to update cross-references and remove outdated and unnecessary text. The Exchange believes that these amendments will clarify the Exchange's Rules to the benefit of the membership.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(1) [10] thereunder, the Exchange has designated this proposal as one that constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the SRO, and therefore has become effective.

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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–112 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–Phlx–2011–112. 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

[3] *See* Securities Exchange Act Release No. 64338 (April 25, 2011), 76 FR 24069 (April 29, 2011) (SR–Phlx–2011–13).

[4] *See* Securities Exchange Act Release No. 65010 (August 2, 2011), 76 FR 48195 (August 8, 2011) (SR–Phlx–2011–100).

[5] *See* Securities Exchange Act Release No. 63064 (October 7, 2010), 75 FR 63231 (October 14, 2010) (SR–Phlx–2010–136).

[6] *See* Securities Exchange Act Release No. 55569 (April 2, 2007), 72 FR 17978 (April 10, 2007) (SR–Phlx–2007–31).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(1).

Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2011–112 and should be submitted on or before September 12, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–21321 Filed 8–19–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65141; File No. SR–CME–2011–01]

Self-Regulatory Organizations; Chicago Mercantile Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Rule Regarding Liens on Collateral That Relates Solely to Its Futures Clearing Operations

August 16, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 5, 2011, Chicago Mercantile Exchange Inc. (''CME'') 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 CME. CME filed the proposed rule change pursuant to Section 19(b)(3)(A)[3] of the Act and Rule 19b–4(f)(4)(ii)[4] thereunder.

I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change

The text of the proposed rule change is below. Italicized text indicates additions; bracketed text indicates deletions.

* * * * *

Rule 819. [Reserved] *Lien on Collateral.*

Each Clearing Member hereby grants to the Clearing House a first priority and unencumbered lien, as security for all obligations of such Clearing Member to the Clearing House, against any property and collateral deposited with the Clearing House by the Clearing Member which is the property of the Clearing Member. Clearing Members shall execute any documents required by CME to create and enforce such lien.

II. Self-Regulatory Organization's Statement of 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 and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

Current CME Rule 902.F provides that ''[e]ach Clearing Member hereby grants to the Clearing House a first priority and unencumbered lien against all memberships required for clearing membership by the Exchange.'' Other CME rules in Chapters 8 and 9 of the CME rulebook address the CME Clearing House's security interest in CME clearing member's guaranty fund and performance bond deposits (perfected by possession of the collateral), but do not contain the type of express language as appears in Rule 902.F. In order to more clearly indicate CME Clearing's security interest in CME clearing member's guaranty fund and performance bond deposits, CME proposes to adopt new CME Rule 819, which states as follows:

Each Clearing Member hereby grants to the Clearing House a first priority and unencumbered lien, as security for all obligations of such Clearing Member to the Clearing House, against any property and collateral deposited with the Clearing House by the Clearing Member which is the property of the Clearing Member. Clearing Members shall execute any documents required by CME to create and enforce such lien.

The proposed rule language mirrors that of CME Rule 8F008 (Lien on Collateral), in Chapter 8F (Over-the-Counter Derivative Clearing) of the CME rule book, which states that ''[e]ach OTC Clearing Member hereby grants to CME a first priority and unencumbered lien against any cash, securities or other collateral deposited with the Clearing House by the OTC Clearing Member which is the property of the OTC Clearing Member. OTC Clearing Members shall execute any documents required by CME to create and enforce such lien.''

New proposed Rule 819 only affects the futures clearing operations of CME. It does not significantly affect any securities clearing operations of CME or any related rights or obligations of CME clearing members. As discussed above, current CME Rule 8F008 currently applies to CME clearing members and is the operative rule covering the subject matter of proposed Rule 819 with respect to CME's security-based swaps clearing activities. As such, the proposed rule change effects a change in an existing service of a registered clearing agency that primarily affects the futures clearing operations of the clearing agency with respect to futures that are not security futures and does not significantly affect any securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service.

CME also submitted a filing to the Commodity Futures Trading Commission (''CFTC'') regarding proposed Rule 819 pursuant to CFTC Regulation 40.6 on July 26, 2011 with a proposed effective date of August 9, 2011 (that is, ten business days after the date of the submission).

B. Self-Regulatory Organization's Statement on Burden on Competition

CME 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

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has been filed pursuant to Section 19(b)(3)(A)[5] of the Act and paragraph (f)(4)(ii) of Rule 19b–4[6] thereunder and will become effective on August 9, 2011,[7] the same date CME's corresponding filing with

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4)(ii).

[5] *Supra* note 3.

[6] *Supra* note 4.

[7] The Commission notes that the proposed rule change became effective upon filing under Section 19(b)(3)(A) of the Act. CME's statement indicates that the proposed rule change, which became effective on August 5, 2011, will not become operative until August 9, 2011.

the CFTC becomes effective. 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 may be submitted by using 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–CME–2011–01 on the subject line.
- Paper comments should be sent 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–CME–2011–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of CME. 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–CME–2011–01 and should be submitted on or before September 12, 2011.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[8]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–21348 Filed 8–19–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65140; File No. SR–Phlx-2011–116]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period To Receive Inbound Routes of Orders From NASDAQ Options Services

August 16, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 11, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx submits this proposed rule change to extend the pilot period of Phlx's prior approval to receive inbound routes of certain option orders from Nasdaq Options Services, LLC (''NOS'') through November 25, 2011.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx 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. Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, NOS is the approved outbound routing facility of The NASDAQ Stock Market LLC (''NASDAQ'') for options, providing outbound routing from The NASDAQ Option Market (''NOM'') to other market centers.[3] Phlx also has been previously approved to receive inbound routes of certain option orders by NOS in its capacity as an order routing facility of NASDAQ for NOM on a pilot basis.[4] The Exchange hereby seeks to extend the previously approved pilot period for such inbound routing (with the attendant obligations and conditions) for an additional 3 months through November 25, 2011.[5]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(5) of the Act,[7] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the proposed rule change will allow the Exchange to continue receiving inbound routes of option orders from NOS acting in its capacity as a facility of NASDAQ for NOM, in a manner consistent with prior approvals and established protections. The Exchange believes that extending the previously approved pilot period for three months is of sufficient length to permit both the Exchange and the

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NOM Rule Chapter VI, Section 11; *See* Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004; SR–NASDAQ–2007–080).

[4] *See* Securities Exchange Act Release Nos. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR–Phlx–2008–31); 61667 (March 5, 2010), 75 FR 11964 (March 12, 2010) (SR–Phlx-2010–36); 61668 (March 5, 2010), 75 FR 12323 (March 15, 2010) (SR–NASDAQ–2010–028); 63873 (February 9, 2011), 76 FR 8798 (February 15, 2011) (SR–Phlx–2011–16).

[5] The Exchange has filed a separate proposal with the Commission seeking permanent approval of the Phlx and NOS routing relationship. See SR–Phlx–2011–111.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

Commission to assess the impact of the Exchange's authority to receive direct inbound routes of option orders via NOS (including the attendant obligations and conditions) while the Commission evaluates the Exchange's pending rule change to make the pilot program permanent.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9]

The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange believes that the proposed rule change does not significantly affect the protection of investors or the public interest because it seeks to extend for a limited period a currently operating pilot program so as to allow the Exchange and Commission to assess whether to make the pilot permanent in accordance with its attendant obligations and conditions.[10] The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot period to be extended without undue delay through November 25, 2011 while the Exchange's proposal to make the pilot permanent is under consideration. Therefore, the Commission designates the proposal operative upon filing.[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–Phlx-2011–116 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–Phlx-2011–116. 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx-2011–116, and should be submitted on or before September 12, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–21320 Filed 8–19–11; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] *See* SR–Phlx-2011–116, Item 7.

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65143; File No. SR–BYX–2011–016]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Y-Exchange, Inc.

August 16, 2011.

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 August 12, 2011, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fee schedule applicable to Members [5] of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

the Exchange pursuant to BYX Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal will be effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its fee schedule applicable to use of the Exchange in order to modify pricing related to executions that occur on EDGA EXCHANGE, Inc. (''EDGA'') through either a BYX + EDGA Destination Specific Order [6] or through the Exchange's TRIM routing strategy.[7] EDGA is implementing certain pricing changes effective August 1, 2011, including introduction of a fee to remove liquidity of $0.0006 per share. To maintain a direct pass through of the applicable cost to execute at EDGA, the Exchange proposes to charge $0.0006 per share for an order routed through its TRIM routing strategy and executed on EDGA. Similarly, because EDGA is part of the Exchange's ''One Under'' pricing program for Destination Specific Orders, the Exchange intends to continue to charge $0.0001 per share less than if a Member executed an order directly on EDGA. Accordingly, the Exchange proposes to charge $0.0005 per share for an order routed as a Destination Specific Order to EDGA and executed on EDGA, which is $0.0001 per share less than EDGA charges directly. The Exchange's ''One Under'' pricing does not apply to securities priced below $1.00. In addition, the Exchange will maintain the pricing currently charged by the Exchange for all other Destination Specific Orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[8] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[9] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that the proposed changes to certain of the Exchange's non-standard routing fees and strategies are competitive, fair and reasonable, and non-discriminatory in that they are equally applicable to all Members and are designed to mirror or provide a discount to the cost applicable to the execution if such routed orders were executed directly by the Member at EDGA Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act [10] and Rule 19b–4(f)(2) thereunder,[11] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective upon filing.

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–BYX–2011–016 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BYX–2011–016. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BYX–

[6] As defined in BYX Rule 11.9(c)(12).

[7] As defined in BYX Rule 11.13(a)(3)(G).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

2011–016 and should be submitted on or before September 12, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–21349 Filed 8–19–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Colorado Wyoming Reserve Co., Grant Life Sciences, Inc., NOXSO Corp., Omni Medical Holdings, Inc., and TSI, Inc., Order of Suspension of Trading

August 18, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Colorado Wyoming Reserve Company because it has not filed any periodic reports since the period ended March 31, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Grant Life Sciences, Inc. because it has not filed any periodic reports since the period ended March 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of NOXSO Corp. because it has not filed any periodic reports since the period ended December 31, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Omni Medical Holdings, Inc. because it has not filed any periodic reports since the period ended December 31, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of TSI, Inc. because it has not filed any periodic reports since the period ended September 30, 2004.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on August 18, 2011 through 11:59 p.m. EDT on August 31, 2011.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2011–21481 Filed 8–18–11; 4:15 pm]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Consolidated Energy, Inc., Diamond Home Services, Inc., Goran Capital Inc., Kingsley Coach, Inc. (The), Knockout Holdings, Inc., and Kuhlman Co., Inc.; Order of Suspension of Trading

August 18, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Consolidated Energy, Inc. because it has not filed any periodic reports since the period ended September 30, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Diamond Home Services, Inc. because it has not filed any periodic reports since the period ended September 30, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Goran Capital Inc. because it has not filed any periodic reports since the period ended March 31, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Kingsley Coach, Inc. (The) because it has not filed any periodic reports since the period ended March 31, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Knockout Holdings, Inc. because it has not filed any periodic reports since the period ended June 30, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Kuhlman Co., Inc. because it has not filed any periodic reports since the period ended October 28, 2006.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on August 18, 2011, through 11:59 p.m. EDT on August 31, 2011.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2011–21480 Filed 8–18–11; 4:15 pm]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of open Federal Advisory Committee meetings.

SUMMARY: The SBA is issuing this notice to announce the location, date, time and agenda for the Board Meeting of the National Small Business Development Center (SBDC) Advisory Board at the ASBDC Conference.

DATES: Wednesday, September 7, 2011 from 8:30 a.m.–12 p.m.

ADDRESSES: Manchester Grand Hyatt, One Market Place, San Diego, CA 92101.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), SBA announces the meetings of the National SBDC Advisory Board. This Board provides advice and counsel to the SBA Administrator and Associate Administrator for Small Business Development Centers.

The purpose of these meetings is to discuss following issues pertaining to the SBDC Advisory Board.:

—SBA Update.

—International Expansion.

—Use of Social Media.

—Member Roundtable.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public however advance notice of attendance is requested. Anyone wishing to be a listening participant must contact Alanna Falcone by fax or e-mail. Her contact information is Alanna Falcone, Program Analyst, 409 Third Street, SW., Washington, DC 20416, Phone, 202–619–1612, Fax 202–481–0134, e-mail, *alanna.falcone@sba.gov.*

Additionally, if you need accommodations because of a disability or require additional information, please

contact Alanna Falcone at the information above.

Dan S. Jones,

Committee Management Officer.

[FR Doc. 2011–21302 Filed 8–19–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 7563]

Culturally Significant Objects Imported for Exhibition

Determinations: ''5,000 Years of Chinese Jade Featuring Selections From the National Museum of History, Taiwan and the Arthur M. Sackler Gallery, Smithsonian Institution'' Exhibition

ACTION: Notice, correction.

SUMMARY: On July 29, 2011, notice was published on pages 45646 and 45647 of the **Federal Register** (volume 76, number 146) of determination made by the Department of State pertaining to the exhibition ''5,000 Years of Chinese Jade Featuring Selections From the National Museum of Taiwan and the Arthur M. Sackler Gallery, Smithsonian Institution.'' The referenced notice is corrected as to the name of the exhibition, which is ''5,000 Years of Chinese Jade Featuring Selections from the National Museum of History, Taiwan and the Arthur M. Sackler Gallery, Smithsonian Institution.'' The exhibition or display of the exhibit objects is at the San Antonio Museum of Art, San Antonio, TX, from on or about October 1, 2011, until on or about February 19, 2012, and at possible additional exhibitions or venues yet to be determined. I have ordered that Public Notice of the correction of the name be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: August 16, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–21366 Filed 8–19–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7562]

Privacy Act; System of Records: State-76, Personal Services Contractor Records

SUMMARY: Notice is hereby given that the Department of State proposes to create a new system of records, Personal Services Contractor Records, State-76, pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a) and Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on July 20, 2011.

It is proposed that the new system be named ''Personal Services Contractor Records.'' It is also proposed that the new system description will document personal services contract record files, reports of contractor actions, and the documents required in connection with the contractor during his or her employment. Any persons interested in commenting on the new system of records may do so by writing to the Director, Office of Information Programs and Services, A/GIS/IPS, Department of State, SA–2, 515 22nd Street, Washington, DC 20522–8001. This system of records will be effective 40 days from the date of publication, unless we receive comments that will result in a contrary determination.

The new system description, ''Personal Services Contractor Records, State-76,'' will read as set forth below.

Dated: July 20, 2011.

William H. Moser,

Acting Assistant Secretary, Bureau of Administration, U.S. Department of State.

STATE–76

SYSTEM NAME:

Personal Services Contractor Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at those offices that have personal services contractor hiring authority and their corresponding automated data processing facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All personal services contractors with the Department of State.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Contractor Personnel File: Name, Social Security number, address, résumés, clearance level, pay grade, salary, contract number, position title, and position number.

2. Contract Actions: Salary worksheet computation(s), statement of work, superior qualifications approval memo, final letter of offer, copies of contract, performance evaluation form(s), correspondences, advanced leave request(s), and certificate(s) of training.

3. Contract Termination: Contractor's release form and out-processing checklist.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 2669(c).

PURPOSE:

To keep a record of personal services contractors; to document personal services contract record files, reports of contractor actions, and the documents required in connection with the contractor during his or her employment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The Department of State periodically publishes in the **Federal Register** its standard routine uses that apply to all of its Privacy Act systems of records. These notices appear in the form of a Prefatory Statement. These standard routine uses apply to Personal Services Contractor Records, State-76.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

By individual name or Social Security number (SSN).

SAFEGUARDS:

All users are given cyber security awareness training which covers the procedures for handling Sensitive But Unclassified information, including personally identifiable information (PII). Annual refresher training is mandatory. In addition, all Foreign Service, all Civil Service, and those Locally Engaged Staff who handle PII are required to take an FSI distance learning course instructing employees on privacy and security requirements, including the rules of behavior for handling PII and the potential consequences if it is handled improperly. Before being granted access to Personal Services Contractor Records, a user must first be granted access to the Department of State computer system.

Remote access to the Department of State network from non-Department owned systems is authorized only through a Department approved access program. Remote access to the network is configured with the Office of Management and Budget Memorandum M–07–16 security requirements, which include but are not limited to two-factor authentication and time-out function.

All Department of State employees and contractors with authorized access have undergone a thorough background security investigation. Access to the Department of State, its annexes and posts abroad is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All paper records containing personal information are maintained in secured file cabinets in restricted areas, access to which is limited to authorized personnel only. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage.

When it is determined that a user no longer needs access, the user account is disabled.

RETENTION AND DISPOSAL:

Records are disposed in accordance with published Department of State Records Disposition Schedules as approved by the National Archives and Records Administration (NARA). Personal Services Contractor records are transferred to a storage center and destroyed 6 years and 3 months after termination of the personal services contract. More specific information may be obtained by writing the Director, Office of Information Programs and Services, Department of State, SA–2, 515 22nd Street NW., Washington, DC 20522–8001.

SYSTEM MANAGER AND ADDRESS:

Office of the Procurement Executive (A/OPE), Department of State, SA–27, 1000 Wilson Blvd., Arlington, VA 20522.

NOTIFICATION PROCEDURES:

Individuals who have cause to believe that the Office of the Procurement Executive here might have records pertaining to them should write to the Director, Office of Information Programs and Services, Department of State, SA–2, 515 22nd Street, NW., Washington, DC 20522–8001. The individual must specify that he/she wishes the records of the Office of the Procurement Executive to be checked. At a minimum, the individual must include: Name; date and place of birth; current mailing address and zip code; signature; the approximate dates of employment with the Department of State; and the nature of such employment.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Director, Office of Information Programs and Services (address above).

CONTESTING RECORD PROCEDURES:

(See above).

RECORD SOURCE CATEGORIES:

These records contain information obtained directly from the individual who is the subject of these records, supervisors, and human resource staff of the bureau that employs the personal services contractor.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 2011–21365 Filed 8–19–11; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate for the use of non-domestic ½″ × 0.008 steel fiber with ultimate tensile strength of 290ksi for experimental use in Ultra High Performance Concrete (UHPC) in Oregon and New York.

DATES: The effective date of the waiver is August 23, 2011.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, (202) 366–1562, or via e-mail at *gerald.yakowenko@dot.gov.* For legal questions, please contact Mr. Michael Harkins, FHWA Office of the Chief Counsel, (202) 366–4928, or via e-mail at *michael.harkins@dot.gov.* Office hours for the FHWA are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register**'s home page at: *http://www.archives.gov* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

The FHWA's Buy America policy in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate to use non-domestic ½″ × 0.008 steel fiber with ultimate tensile strength of 290ksi for experimental use in UHPC in Oregon and New York.

In accordance with Division A, section 123 of the ''Consolidated Appropriations Act, 2010'' (Pub. L. 111–117), the FHWA published a notice of intent to issue a waiver on its Web site for ½″ × 0.008 steel fiber with ultimate tensile strength of 290ksi for experimental use in UHPC in Oregon and New York (*http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=55*) on April 4th. The FHWA received seven comments in response to the publication. Three commenters opposed the waiver request but did not provide information about domestic manufacturers. Three other commenters were in support of the waiver and suggested that domestic manufacturers of steel fibers should have been in production by now. Oregon Department of Transportation responded to each comment received for this waiver request. During the 15-day comment period, the FHWA conducted additional nationwide review to locate potential domestic manufacturers for ½″ × 0.008 steel fiber with ultimate tensile strength of 290ksi for experimental use in UHPC in Oregon and New York. Based on all the information available to the agency, the FHWA concludes that there are no domestic manufacturers of ½″ × 0.008 steel fiber with ultimate tensile strength of 290ksi for experimental use in UHPC in Oregon and New York.

In accordance with the provisions of section 117 of the SAFETEA–LU Technical Corrections Act of 2008 (Pub.

L. 110–244, 122 Stat. 1572), the FHWA is providing this notice as its finding that a waiver of Buy America requirements is appropriate. The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to the FHWA's Web site via the link provided to the Oregon/New York waiver page noted above.

Authority: 23 U.S.C. 313; Pub. L. 110–161, 23 CFR 635.410.

Issued on: August 15, 2011.

Victor M. Mendez,

Administrator.

[FR Doc. 2011–21404 Filed 8–19–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate for the use of non-domestic 5 ⅜″ stud link chain for a Recovery Act bridge replacement project in Larose, Louisiana.

DATES: The effective date of the waiver is August 23, 2011.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, (202) 366–1562, or via e-mail at *gerald.yakowenko@dot.gov*. For legal questions, please contact Mr. Michael Harkins, FHWA Office of the Chief Counsel, (202) 366–4928, or via e-mail at *michael.harkins@dot.gov*. Office hours for the FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register's** home page at: *http://www.archives.gov* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

Background

The FHWA's Buy America policy in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate to use non-domestic 5 ⅜″ stud link chain on a Federal-aid project in Larose, Louisiana.

In accordance with Division A, section 123 of the ''Consolidated Appropriations Act, 2010'' (Pub. L. 111–117), the FHWA published a notice of intent to issue a waiver on its Web site (*http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=56*) on April 12th. The FHWA received three comments in response to the publication. Two of the comments inquired for more detailed information about the project and the purpose of using the stud link chain on the project. The third comment, by the Louisiana Department of Transportation, responded to the first two comments. The response provided additional information about the project, including the purpose for the use of the 5 ⅜″ stud link chain. During the 15-day comment period, the FHWA conducted additional nationwide review to locate potential domestic manufacturers for 5 ⅜″ stud link chain. Based on all the information available to the agency, the FHWA concludes that there are no domestic manufacturers of 5 ⅜″ stud link chain.

In accordance with the provisions of section 117 of the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572), the FHWA is providing this notice as its finding that a waiver of Buy America requirements is appropriate. The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to the FHWA's Web site via the link provided to the Louisiana page noted above.

(Authority: 23 U.S.C. 313; Pub. L. 110–161, 23 CFR 635.410)

Issued on: August 15, 2011.

Victor M. Mendez,

Administrator.

[FR Doc. 2011–21402 Filed 8–19–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2011–0050]

Temporary Closure of I–395 Just South of Conway Street in the City of Baltimore to Vehicular Traffic To Accommodate the Construction and Operation of the Baltimore Grand Prix

AGENCIES: Federal Highway Administration (FHWA), DOT.

ACTION: Final Notice.

SUMMARY: The FHWA has approved a request from Maryland Transportation Authority (MDTA) to temporarily close a portion of I–395 (just south of Conway Street in Baltimore City) from approximately 7 p.m. on Thursday, September 1, 2011, until approximately 6 a.m. on Tuesday, September 6, 2011. The closure is requested to accommodate the construction and operation of the Baltimore Grand Prix (BGP), which will use the streets of downtown Baltimore as a race course.

The approval is granted in accordance with the provisions of 23 CFR 658.11 which authorizes the deletion of segments of the federally designated routes that make up the National Network designated in Appendix A of 23 CFR Part 658. The FHWA published a Notice and Request for Comment on June 28, 2011, seeking comments from the general public on this request submitted by the MDTA for a deletion in accordance with 23 CFR 658.11(d). No public comments were received.

DATES: *Effective Date(s):* This Notice is effective immediately.

FOR FURTHER INFORMATION CONTACT: Mr. John Nicholas, Truck Size and Weight Program Manager in the Office of Freight Management, (202) 366–2317; Mr. William Winne, Office of the Chief Counsel, (202) 366–0791, Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; and Mr. Gregory Murrill, FHWA Division Administrator-DELMAR Division, (410) 962–4440. Office hours for FHWA are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may retrieve a copy of the Notice and Request for Comment, comments submitted to the docket, and a copy of this final notice through the Federal eRulemaking portal at: *http://www.regulations.gov*. The Web site is available 24 hours each day, 365 days each year. Electronic submission and

retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from Office of the Federal Register's home page at: *http://www.archives.gov/federal_register* and the Government Printing Office's Web page at: *http://www.gpoaccess.gov.*

Background

The MDTA submitted a request to the FHWA for approval of the temporary closure of I–395 just south of Conway Street in the city of Baltimore from the period beginning Thursday, September 1, 2011, at approximately 7 p.m. through Tuesday, September 6, 2011, at around 6 a.m., encompassing the Labor Day holiday. This closure will be undertaken in support of the BGP which will use the streets of downtown Baltimore as a race course. The MDTA is the owner and operator of I–395 and I–95 within the city of Baltimore.

The FHWA is responsible for enforcing the Federal regulations applicable to the National Network of highways that can safely and efficiently accommodate the large vehicles authorized by provisions of the Surface Transportation Assistance Act of 1982 (STAA), as amended, designated in accordance with 23 CFR Part 658 and listed in Appendix A. In accordance with 23 CFR 658.11, the FHWA may approve deletions or restrictions of the Interstate system or other National Network route based upon specified justification criteria in § 658.11(d)(2). Requests for deletions are published in the **Federal Register** for notice and comment.

Notice and Request for Comment

The FHWA published a Notice and Request for Comment on June 28, 2011, seeking comments from the general public on this request submitted by the MDTA for a deletion in accordance with 23 CFR 658.11(d). The comment period closed on July 28, 2011. No public comments were received.

The FHWA sought comments on this request for temporary deletion from the National Network in accordance with 23 CFR 658.11(d). Specifically, the request is for approval of the temporary closure of I–395 just south of Conway Street in the city of Baltimore from the period beginning Thursday, September 1, 2011, at approximately 7 p.m. through Tuesday, September 6, 2011, at around 6 a.m., encompassing the Labor Day holiday. This closure will be undertaken in support of the BGP which will use the streets of downtown Baltimore as a race course. It is anticipated the BGP event will be hosted in the city of Baltimore for 5 consecutive years beginning in 2011. The inaugural event is scheduled to occur September 2 through September 4, 2011. The event is expected to attract 150,000 spectators over a 3–4 day period, not including the event organizer workforce and volunteers, the racing organizations and their respective personnel, or media and vendors. Event planners expect spectators from within a 400-mile radius of the city, with a large portion traveling the I–95 corridor. It is anticipated that the attendance for the peak day (Sunday) will reach 70,000 people with most arriving by private vehicle.

The construction and operation of the race course will create safety concerns by obstructing access from the I–395 northern terminus to the local street system including Howard Street, Conway Street, and Lee Street. However, an existing connection from I–395 to Martin Luther King Jr. Boulevard will remain open throughout the event. In addition, access to and from I–95 into and out of the city along alternative access routes, including U.S. 1, U.S. 40, Russell Street, and Washington Boulevard will be maintained. The BGP and the city are developing a signage plan to inform and guide motorists to, through, and around the impacted downtown area. The statewide transportation operations system, the Coordinated Highways Action Response Team, will provide real-time traffic information to motorists through dynamic message signs and highway advisory radio. The MDTA states that the temporary closure of this segment of I–395 to general traffic should have no impact on interstate commerce. I–95, the main north-south Interstate route in the region, will remain open during the time period of the event. There are five additional I–95 interchanges, just to the north or south of I–395, with connections to the local street system including the arterials servicing the city's downtown area. A sign and supplemental traffic control systems plan is being developed as part of the event's Traffic Management Plan (TMP). In addition, I–695 (Baltimore Beltway) will provide motorists traveling through the region the ability to bypass the impact area by circling around the city.

Commercial motor vehicles of the dimensions and configurations described in 23 CFR 658.13 and 658.15 which serve the impacted area, may use the alternate routes listed above. Vehicles servicing the businesses bordering the impacted area will still be able to do so by also using the alternative routes noted above to circulate around the restricted area. In addition, vehicles not serving businesses in the restricted area but, currently using I–395 and the local street system to reach their ultimate destinations, will be able to use the I–95 interchanges north and south of I–395 to access the alternative routes. A map depicting the alternative routes is available electronically at the docket established for this notice at *http://www.regulations.gov.* The MDTA has reviewed these alternative routes and determined the routes to generally be capable of safely accommodating the diverted traffic during the period of temporary restriction. As mentioned previously, a sign and supplemental traffic control system plan is also being developed as part of the event's TMP. Commercial vehicles as well as general traffic leaving the downtown area will also be able to use the alternative routes to reach I–95 and the rest of the Interstate System. The BGP and the city are working closely with businesses, including the hotels and restaurants located within the impact area, to schedule deliveries prior to the proposed I–395 closure to the extent feasible. The BGP is also working with affected businesses to schedule delivery services during the event period.

The plan is to use a credentialing process for access through designated gates with access to specific loading areas. This request to temporarily close I–395 was prepared for the MDTA by the BGP and the city. In addition, the city has reached out to the Federal, State, and local agencies to collaborate and coordinate efforts to address the logistical challenges of hosting the BGP. The BGP and the city have worked extensively with the businesses and residential communities in the city that could be affected by the event. These efforts include the formation of Task Forces and event Sub-Committees, to guide the development of plans for event security, transportation management, public safety and more. Neighborhood meetings have been held since late 2009 to discuss the event and pertinent access issues.

The FHWA did not receive any comments in response to the Notice and Request for Comment. After full consideration of the MDTA request discussed in this final notice and determining that the request meets the requirements of 23 CFR 658.11(d), the FHWA approves the deletion as proposed.

Authority: 23 U.S.C. 127, 315 and 49 U.S.C. 31111, 31112, and 31114; 23 CFR Part 658.

Issued on: August 15, 2011.

Victor M. Mendez,

Administrator.

[FR Doc. 2011–21406 Filed 8–19–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2011–0001–N–11]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, (FRA), Department of Transportation (DOT).

ACTION: Notice and Request for Comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirements (ICRs) abstracted below are being forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collections and their expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on June 13, 2011 (76 FR 34287).

DATES: Comments must be submitted on or before September 21, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., 3rd Floor, Mail Stop 25, Washington, DC 20590, (telephone: (202) 493–6292), or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., 3rd Floor, Mail Stop 35, Washington, DC 20590, (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On June 13, 2011, FRA published a 60-day notice in the **Federal Register** soliciting comment on these ICRs for which the agency is seeking OMB approval. 76 FR 34287. FRA received no comments in response to this notice.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication of this Notice to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describes the nature of the information collection requirements (ICRs) and the expected burden being submitted for clearance by OMB as required by the PRA.

Title: Locomotive Safety Standards and Event Recorders.

OMB Control Number: 2130–0004.

Type of Request: Extension without change of a currently approved collection.

Affected Public: Businesses.

Abstract: The Locomotive Inspection requires railroads to inspect, repair, and maintain locomotives and event recorders so that they are safe, free of defects, and can be placed in service without peril to life. Crashworthy locomotive event recorders provide FRA with verifiable factual information about how trains are maintained and operated, and are used by FRA and State inspectors for Part 229 rule enforcement. The information garnered from crashworthy event recorders is also used by railroads to monitor railroad operations and by railroad employees (locomotive engineers, train crews, dispatchers) to improve train handling, and promote the safe and efficient operation of trains throughout the country, based on a surer knowledge of different control inputs.

Form Number(s): FRA F 6180.49A.

Total Annual Estimated Burden Hours: 863,951 hours.

Addressee: Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via e-mail to OMB at the following address: *oira-submissions@omb.eop.gov.*

Comments are invited on the following: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on August 16, 2011.

Kimberly Coronel,

Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. 2011–21298 Filed 8–19–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 27, 2011, and comments were due by July 26, 2011. No comments were received.

DATES: Comments must be submitted on or before September 23, 2011.

FOR FURTHER INFORMATION CONTACT: Daniel Ladd, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–1859; or E-mail: *daniel.ladd@dot.gov.* Copies of this

collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Title XI Obligation Guarantees.

OMB Control Number: 2133–0018.

Type of Request: Extension of currently approved collection.

Affected Public: Individuals/businesses interested in obtaining loan guarantees for construction or reconstruction of vessels as well as businesses interested in shipyard modernization and improvements.

Forms: MA–163, MA–163A.

Abstract: In accordance with the Merchant Marine Act, 1936, MARAD is authorized to execute a full faith and credit guarantee by the United States of debt obligations issued to finance or refinance the construction or reconstruction of vessels. In addition, the program allows for financing shipyard modernization and improvement projects.

Annual Estimated Burden Hours: 700 hours.

Addressees: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

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

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Dated: August 16, 2011.

By Order of the Maritime Administration.

Julie Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2011–21325 Filed 8–19–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2011–0126]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before October 21, 2011.

ADDRESSES: You may submit comments, identified by the docket number in the heading of this document, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments on the electronic docket site by clicking on ''Help'' or ''FAQ.''
- *Hand Delivery:* 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Regardless of how you submit comments, you should mention the docket number of this document.

You may call the Docket Management Facility at 202–366–9826.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://www.dot.gov/privacy.html.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov,* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Kil-Jae Hong, NHTSA, 1200 New Jersey Avenue SE., W52–232, NPO–520, Washington, DC 20590. Ms. Hong's telephone number is (202) 493–0524 and e-mail address is *kil-jae.hong@dot.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information for which the agency is seeking approval from OMB:

Title: 49 CFR 575—Consumer Information Regulations (sections 103 and 105) Quantitative Research.

OMB Control Number: Not Assigned.

Form Number: None.

Affected Public: Passenger vehicle consumers.

Requested Expiration Date of Approval: Three years from approval date.

Abstract: The Energy Independence and Security Act of 2007 (EISA), enacted in December 2007, included a requirement that the National Highway Traffic Safety Administration (NHTSA) develop a consumer information and education campaign to improve consumer understanding of automobile performance with regard to fuel economy, Greenhouse Gases (GHG) emissions and other pollutant emissions; of automobile use of alternative fuels; and of thermal management technologies used on automobiles to save fuel. In order to effectively achieve the objectives of the consumer education program and fulfill its statutory obligations, NHTSA proposes a multi-phased research project to gather the data and apply analyses and results from the project to develop the consumer information program and education campaign. NHTSA has conducted qualitative research and is now requesting to conduct follow-up quantitative research with consumers to assess current levels of knowledge surrounding these issues, explore current available fuel economy-related content for clarity and understanding, evaluate potential consumer-facing messages and their potential to encourage consumers to seek more fuel economy-related information from NHTSA, and explore communications channels in which these messages should be present. The research will allow NHTSA to refine the fuel economy-related content and consumer-facing messaging that will be used throughout the consumer education campaign by identifying what relevant issues consumers care more about and what information they still need to make more informed purchase and driver behavior decisions.

Estimated Annual Burden: 1,333.33 hours.

Number of Respondents: 4,000.

NHTSA proposed to conduct two research phases. For the first phase, NHTSA conducted one type of qualitative research consisting of two (2) focus groups in each of four (4) cities. The results of that research phase were used to inform the quantitative phase of research which this notice addresses. This quantitative research will consist of an online survey that will require approximately 20 minutes for each respondent to complete, and will require 4,000 participants. NHTSA plans to administer this study one time.

The estimated annual burden hour for the second phase of research is 1,333.33 hours (20 minutes × 4,000 participants). Based on the Bureau of Labor and Statistics' median hourly wage (all occupations) in the May 2010 National Occupational Employment and Wage Estimates, NHTSA estimates that it will take an average of $16.27 per hour for professional and clerical staff to gather data, develop and distribute material. Therefore, the agency estimates that the cost associated with the burden hours is $21,693.28 ($16.27 per hour × 1,333.33 burden hours).

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: August 17, 2011.

Gregory A. Walter,

Senior Associate Administrator, Policy and Operations.

[FR Doc. 2011–21399 Filed 8–19–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Indexing the Annual Operating Revenues of Railroads

The Surface Transportation Board (STB) is publishing the annual inflation-adjusted index factors for 2010. These factors are used by the railroads to adjust their gross annual operating revenues for classification purposes. This indexing methodology insures that railroads are classified based on real business expansion and not from the affects of inflation. Classification is important because it determines the extent to which individual railroads must comply with STB reporting requirements.

The STB's annual inflation-adjusted factors are based on the annual average Railroad's Freight Price Index which is developed by the Bureau of Labor Statistics (BLS). The STB's deflator factor is used to deflate revenues for comparison with established revenue thresholds.

The base year for railroads is 1991. The inflation index factors are presented as follows:

STB RAILROAD INFLATION-ADJUSTED INDEX AND DEFLATOR FACTOR TABLE

Year	Index	Deflator
1991	409.50	[1] 100.00
1992	411.80	99.45
1993	415.50	98.55
1994	418.80	97.70
1995	418.17	97.85
1996	417.46	98.02
1997	419.67	97.50
1998	424.54	96.38
1999	423.01	96.72
2000	428.64	95.45
2001	436.48	93.73
2002	445.03	91.92
2003	454.33	90.03
2004	473.41	86.40
2005	522.41	78.29
2006	567.34	72.09
2007	588.30	69.52
2008	656.78	62.28
2009	619.73	66.00
2010	652.29	62.71

DATES: *Effective Date:* January 1, 2010.

FOR FURTHER INFORMATION CONTACT: Scott Decker 202–245–0330. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

By the Board, William F. Huneke, Director, Office of Economics.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–21276 Filed 8–19–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of Additional Entities Pursuant to Executive Order 13405

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of four newly-designated entities whose property and interests in property are blocked pursuant to Executive Order 13405 of June 16, 2006, ''Blocking Property of Certain Persons Undermining Democratic Processes or Institutions in Belarus.''

DATES: The designation by the Director of OFAC of the four entities identified in this notice, pursuant to Executive

[1] Ex Parte No. 492, *Montana Rail Link, Inc., and Wisconsin Central Ltd., Joint Petition For Rulemaking With Respect To 49 CFR 1201,* 8 I.C.C. 2d 625 (1992), raised the revenue classification level for Class I railroads from $50 million (1978 dollars) to $250 million (1991 dollars), effective for the reporting year beginning January 1, 1992. The Class II threshold was also raised from $10 million (1978 dollars) to $20 million (1991 dollars).

Order 13405, is effective August 11, 2011.

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

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treasury.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, *Tel.:* 202/622–0077.

Background

On June 16, 2006, the President issued Executive Order 13405 (the ''Order'') pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–06). In the Order, the President declared a national emergency to address political repression, electoral fraud, and public corruption in Belarus. The Order imposes economic sanctions on persons responsible for actions or policies that undermine democratic processes or institutions in Belarus. The President identified ten individuals as subject to the economic sanctions in the Annex to the Order.

Section 1 of the Order blocks, with certain exceptions, all property, and interests in property, that are in, or hereafter come within, the United States or the possession or control of United States persons for persons listed in the Annex and those persons determined by the Secretary of the Treasury, after consultation with the Secretary of State, to satisfy any of the criteria set forth in subparagraphs (a)(ii)(A) through (a)(ii)(E) of Section 1.

On August 11, 2011, the Director of OFAC, in consultation with the Secretary of State, designated, pursuant to one or more of the criteria set forth in Section 1, subparagraphs (a)(ii)(A) through (a)(ii)(E) of the Order, the following four entities, whose names have been added to the list of Specially Designated Nationals and whose property and interests in property are blocked, pursuant to Executive Order 13405:

1. BELSHINA OAO (a.k.a. BELSHINA OJSC; a.k.a. BELSHINA TYRE WORKS OAO; a.k.a. JSC BELSHINA; f.k.a. RUP BELORUSSKY SHINNY KOMBINAT BELSHINA), Minsk Highway Bobruisk, 213824, Mogilev Region, Belarus; Minskoye schosse Bobruisk 213824, Mogilevskaya oblast, Belarus; Minsk Highway, Bobruisk, Mogilev region, Belarus; [BELARUS]
2. GRODNO AZOT OAO (a.k.a. GRODNO AZOT; f.k.a. GPO AZOT OJSC; f.k.a. GRODNESKOYE PROZVODSTVENNOYE OBYEDINENYE AZOT; f.k.a. RUP GRODNENSKOYE PO AZOT; f.k.a. RUP GPO AZOT), 100 Kosmonavtov Avenue, 230013, Grodno, Belarus; 100 Kosmonavtov pr., 230013, Grodno, Belarus; Prospekt Kosmanovtov 100, 230013, Grodno, Belarus; [BELARUS]
3. GRODNO KHIMVOLOKNO OAO (a.k.a. JSC GRODNO KHIMVOLOKNO; a.k.a. GRODNO KHIMVOLOKNO JSC; a.k.a. GRODNO CHEMICAL FIBRE OJSC), 4 Slavinskogo Street, 230026, Grodno, Belarus; ulitsa Slavinskogo 4, 230026, Grodno, Belarus; str. Slavinskogo 4, 230026, Grodno, Belarus; [BELARUS]
4. NAFTAN OAO (a.k.a. NAFTAN OJSC; a.k.a. NAFTAN; f.k.a. NAFTAN PROIZVODSTVENNOYE OBYEDINENYE; f.k.a. NAFTAN PRODUCTION ASSOCIATION), Industrial Area, Novopolotsk-1, 211440, Vitebsk Region, Belarus; Novopolotsk, 21140, Vitebsk region, Belarus; Novopolotsk, 211440, Vitebskaya Oblast, Belarus; [BELARUS]

Dated: August 11, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–21376 Filed 8–19–11; 8:45 am]

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Part II

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Implementation Plans; New Mexico; Federal Implementation Plan for Interstate Transport of Pollution Affecting Visibility and Best Available Retrofit Technology Determination; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

EPA–R06–OAR–2010–0846; FRL–9451–1

Approval and Promulgation of Implementation Plans; New Mexico; Federal Implementation Plan for Interstate Transport of Pollution Affecting Visibility and Best Available Retrofit Technology Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is disapproving a portion of the State Implementation Plan (SIP) revision received from the State of New Mexico on September 17, 2007, for the purpose of addressing the ''good neighbor'' requirements of section 110(a)(2)(D)(i) of the Clean Air Act (CAA or Act) for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS or standards) and the 1997 fine particulate matter ($PM_{2.5}$) NAAQS. In this action, EPA is disapproving the New Mexico Interstate Transport SIP provisions that address the requirement of section 110(a)(2)(D)(i)(II) that emissions from New Mexico sources do not interfere with measures required in the SIP of any other state under part C of the CAA to protect visibility. We have found that New Mexico sources, except the San Juan Generating Station, are sufficiently controlled to eliminate interference with the visibility programs of other states. EPA is promulgating a Federal Implementation Plan (FIP) to address this deficiency by implementing nitrogen oxides (NO_X) and sulfur dioxide (SO_2) emission limits necessary at the San Juan Generating Station (SJGS), to prevent such interference. EPA found in January 2009 that New Mexico had failed to submit a SIP addressing certain regional haze (RH) requirements, including the requirement for best available retrofit technology (BART). The Clean Air Act required EPA to promulgate a FIP to address RH requirements by January 2011. This FIP addresses the RH BART requirement for NO_X for SJGS. In addition, EPA is implementing sulfuric acid (H_2SO_4) hourly emission limits at the SJGS, to minimize the contribution of this compound to visibility impairment. This action is being taken under section 110 and part C of the CAA.

DATES: This final rule is effective on: September 21, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2010–0846. All documents in the docket are listed in the Federal eRulemaking portal index at *http://www.regulations.gov* and are available either electronically at *http://www.regulations.gov* or in hard copy at EPA Region 6, 1445 Ross Ave., Dallas, TX 75202–2733. To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section. A reasonable fee may be charged for copies.

FOR FURTHER INFORMATION CONTACT: Joe Kordzi, EPA Region 6, (214) 665–7186, *kordzi.joe@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' ''our,'' or ''the Agency'' is used, we mean the EPA. Unless otherwise specified, when we say the ''San Juan Generating Station,'' or ''SJGS,'' we mean units 1, 2, 3, and 4, inclusive.

Overview

The Clean Air Act requires states to prevent air pollution from sources within their borders from impairing air quality and visibility in other states. The Act also requires states to reduce pollution from significant sources whose emissions reduce visibility in the nation's pristine and wilderness areas (such as the Grand Canyon), and contribute to regional haze. When a state has not adopted plans as required by these provisions, EPA must put such a plan in place, known as a Federal Implementation Plan (FIP).

In this action, EPA is finalizing a FIP for New Mexico to address emissions from one source: the San Juan Generating Station coal-fired power plant. EPA is finding that the other New Mexico pollution sources are adequately controlled to eliminate interference with the clean air visibility programs of other states. This FIP can be replaced by a state plan that EPA finds meets the applicable Clean Air Act requirements. The federal plan will remain in effect no longer than necessary.

In December 2010, EPA proposed to disapprove a portion of the New Mexico Interstate Transport State Implementation Plan (SIP), specifically the New Mexico Interference with Visibility SIP, and proposed a source-specific FIP to cut pollution from San Juan Generating Station to address adverse visibility impacts.

The federal plan also addresses a portion of EPA's 2-year obligation under the Clean Air Act's Regional Haze Rule to implement a federal plan when the state failed to meet the January 2009 deadline. This shortfall is being addressed by establishing emissions limits representing Best Available Retrofit Technology (BART) for nitrogen oxide (NOx) pollution at the San Juan Generating Station power plant.

The federal plan will require the San Juan Generating Station to cut emissions to improve scenic views at 16 of our most treasured parks including the Grand Canyon, Mesa Verde and Bandelier National Monument. Pollution from this power plant impacts four states including Arizona, Utah, Colorado, and New Mexico. Improved air quality also results in public health benefits.

Public Service Company of New Mexico (PNM) owns the San Juan Generating Station power plant. The power plant has four coal-fired generating units. It is located in San Juan County, 15 miles west of Farmington in northwest New Mexico. The thirty-year-old San Juan Generation Station power plant is one of the largest sources of NOx pollution in the United States.

The federal plan requires the San Juan Generating Station coal-fired power plant to reduce nitrogen oxide and sulfur dioxide pollution to 0.05 pounds per million BTU and 0.15 pounds per million BTU respectively.

By addressing nitrogen oxide pollution requirements of both Interstate Transport and the Regional Haze Rule, PNM will meet these two Clean Air Act requirements for NOx emission limits for the power plant with only one round of improvements. This regulatory certainty will help guide PNM's business decisions regarding capital investments in pollution controls.

EPA evaluated reliable and proven pollution technologies as part of its decision. EPA determined Selective Catalytic Reduction (SCR) to be the most cost-effective pollution control to achieve the emission reductions outlined in the federal plan. Evaluation of a less expensive alternative, Selective Non Catalytic Reduction (SNCR), showed that SNCR at the San Juan Generating Station coal-fired power plant achieves far less reduction in pollution and less visibility improvement, and does not fully meet the requirement of the Act for Best Available Retrofit Technology (BART).

EPA held an extended public comment period on this action, an open house, and a public hearing. After careful review of information provided during the public comment period, EPA revised its calculation of the associated cost investment from $229 million to $345 million. Also, in consideration of comments about the time to comply with the new emissions limits, EPA

extended the time for compliance with the nitrogen oxide pollution emission limit from 3 years to 5 years, the maximum period allowed by the Clean Air Act.

This investment will reduce the visibility impacts due to this facility by over 50% at each one of the 16 national parks and wilderness areas in the area, and promote local tourism by decreasing the number of days when pollution impairs scenic views. Although today's action is taken to address visibility impairments, PNM will also reduce public health impacts by cutting NO_X pollution by over 80% by installing reliable pollution-control technology on its four coal-fired power generation units over the next five years.

EPA will review the regional haze plan that the State submitted in July 2011, and if there is significant new information that changes our analysis, EPA will make appropriate revisions to today's decision.

Detailed Outline

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I. Summary of Our Proposal

On January 5, 2011, we published the proposal on which we are now taking final action. 76 FR 491. We proposed to disapprove a portion of the SIP revision received from the State of New Mexico on September 17, 2007, for the purpose of addressing the ''good neighbor'' provisions of the CAA section 110(a)(2)(D)(i) with respect to visibility for the 1997 8-hour ozone NAAQS and the $PM_{2.5}$ NAAQS. Having proposed to disapprove these provisions of the New Mexico SIP, we proposed a FIP to address the requirements of section 110(a)(2)(D)(i)(II) with respect to visibility to ensure that emissions from sources in New Mexico do not interfere with the visibility programs of other states. We proposed to find that New Mexico's sources, other than the San Juan Generating Station (SJGS), are sufficiently controlled to eliminate interference with the visibility programs of other states, and for the SJGS, we proposed specific SO_2 and NO_X emissions limits that will eliminate such interstate interference. For SO_2, we proposed to require the SJGS to meet an emission limit of 0.15 pounds per million British Thermal Units (lb/MMBtu). For NO_X, we proposed to implement a NO_X emission limit of 0.05 lbs/MMBtu, based on our BART determination, as discussed below.

Separate from our proposal under Section 110 of the CAA, we simultaneously evaluated whether the SJGS met certain other related requirements under the Regional Haze (RH) program under Sections 169A and 169B of the CAA. Regional Haze SIPs were due December 17, 2007. In January 2009, we made a finding that New Mexico had failed to submit a RH SIP addressing the requirements of 40 CFR 51.309(d)(4) and (g). 74 FR 2392 (January 15, 2009). Under the CAA, we are required to promulgate a FIP within two years of the effective date of a finding that a State has failed to submit a SIP unless the State submits a SIP and we approve that SIP within the two year period. CAA § 110(c). At the time of the proposed FIP, New Mexico had not yet submitted a substantive RH SIP addressing, among other things, the requirement that certain stationary sources install BART for NO_X. (On July 5, 2011, New Mexico submitted a RH SIP, which we discuss later in this Notice.) Based on our evaluation of the RH BART requirements of section 40 CFR 51.309(d)(4), we proposed to find that the SJGS is subject to BART under section 40 CFR 51.309(d)(4), and/or 51.308(e). We proposed a FIP which contained NO_X BART limits for the SJGS based on our proposed NO_X BART determination. We proposed to require that the SJGS meet a NO_X emission limit of 0.05 lb/MMBtu individually at Units 1, 2, 3, and 4. We noted this NO_X limit is achievable by installing and operating Selective Catalytic Reduction (SCR).

We proposed that both the NO_X and SO_2 emission limits be measured on the basis of a 30 day rolling average. We also proposed hourly average emission limits of 1.06×10^{-4} lb/MMBtu for H_2SO_4 and 2.0 parts per million volume dry (ppmvd) ammonia adjusted to 6 percent oxygen, to minimize the contribution of these compounds to visibility impairment. We solicited comments on a range of 2–6 ppmvd for ammonia, and 1.06×10^{-4} to 7.87×10^{-4} lb/MMBtu for H_2SO_4. Additionally, we proposed monitoring, record-keeping and reporting requirements to ensure compliance with these emission limitations.

Lastly, we proposed that compliance with the emission limits must be within three (3) years of the effective date of our final rule. We solicited comments on alternative timeframes, up to five (5) years from the effective date our final rule. In our proposal, we did not address whether the state had met other requirements of the RH program, which we will address in later actions. Please see our proposal for more details.

II. Final Decision

A. Interstate Transport

We are disapproving the portion of the SIP revision received from the State of New Mexico on September 17, 2007, for the purpose of addressing the ''good neighbor'' provisions of the CAA section 110(a)(2)(D)(i) with respect to visibility for the 1997 8-hour ozone NAAQS and the $PM_{2.5}$ NAAQS. The 2007 SIP submission by New Mexico anticipated that the State would submit a substantive RH SIP to meet the requirements of section 110(a)(2)(D)(i)(II).

Section 110(a)(2)(D)(i)(II) of the CAA requires that states have a SIP, or submit a SIP revision, containing provisions ''prohibiting any source or other type of emission activity within the state from emitting any air pollutant in amounts which will * * * interfere with measures required to be included in the applicable implementation plan for any other State under part C [of the CAA] to protect visibility.'' States were required to submit a SIP by December 2007 with measures to address regional haze—visibility impairment that is caused by the emissions of air pollutants from numerous sources located over a wide geographic area. Under the RH program, each State with a Class I area must submit a SIP with reasonable progress goals for each such area that provides for an improvement in visibility for the

most impaired days and ensures no degradation of the best days. (The ''Class I'' federal areas [1] affected by the SJGS include 16 of our most treasured parks, such as the Grand Canyon, Mesa Verde, and Bandelier National Monument. Emissions from this power plant impact four states including Arizona, Utah, Colorado, and New Mexico.)

Because of the often significant impacts on visibility from the interstate transport of pollutants, we interpret the ''good neighbor'' provisions of section 110 of the CAA described above as requiring states to include in their SIPs measures to prohibit emissions that would interfere with the reasonable progress goals set to protect Class I areas in other states. This is consistent with the requirements in the RH program which explicitly require each State to address its share of the emission reductions needed to meet the reasonable progress goals for surrounding Class I areas. 64 FR 35714, 35735 (July 1, 1999). States working together through a regional planning process are required to address an agreed upon share of their contribution to visibility impairment in the Class I areas of their neighbors. 40 CFR 51.308(d)(3)(ii).

The States in the West, including New Mexico, worked through a regional planning organization, the Western Regional Air Partnership (WRAP), to develop strategies to address regional haze. To help the State in establishing reasonable progress goals, the WRAP modeled future visibility conditions. The WRAP modeling assumed emissions reductions from each State, based on extensive consultation among the States as to appropriate strategies for addressing haze. In setting reasonable progress goals, States in the West generally relied on this modeling. As explained in the notice of proposed rulemaking, we believe that the analysis conducted by the WRAP provides an appropriate means for designing a FIP that will ensure that emissions from sources in New Mexico are not interfering with the visibility programs of other states, as contemplated in section 110(a)(2)(D)(i)(II).

As a result of our disapproval of New Mexico's SIP, submitted to meet the requirements of section 110(a)(2)(D)(i)(II) with respect to visibility, we are promulgating a FIP to ensure that emissions from New Mexico sources do not interfere with the visibility programs of other states. We find that New Mexico sources, other than the SJGS, are sufficiently controlled to eliminate interference with the visibility programs of other states because the federally enforceable emission limits for these sources are consistent with those relied upon in the WRAP modeling. The SO_2 and NO_X emissions relied upon in the WRAP modeling for the SJGS, however, are not federally enforceable. Therefore, we are establishing federally enforceable SO_2 emissions limits that will address these discrepancies and eliminate interstate interference based on current emissions that satisfy the assumptions in the WRAP modeling. We are finalizing our proposal to require the SJGS to meet an SO_2 emission limit of 0.15 lb/MMBtu, the rate assumed in the WRAP modeling. We proposed a 30 day rolling average for units 1, 2, 3, and 4 of the SJGS. However, in response to a comment we received, we are changing our proposed averaging period for these emission limits from a straight 30 day calendar average to one calculated on the basis of a Boiler Operating Day (BOD).

Besides not being federally enforceable, the NOx emissions that were assumed in the WRAP modeling cannot be achieved without additional NOx controls for the SJGS to prevent interference with visibility pursuant to the requirements of section 110(a)(2)(D)(i)(II) of the CAA. We are choosing, however, not to use the WRAP assumptions to make a determination on the enforceable NOx controls necessary to prevent visibility interference, as we are doing for the SO_2 controls. Instead, we are addressing NOx control for the SJGS by fulfilling our duty under the BART provisions of the RH rule to promulgate a RH FIP for New Mexico to address, among other elements of the visibility program, the requirement for BART.[2] We do not believe it is prudent to delay a NOx BART determination for the SJGS, because we have determined that the BART requirements are more stringent than the visibility transport requirements. Separating the visibility transport and BART rulemakings could result in near-term requirements for the utility to install one set of controls and capital expenditures, to only satisfy our obligation under section 110(a)(2)(D)(i)(II), followed shortly thereafter by different requirements for controls and capital expenditures to satisfy our obligation under BART. This could result in unnecessary costs and confusion.

We did receive a New Mexico RH SIP submittal on July 5, 2011, but it came several years after the statutory deadline, and after the close of the comment period on today's action.[3] In addition, because of the missed deadline for the visibility transport, we are under a court-supervised consent decree deadline with WildEarth Guardians of August 5, 2011, to have either approved the New Mexico SIP or to have implemented a FIP to address the 110(a)(2)(D)(i) provision. It would not have been possible to review the July 5, 2011 SIP submission, propose a rulemaking, and promulgate a final action by the dates required by the consent decree. Notwithstanding these facts, we did comment during the State's public comment period for their proposed RH SIP in May 2011 and we did evaluate the technology advocated as BART in the State's proposed RH SIP: SNCR, as discussed in further detail elsewhere in this Notice.

B. NOx BART Determination for the San Juan Generating Station (SJGS)

We find that the SJGS is subject to BART under sections 40 CFR 51.309(d)(4), and/or 51.308(e). In this action, we are adopting a FIP that partially addresses the BART requirements of the RH program for New Mexico. We are finalizing our proposal to require the SJGS to meet a NOx emission limit of 0.05 lb/MMBtu individually at Units 1, 2, 3, and 4. As we discuss elsewhere in our response to comments, we find there is ample support for this decision. However, in response to a comment we received, we are changing our proposed averaging period for these emission limits from a straight 30 day calendar average to one calculated on the basis of a boiler operating day (BOD). We also received a comment requesting we revise our proposed unit-by-unit NOx limitation, and replace it with a plant wide average NOx limitation. As we note in our response to this comment, although we are open to combining the BOD and plant wide averaging schemes, this presents a significant technical challenge in having a verifiable, workable, and enforceable algorithm for calculating such an average. Due to our obligation to ensure the enforceability of the emission limits we are imposing in our FIP, we leave it to New Mexico to take up this matter in a future SIP revision, should they deem it worth pursuing. We are confident this issue

[1] CAA 42 U.S.C. 7472(a). The list of mandatory class I federal areas where visibility is an important value is codified at 40 CFR part 81 subpart D.

[2] *See* 74 FR 2392.

[3] A State Regional Haze SIP was due under the CAA by Dec. 17, 2007, and EPA was obligated to either approve an RH SIP or promulgate a FIP by January 15, 2011. *See* CAA Section 110(c)(1)(B).

can be addressed prior to the installation of the emission controls required to satisfy our FIP.

We are also finalizing our proposal requiring the SJGS to meet an H_2SO_4 emission limit of 2.6×10^{-4} lb/MMBtu to minimize its contribution to visibility impairment. We are promulgating monitoring, record-keeping and reporting requirements to ensure compliance with this emission limit. As discussed in our response to comments, after careful consideration of the comments we received concerning our proposal to require the SJGS to meet an hourly average emission limit of 2.0 parts ppmvd for ammonia, we have determined that neither an ammonia limit, nor ammonia monitoring is warranted, and we are not finalizing ammonia limits or monitoring requirements.

C. Compliance Timeframe

We originally proposed a compliance schedule of 3 years for SJGS for the NO_X, SO_2, ammonia, and H_2SO_4 emission limits, and solicited comments on alternative timeframes of less than 3 years and up to 5 years (the maximum allowed under the statute).[4] As noted above, we are no longer requiring an ammonia emission limit. Also, as discussed in our response to comments, we carefully considered comments urging a longer compliance schedule due to site-specific issues such as the congestion of existing equipment (which could slow the retrofit process), historical information on SCR installation times, and our own observation of the site conditions,[5] and we now conclude that a longer compliance schedule is more appropriate. Consequently, compliance with the NO_X, SO_2, and H_2SO_4 emission limits will now be required within 5 years—rather than 3 years—of the effective date of our final rule. (This issue is discussed in further detail in Section III.E., below.)

III. Analysis of Major Issues Raised by Commenters

Our January 5, 2011 proposal included a 60 day public comment period, which ended on March 7, 2011. We subsequently extended that comment period until April 4, 2011.[6] We also held an open house and a public hearing in Farmington, NM, on February 17, 2011.[7] We received in excess of 13,000 comments.

In light of the very large number of comments received and the significant overlap between many comments, we have grouped some comments together. We have summarized and provided responses to each significant argument, assertion, and question contained within the totality of the comments. Full responses to comments can be found in our *Complete Response to Comments for NM Regional Haze/Visibility Transport FIP.*

A. Comments on the Costs of the NO_X BART Determination

We received many comments related to various aspects of our cost analysis that fell into four major categories. First, we received general comments opining on the appropriateness of our cost analysis. Second, we received comments that were technical and related to specific line items in the cost analysis (*e.g.,* additional steel, SCR bypass, sorbent injection, *etc.*). Third, we received comments that expressed general concern that the costs of the controls would be passed to the SJGS's customer base in the form of electricity rate increases. Fourth, we received comments that opined on the use of the Regional Haze Rule's (RHR) reliance on the EPA Air Pollution Control Cost Manual (the Cost Manual) to estimate the cost of the SCR installations. We address the more significant comments within these categories individually below.

1. General Cost Comments

Comment: The National Park Service (NPS) and the U.S. Forest Service (USFS) separately presented a great deal of information in support of their opinions that Public Service Company of New Mexico's (PNM) contractor, Black &Veatch (B&V) overestimated the cost of installing SCR on the units of the SJGS. PNM is a part owner and the operator of the SJGS. The following is a combined summary of their separate comments.

The NPS and the USFS cited a large number of well-documented recent industry studies or surveys, which they use to conclude that PNM has overestimated its SCR costs, expressed in dollars per kilowatt. They stated that PNM has not provided valid information to justify their higher cost estimates for SCR installation at the SJGS. Additionally, the USFS stated PNM's contractors went against our guidance which recommends using the Cost Manual to ensure a transparent and consistent means to conduct cost analyses across the nation. The USFS took issue with PNM's estimation of indirect (soft) costs which include: engineering costs; construction and field expenses (*e.g.,* costs for construction supervisory personnel, office personnel, rental of temporary offices, *etc.*); contractor fees; and start-up and performance test costs. Also, the NPS stated that B&V's improperly escalated costs and its calculations did not consider the weakening of labor markets that has occurred since they set up their spreadsheets in 2007.

Response: We found that PNM raised some legitimate points about costs, and as discussed elsewhere in this notice, we have adjusted several of our cost estimates upward based on those points. However, in large part, we agree with the NPS that PNM's estimated costs for installing SCR on the units of the SJGS are higher than justified. Please see our other responses to comments for more details on how we have adjusted our cost estimates. The following table illustrates our revised costs in terms of $/kW. These costs agree with the ranges presented by the NPS and the USFS in their comments, which can be viewed in our *Complete Response to Comments for NM Regional Haze/Visibility Transport FIP* document:

TABLE 1—EPA REVISED ESTIMATED COSTS OF INSTALLING SCR ON THE UNITS OF THE SJGS

	Unit 1	Unit 2	Unit 3	Unit 4
Proposed ($/kW)	$144	$155	$116	$110
Final ($/kW)	211	234	179	165

[4] 76 FR 491, 504.

[5] See San Juan Generating Station Site Visit, 5/23/11, which is viewable in the docket. As explained in a letter, dated May 17, 2011, the visit was solely for the purpose of reviewing and responding to comments. It was not an opportunity to introduce additional comments, and we did not receive any comments as a result of this visit.

[6] 76 FR 12305.

[7] 76 FR 1578.

We note, that as required by the BART Guidelines, ''[i]n order to maintain and improve consistency, cost estimates should be based on the *OAQPS Control Cost Manual,* [now renamed ''EPA Air Pollution Control Cost Manual, Sixth Edition, EPA/452/B–02–001, January 2002] where possible.'' 70 FR at 39166 (July 6, 2005). As explained more fully in our *Complete Response to Comments for NM Regional Haze/Visibility Transport FIP* document, we also agree with the USFS that owner's costs are not an appropriate cost item to include in a BART cost estimate, as owners costs are not included in the Cost Manual.

Comment: PNM and its consultants estimated the cost of retrofitting SJGS with SCRs to be between $194 million and $261 million per unit (depending on the unit) with a total cost of $908 million for all four units. EPA maintains that SCRs can be purchased and installed for much less—between $52 million and $63 million per unit for a total of about $229 million. EPA's estimates of annual operating costs for the SCRs are also much lower than PNM's estimate. PNM's analysis indicates annual operating costs for all four SCRs would be approximately $114 million per year, whereas EPA expects PNM to be capable of operating the SCRs for only about $28 million per year. In short, EPA believes that SCRs cost $679 million less, or one quarter of the amount estimated by PNM. The commenter calls our cost estimate into question, since the disparity between these two estimates is large.

Response: B&V estimated it would cost between $446/kW and $559/kW to retrofit SCR on the SJGS units. Five industry studies conducted between 2002 and 2007 have reported the installed unit capital cost of SCRs to be $79/kW to $316/kW, where the upper end of the range is for very complex retrofits that are severely site constrained.[8] Others have noted the anomalously high costs reported for SJGS.[9] [10] We revised our cost estimates based on some comments highlighted in comments, but even with those changes, our revised costs for SCR are from $165/kW to $234/kW,[11] still well within the accepted range of expected costs for such controls.[12]

B&V's SJGS costs are unusually high for four principal reasons: (1) Using a methodology (*e.g.,* Allowance for Funds Used During Construction (AFUDC)) that has been disallowed under EPA''s Cost Manual methodology and specifically disallowed for SCR (see discussion at footnote 28); (2) consistently using assumptions at the upper end of the range for key SCR components (*e.g.,* SCR backpressure; stiffening design pressure); (3) including costs for equipment that is not necessary for a SCR (*e.g.,* balanced draft conversion, sorbent injection, SCR bypass); and (4) using excessive contingencies. The BART Guidelines require that ''documentation'' be provided for ''any unusual circumstances that exist for the source that would lead to cost-effectiveness estimates that would exceed that for recent retrofits.'' [13] The B&V analysis does not support its unusually high cost estimates.

Further, much of the information that could have supported a claim that site specific issues at SJGS result in costs that are outside of the normal range is missing. Specifically, the B&V analysis lacked information such as project schedules, general arrangement site plans showing SCR and duct layout, requests for proposal (RFPs), vendor proposals, and a complete description of existing facilities.

Instead of preparing a site-specific SCR design, B&V in most circumstances made a worst case, upper bound assumption that, taken together, result in overall costs that are significantly outside of the normal range for SCR. However, B&V provided no record support for their decision to choose the upper end of the range for nearly every aspect of the cost of SCRs. It is unlikely that so many upper bound assumptions could be justified, and if B&V believed that they were justified, they should have explored that proposition in a risk analysis. Therefore, we believe that our approach to considering site specific conditions that would lead to costs outside of the normal range, is justified.

Comment: Private citizens submitted comments that the costs to PNM will be, alternatively, $250, $500, or $750 million dollars, and that PNM's estimates are overstated, and that any investment in the plant is an investment in the future, and that the plant and its jobs will not be threatened by the proposed emission reductions.

Response: As we discuss elsewhere in our response to comments, we agree that the cost of installing SCR on the four units of the SJGS is considerably lower than PNM estimated.

Comment: The CAA visibility provisions, EPA's own RH regulations, and the preambles to those rules all envision a ''source-by-source'' approach to BART, which by its nature must account for site-specific challenges at each facility. However, despite the significant amount of information provided by PNM in its original BART analysis, in subsequent exchanges with the New Mexico Environment Department (NMED) and EPA, and in meetings between EPA and PNM specifically to discuss the site-specific challenges at SJGS, EPA did not to take into account many of the most significant costs that are essential in calculating an accurate cost estimate of installing SCRs at SJGS.

Response: We agree that a source-by-source analysis is appropriate, but we do not believe that B&V provided an acceptable analysis. First, the B&V costs were extrapolated from other facilities, based on confidential information that was not provided in response to our requests. Second, the B&V costs were estimated using worst-case upper bounds in lieu of making a site-specific estimate, as discussed above. Third, their costs included components that are not required at this site, and further assumed contingency factors beyond those normally expected. Therefore, we believe, with the exception of certain issues related to site congestion that are addressed separately in other comments, site-specific conditions were properly considered.

Comment: To justify the approach based entirely on the median of different control technologies, EPA downplays the complicated process of designing and constructing an SCR, thereby not only ignoring the technology itself, but also the site specific-factors that must be considered at SJGS. SCRs at SJGS would have to be constructed so that each SCR can be positioned at the proper point in the flue gas stream, which will significantly complicate the foundation and supports that will be needed, resulting in additional costs of $35,630,000 that EPA failed to recognize or consider.

Response: All SCRs have to be constructed so that each SCR can be positioned at the proper point in the flue gas stream, with proper foundation and supports; this is not unique to the SJGS. Over 300 retrofit SCRs have been installed since the early 1990s in the

[8] Revised BART Cost Effectiveness Analysis for Selective Catalytic Reduction at the Public Service Company of New Mexico San Juan Generating Station, November 2010, pp. 28–29.

[9] Comments submitted by United States Department of Interior, National Park Service, dated 3/31/11.

[10] New Mexico Environment Department, Appendix A, NMED, Air Quality Bureau, BART Determination, Public Service Company of New Mexico, San Juan Generating Station, Units 1–4, 6/21/10.

[11] See Exhibit 1, RTC Revised Cost Analysis.

[12] Please see our Complete Response to Comments for NM Regional Haze/Visibility Transport FIP document.

[13] 70 FR at 39168 (July 6, 2005).

United States. Accordingly, constructability issues are well understood. Standard design and construction management methods have been developed from these 300+ existing installations.[14] This experience would inform the design and construction of the SJGS SCR, resulting in significant economies compared to the estimates presented by B&V based on a very rough preliminary design that has not been optimized for constructability. The record does not identify any unusual site-specific conditions that would result in direct installation costs for SJGS that are substantially higher than upper bound direct installation costs reported by other SCR design firms for similarly complex sites. In fact, B&V has provided no support in the record for its assumptions. Finally, the design costs are not a direct installation cost, but rather indirect costs discussed elsewhere in our response to comments.

Comment: EPA suggests that the engineering needed to design four SCRs can be completed all at the same time, thus saving time and money. While some economies may arise with a multiple SCR installation, as lessons learned in designing and installing one SCR are applied to the next, a three-year deadline would require PNM to design all four SCRs at the same time. Designing all four SCRs at once would require four separate design and construction teams, which would eliminate the opportunity to apply any experience gained. As a result, the costs associated with designing the SCRs will be much higher on a shorter timeframe, not lower as EPA appears to suggest. The short, three-year deadline also allows no time for additional design work that may be needed to address unforeseen engineering challenges that are likely to arise at each unit.

Response: We disagree with this comment and believe it mischaracterizes our analysis. In our proposal, we simply noted that ''multiple unit discounts may apply to much of this equipment.'' [15] Multiple unit discounts were not assumed in our revised cost analysis. It is well established that economies arise from constructing multiple units at a single site. Economies will arise, for example, from common equipment that would serve all four units, such as the ammonia injection system and the control system. Economies arise from shop and material discounts based on quantity. Our cost analysis, however, did not assume any discount for multiple unit discounts. Regardless, for other reasons as stated elsewhere in our response to comments, we are finalizing a schedule which calls for compliance with the emission limits within 5 years—rather than 3 years—of the effective date of our final rule.

Comment: The proposed FIP costs do not acknowledge, or take into account, the $330 million incurred in the past five years implementing a comprehensive emission control plan at SJGS. EPA's proposed BART determination for the SJGS is too expensive and EPA should accept the recently installed pollution control equipment at the SJGS as BART.

Response: We did, as part of our NO_X BART evaluation, consider the controls previously installed by PNM as a result of its March 10, 2005 consent decree with the Grand Canyon Trust, Sierra Club, and NMED. These controls included the installation of low-NO_X burners with overfire air ports, a neural network system, and a pulse jet fabric filter. However, when making the NO_X BART determination, we are obligated by the RHR to examine additional retrofit technologies.[16] In so doing, we have determined that SCR is cost effective and results in significant visibility improvements at a number of Class I areas, over and above the existing pollution controls currently installed.

Comment: EPA proposes to conclude that, because the SJGS currently is subject to a federally enforceable permit limit of 0.30 lb/MMBtu for NO_X, which is less restrictive than the WRAP modeling's assumed NO_X rates for those units (as characterized by EPA), additional NO_X emission controls are required. EPA, however, proposes on this basis to determine that the BART emission limit for units 1 through 4 at SJGS is not 0.27 (or 0.28) lb/MMBtu but is instead 0.05 lb/MMBtu based on the application of SCR technology. As a result, EPA discontinues its evaluation of other technologies before fully assessing their relative cost-effectiveness and other factors mandated by section 169A(g)(2) of the CAA. EPA's analytical approach is in conflict with its own BART rules and is inconsistent with a logical approach to assessing relative cost-effectiveness of various technology options.

Response: We disagree with this commenter's characterization of our analysis. As discussed in our proposal (76 FR 491), once we established that units 1, 2, 3, and 4 of the SJGS were subject to BART, we conducted a full five factor BART analysis (40 CFR 51.308(e)(1)(ii)(A)), rather than relying on the WRAP modeling. In conducting the BART analysis, we identified all available retrofit control technologies, including Selective Non Catalytic Reduction (SNCR), considering the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. In so doing, we did assess other NO_X control technologies.[17]

Comment: Several commenters stated EPA should follow its own promulgated RHR and follow New Mexico's recommendation for BART determinations These commenters are referring to the proposal that was sent to New Mexico's Environmental Improvement Board on February 11, 2011 (later formally submitted to EPA on July 5, 2011). The proposed revision to the SIP finds that BART for SJGS is SNCR—not SCR. One commenter believed that the application of the 2005 BART Guidelines supports a NO_X emission rate for the SJGS of between 0.23 to 0.39 lb/MMBtu, as opposed to our proposed FIP of 0.05 lb/MMBtu, which requires costly SCR technology. One commenter stated the presumptive limits should be required ''unless you [the BART-determining authority] determine that an alternative control level is justified based on consideration of the statutory factors.'' 70 FR at 39171. Except for cyclone boilers (which are not present at SJGS), this commenter noted, our presumptive NO_X BART limits are not based on application of SCR; as noted above, they are instead based on the use of combustion controls. Further, EPA determined that when current combustion control technology would be insufficient to meet the presumptive limits, it would

[14] J.A. Hines and others, Design for Constructability—A Method for Reducing SCR Project Costs, Mega, 2001, available at: *http://www.babcock.com/library/pdf/br-1720.pdf; see also* Institute of Clean Air Companies (ICAC), White Paper, Selective Catalytic Reduction (SCR) Control of NO_X Emissions from Fossil Fuel-Fired Electric Power Plants, May 2009, EPA–R09–OAR–2009–0598–0032 and Walter Nischt and others, Update of Selective Catalytic Reduction Retrofit on a 675 MW Boiler at AES Somerset, ASME International Joint Power Generation Conference, July 24–25, 2000, available at: *http://www.babcock.com/library/pdf/br-1703.pdf.*

[15] Revised BART Cost Effectiveness Analysis for Selective Catalytic Reduction at the Public Service Company of New Mexico San Juan Generating Station, November 2010, p. 5.

[16] ''You are expected to identify potentially applicable retrofit control technologies that represent the full range of demonstrated alternatives.'' 70 FR at 39164.

[17] 76 FR at 499.

be appropriate to ''consider whether advanced combustion control technologies such as rotating opposed fire air should be used to meet these [presumptive] limits.'' *Id.* at 39172. Another commenter asserted that a proper BART assessment would take the presumptive limits into account by beginning with the assumption that the established presumptive limit for these units is appropriate, and then would proceed with an analysis of whether the least stringent control options could achieve that limit. A five-factor BART analysis of increasingly stringent control options could then properly assess incremental costs (and cost-effectiveness) and any benefits of requiring more stringent controls.

Response: We note the RHR states:

> For each source subject to BART, 40 CFR 51.308(e)(1)(ii)(A) requires that States identify the level of control representing BART after considering the factors set out in CAA section 169A(g), as follows:
>
> States must identify the best system of continuous emission control technology for each source subject to BART taking into account the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use at the source, the remaining useful life of the source, and the degree of visibility improvement that may be expected from available control technology.[18]

The RHR also states:

> States, as a general matter, must require owners and operators of greater than 750 MW power plants to meet these BART emission limits. We are establishing these requirements based on the consideration of certain factors discussed below. Although we believe that these requirements are extremely likely to be appropriate for all greater than 750 MW power plants subject to BART, a State may establish different requirements if the State can demonstrate that an alternative determination is justified based on a consideration of the five statutory factors.[19]

We followed the five statutory factors when assessing NO_X BART at the SJGS, in determining that a different level of BART control was warranted.[20] This analysis included an examination of whether other technologies should be BART for the SJGS. We also performed our BART evaluation on the basis of increasingly stringent levels of control and assessed incremental costs and cost effectiveness. Thus, we do not believe we improperly truncated the NO_X BART assessment for the SJGS.

We received a New Mexico RH SIP on July 5, 2011. This SIP does contain a revised BART analysis that concludes that NO_X BART for the SJGS should be SNCR and an emission rate of 0.23 lb/MMBtu on a 30-day rolling average. We will review the State RH SIP submittal, and if there is significant new information that changes our analysis, we will make appropriate revisions to today's decision. However, the State RH SIP recommends SNCR as BART, and we have considered that technology in the context of responding to other comments in this notice. For the reasons discussed in our proposal (76 FR 491), and in other responses to comments, we have concluded that BART for the SJGS is an emission limit of 0.05 lbs/MMBtu, based on a 30 BOD average, more stringent than the levels achievable by the SNCR technology recommended by the State.

Comment: To meet a three-year deadline, PNM would have to prefabricate as much of the SCRs as possible. In addition, a three-year deadline would also require significant overtime hours, expedited material costs, double ''heavy long-lift'' crane costs, and a larger construction workforce overall. Because these costs would never be incurred in the normal course of installing SCRs, PNM did not include these costs in its analysis, but they would be unavoidable in the event a three-year deadline is required. Such a short construction deadline would also exacerbate the shortage of skilled labor caused by the significant number of similar projects that are either ongoing or planned for the near future in the region. The failure to account for the additional labor costs associated with such a short timeframe, particularly given other factors affecting the market for skilled labor, renders both the three-year deadline and the cost estimate prepared by EPA unrealistic.

Response: The information in the record does not demonstrate a shortage of labor necessary to complete the installation of SCRs at the SJGS. However, as stated elsewhere in our response to comments, we have modified the schedule for compliance with the emission limits to now require compliance within 5 years—rather than 3 years—from the effective date of our final rule. We believe this compliance schedule will provide adequate time to schedule the necessary labor resources for the installation of controls at the SJGS.

Comment: The NPS recommends that in addition to the $/ton metric, we evaluate the visibility metric $/deciview as an additional tool to report the benefits of emissions controls. The NPS contends that BART is not necessarily the most cost-effective solution. Instead, it represents a broad consideration of technical, economic, energy, and environmental (including visibility improvement) factors. The NPS notes that one of the options suggested by the BART Guidelines to evaluate cost-effectiveness is $/deciview. The NPS believes that visibility improvement must be a critical factor in any program designed to improve visibility. The NPS goes on to provide several examples of $/deciview calculations.

Two other comments recommend we employ the $/deciview metric. One commenter states EPA has not appropriately considered the costs of compliance for any proposed BART for the SJGS because it relies on a $/ton metric. The commenter maintains that cost should be related to the amount of visibility improvement that it is projected to achieve and proposes the $/dv as the means for making a rational comparison of the relative cost-effectiveness of control measures.

This commenter also states that a method that aggregates projected visibility improvement in each affected class I area is not appropriate for several reasons. That approach masks the fact that it is cumulative over time and space and does not represent actual change at any one class I area. That approach also ensures an artificially low measure of cost-effectiveness simply by allowing the control cost to be divided by a larger value. The commenter suggests that a $/dv metric expressed as a range of the values for each affected class I area would be an appropriate means for comparing cost-effectiveness of different controls. The commenter states that EPA's current measure of cost-effectiveness in terms of $/ton is virtually meaningless in the context of the RH program. Thus, EPA's assessment of the $/ton costs of BART candidates for the SJGS is flawed because the premise for its use is faulty, *i.e.,* a change in emissions is not a suitable surrogate to represent a change in visibility.

Another commenter believes that a dollar per deciview of visibility improvement metric would be more in line with the overall goal of the RH program, namely to improve visibility in national parks and wilderness areas. To properly gauge cost-effectiveness, EPA must consider the fact that installing SCRs at San Juan will cost between $78 million and $336 million per deciview, depending on the Class I area.

Response: The BART Guidelines require that cost effectiveness be calculated in terms of annualized dollars per ton of pollutant removed, or

[18] 70 FR at 39158.

[19] 70 FR at 39131.

[20] 76 FR 491, 499.

$/ton.[21] The commenters are correct in that the BART Guidelines list the $/deciview ratio as an additional cost effectiveness measure that can be employed along with $/ton for use in a BART evaluation. However, the use of this metric further implies that additional thresholds of acceptability, separate from the $/ton metric, be developed for BART determinations for both single and multiple Class I analyses. We have not used this metric because (1) We believe it is unnecessary in judging the cost effectiveness of BART, (2) it complicates the BART analysis, and (3) it is difficult to judge. We conclude it is sufficient to analyze the cost effectiveness of potential BART controls using $/ton, in conjunction with the modeled visibility benefit of the BART control. We have addressed the commenter's statement that we should not aggregate visibility improvement over Class I areas elsewhere in our response to comments.

2. Comments on Specific Cost Line Items

The comments that follow have been summarized to capture each one's main points and most of the references have been removed. The reader is encouraged to refer to our *Complete Response to Comments for NM Regional Haze/Visibility Transport FIP* for more details and references.

Comment: The NPS stated that PNM has improperly rejected use of the Cost Manual in favor of methods not allowed by EPA. The NPS states the SCR cost estimates submitted by PNM are severely lacking in the types of specific information needed to give them credibility. The NPS goes on to provide a great deal of detailed information that supports their opinion that specific cost items were overestimated. This information includes the following cost item categories:

- Appropriateness of using the Cost Manual.
- Problems in B&V's scaling of cost items from another project.
- Ductwork and ammonia grid costs.
- Reactor box and breaching.
- Expansion joints.
- Sonic horns.
- Elevator.
- Structural steel.
- SCR bypass.
- Catalyst.
- NO_X monitoring.
- Auxiliary electrical system upgrades.
- Instrumentation and control systems.
- Air preheaters.
- Balanced draft conversion.
- Contingencies.
- Operating Labor.
- Reagent.
- Auxiliary power demand.
- Catalyst life.
- Interest rate.
- Effect on cost of PNM's assumption of an emission rate of 0.07 lbs/MMBtu.

The NPS concluded their critique of PNM's cost estimate with their own estimate of an average cost of $2,600/ton for the four units of the SJGS.

Response: We agree with the general contention that many individual cost items for the installation of SCR on the units of the SJGS were overestimated by PNM. Please see elsewhere in our response to comments for our opinion regarding the appropriate estimated costs for these and other cost items. We note that the NPS estimate of an average cost of $2,600/ton for the four units of the SJGS closely agrees with our own revised estimate.

Comment: EPA failed to account for the costs associated with ensuring sufficient auxiliary power to operate SCRs at SJGS. EPA discounted by nearly 80 percent the estimated cost of the auxiliary power upgrades needed to power the SCRs. The theory behind this sharply discounted cost estimate is that the SCRs will only be responsible for approximately 20 percent of the total draft pressure of the units and that therefore the cost of the auxiliary power upgrades should be allocated in similar fashion. Without SCRs, no additional auxiliary power would be needed. As such, those costs must be included in the cost of the SCRs, as they represent one of the site-specific concerns that could make the installation of SCR at SJGS more difficult than other units. The decision by EPA to exclude these costs underestimates the cost of SCRs for SJGS by $73,175,000.

Response: We disagree that installing SCRs would by itself trigger the need to upgrade the auxiliary power system, especially to the extent proposed by PNM. The upgrade benefits the entire auxiliary power system. The modifications, for example, include new transformers, switchgear, and motor control centers that will serve the entire fan auxiliary loads of both the Consent Decree projects and the SCR.[22] The modifications also include replacing the existing fans with upgraded units. These fans will service more than just the SCRs.

This comment advocates attributing 100% of the cost of the auxiliary power system upgrade, recognized after the fact, to the last project to be implemented, the SCR. We did not ''discount'' the cost of the auxiliary power system by 80%, but rather distributed it among the control projects planned around the same time that triggered its need according to each control's contribution to draft pressure lost. This recognizes that the upgrade provides benefits to the entire system and includes elements that are more than strictly necessary because of the installation of the SCR. Therefore, it is not appropriate to attribute the entire cost of the upgrade to the SCR project. We believe our approach is consistent with standard engineering practices.

Comment: EPA failed to account for additional costs associated with protecting the air preheater following an SCR Installation. Ammonia reacts with sulfur in the flue gas downstream of the SCR forming ammonium bisulfate (ABS), which condenses in the air preheater. ABS is an acidic substance that forms a sticky deposit on heat transfer surfaces, resulting in both corrosion of the equipment and the collection of fly ash that plug passages, which ultimately impairs the efficiency and reliability of the unit. As such, the installation of a retrofit SCR generally requires a modification to the air preheater to allow for easier cleaning of the basket surfaces in order to protect the heat transfer elements against the potential damage that might otherwise result from ABS. EPA deleted the costs of protecting the air preheater in its SCR cost analysis, ''pending compelling justification that they are required for the SCR.'' EPA's cost analysis recognizes that modifications to the air preheater are generally required for ''units that burn high sulfur coal,'' but EPA assumes that such modifications are not necessary ''for a properly designed SCR on a boiler that burns low sulfur coal.'' EPA is correct that, in spite of the quoted discussion above, Sargent & Lundy did not recommend air preheater modifications in the SCR cost analysis for the Navajo Generating Station. However, that recommendation was based on the specific emission characteristics at Navajo Generating Station, which differ significantly from those at SJGS.

Response: This comment attempts to distinguish the emission characteristics of Navajo Generating Station and the SJGS by pointing to differences in the coal quality to support air preheater modifications at SJGS but not at Navajo. We obtained and analyzed the Navajo design basis coal quality. The

[21] 70 FR 39167.

[22] B&V 10/22/10 Cost Analysis, Sec. 3.0 and 11/4/10 Norem E-mail to Kordzi, Re: Questions on PNM's Revised Cost Estimate for the SJGS SCR Project, Response to Question 3, Table 3 of attachment 1.

differences in coal quality are either not material (sulfur, heat content) or mitigate the potential impacts of ammonium bisulfate plugging (higher ash at SJGS). The key factors that determine whether ammonium bisulfate plugging will occur are not coal quality, but rather the amount of sulfur trioxide (SO_3) and ammonia in the exhaust gases that reach the air preheater and the air preheater temperature regime. The formation of ammonium bisulfate depends on the relative amounts of ammonia and SO_3 in the exhaust gases. When the molar ratio is more than 2:1, ammonium sulfate (not ammonium *bi*sulfate) is preferentially formed. The average molar ratio for both SJGS and Navajo over the catalyst lifetime is much higher than 2:1. Thus, ammonium sulfate would be preferentially formed. Ammonium sulfate is a dry powder at all air preheater operating temperatures and does not create a fouling problem. Thus, consistent with Sargent & Lundy's conclusion for the nearby Navajo Station, which burns a similar coal, ammonium bisulfate fouling would not be expected and we do not believe that upgrades are justified for the air preheaters due to SCR installation.

Comment: The installation of SCR at SJGS would increase the resistance in the flue gas path for the units. To overcome that additional resistance, PNM would need to install new higher capacity fan rotors and motors because the SCRs will add an additional pressure drop in the system of 10 inches of water gauge (w.g.). This change in pressure and higher fan pressure ratings would increase the potential risk of a boiler implosion during transient (upset or malfunction) conditions. The analysis prepared by B&V of the expected cost of an SCR retrofit includes the costs to mitigate the implosion risk by converting to balanced draft and stiffening the boiler and associated flue gas path. EPA concludes that additional boiler stiffening would not be required, stating simply that ''a balance draft conversion with the proposed stiffening is not part of an SCR project.''

Response: The basis for selecting 10 in. w.g. for a 77% NO_X removal SCR is not explained or documented in the record. The overall SCR system pressure drop consists of losses from the SCR catalyst, static mixers, and duct work. Determining the pressure drop due to the SCR requires a more advanced design than presented in the B&V BART analysis. Instead, B&V appears to have assumed that the pressure drop due to the SCR would be 10 in. w.g., which is at the upper end of the usual range of 3 to 10 in. w.g. The B&V record, for example, contains no duct arrangement drawings; no catalyst vendor quotes; does not identify the type of catalyst, *e.g.,* honeycomb or plate; does not specify the catalyst pitch; and is silent as to static mixers, all important factors in determining the pressure drop due to the SCR. Thus, we do not believe there is a basis for the 10 in. w.g. used to cost boiler stiffening and to justify balanced draft conversion. This pressure drop likely has not been optimized and could be significantly reduced by catalyst selection (*e.g.,* by using honeycomb with large pitch) and ductwork design. Therefore, we do not concur that the record supports a pressure drop of 10 in w.g. for the SCR.

Comment: Installation of SCR's at SJGS will increase boiler and duct implosion potential due to increased draft system requirements and fan pressure ratings. SCRs will trigger the need to choose between either designing to the general standard of +/− 35 inches w.g. (which is typical for a newly designed power plant) or performing a ''more complete and rigorous analysis'' to determine whether PNM will qualify for an exception from the generally-applicable implosion protection standard through the use of alternative methods. To date, neither PNM nor its consultants have fully determined whether an alternative to the +/− 35 inches w.g. standard would suffice following installation of an SCR, due to the significant amount of time and expense that would be associated with that analysis. Therefore, B&V included the cost of stiffening the boilers to +/− 35 inches w.g. in its analysis. EPA's failure to properly account for the boiler stiffening costs underestimates the cost of the SCR retrofits for SJGS by $55,718,000 in capital costs for boiler stiffening and properly sized fans and motors.

Response: This comment acknowledges that the boiler stiffening costs represent a worst case estimate. The magnitude of these costs is unusual. The BART Guidelines require that unusual costs be documented in the record. These costs are stated without providing the underlying engineering calculations. PNM states that the boilers were stiffened to negative pressure differentials of 18 in. w.g. during the Consent Decree projects. The 10 in. w.g. estimate is a worst-case upper bound that is not supported by vendor quotes and SCR design. We agree some cost for code compliance is warranted. However, the worst case used in B&V's analysis is unreasonable and unsupported, given the SCR's potential upper bound contribution of 10 in. w.g. Absent the ''more complete and rigorous analysis'' to support upper bounds for both an SCR pressure differential and stiffening to +/− 35 in w.g., we feel stiffening costs should have been based on no more than the SCR's contribution to the increase from current conditions of 18 in. w.g. to 35 in. w.g. Thus, we modified our cost analysis to estimate the stiffening cost based on the SCR's maximum contribution to the increase from 18 in. w.g. to 35 in. w.g. or by 59%. This increased our estimate of the capital cost to install SCRs by $19,258,318.

Comment: EPA failed to account for the cost of installing the initial layers in the SCR. The cost analysis prepared by B&V included the cost of the initial layers of catalyst in the capital cost and including the replacement layers in the annual operating cost calculation. EPA, however, appears to have misunderstood the analysis and assumed that the initial catalyst layers were double-counted. As a result, it subtracted the initial catalyst cost from the capital cost calculation, without adding it to the annual cost calculation. As such, EPA's failure to include the cost of the initial layers of catalyst in its analysis underestimates the cost of installing SCRs at SJGS by $33,556,000.

Response: We agree with this comment. We have revised our cost analysis to include the initial catalyst charge.

Comment: Sorbent injection will be needed if PNM must install SCRs at SJGS, and the EPA cost analysis should reflect those costs. Sorbent injection systems are often used at coal-fired power plants equipped with SCRs to help reduce emissions of sulfuric acid mist that are an unavoidable byproduct of the chemical reactions that occur in an SCR. Sulfuric acid mist resulting from SCR operation has been known to cause a visible plume at some units in the industry. Although the installation of SCRs may not result in such a plume at SJGS, the sorbent injection system would be needed to ensure a visible plume does not materialize. The failure to address the sulfuric acid mist created by the SCR can reduce any visibility benefits associated with an SCR.

Response: We disagree with this comment. B&V updated its cost analysis in October 2010. This is the most recent version of B&V's cost analysis, which was critiqued in our Technical Support Document (TSD) in our proposal. This analysis did not include any costs for sorbent injection. In its June 21, 2010 BART Determination, NMED concluded that BART for SJGS was SCR plus sorbent injection to remove SO_3 and requested a sorbent injection cost analysis from PNM. However, we

disagreed and concluded that sorbent injection was not required due to the low sulfur content of the coal, availability of low conversion SCR catalyst, and our calculations. We see no reason to change that view. The reasons advanced in this comment for requiring sorbent injection to control sulfuric acid mist (SAM) are not applicable to the SJGS SCR. Visible plume issues have only been experienced at units that burn high sulfur coal, containing greater than 2+% sulfur and typically over 3% sulfur, *e.g.,* Gavin, Ghent. The coal burned at SJGS contains 0.77% sulfur, much lower than the amount of sulfur that has resulted in visible plume issues elsewhere and is considered to be low sulfur. No explanation is provided for why the commenter believes a plume may ''materialize'' on installing SCR. If the SCR is properly designed to address SJGS's coal, a plume should not materialize. Low conversion catalysts capable of achieving an SO_2 conversion as low as 0.1% per layer of catalyst in the high dust, hot (>650 F) position and 0.5% across the entire SCR reactor are common in higher sulfur and other applications. Even lower levels can be achieved if the catalyst is regenerated.

Comment: EPA's calculation of sulfuric acid emissions is incorrect. EPA estimated sulfuric acid mist emission levels based on a document prepared by the Electric Power Research Institute (EPRI), which describes a formula used by many utilities to estimate sulfuric acid emissions. However, in applying that formula, EPA assumed an ammonia slip value of 2.0 parts per million (ppm), even though actual ammonia slip varies over the life of a catalyst layer from very low values up to 2.0 ppm as the catalyst ages. A more appropriate assumption for ammonia slip is the 0.75 ppm value recommended by the EPRI formula, which better represents the expected ammonia slip over the life of a catalyst. Using that assumption, the sulfuric acid emissions from SJGS are calculated to be twice that assumed by EPA. As a result, EPA's attempt to justify its decision to delete the costs of sorbent injection based on minimal sulfuric acid mist emissions is incorrect.

Response: The commenter is correct in that the EPRI report does suggest that a value of 0.75 ppm should be used. We note that the ammonia slip of an SCR is minimal when the catalyst is new and increases as the catalyst ages. In order to be conservative, we recalculated the sulfuric acid emission rate, based on zero ammonia slip, to be 2.6 $X10^{-4}$ lb/MMBtu, compared to our original value of 1.06 $X10^{-4}$ lb/MMBtu at 2ppm ammonia slip. The 2.0 ppm we selected in our proposed visibility modeling was based on the maximum slip from PNM's design specifications. This revised sulfuric acid emission rate remains significantly lower than that estimated by NMED and is a minimal level of sulfuric acid emissions. We continue to conclude that sorbent injection is not required due to the low sulfur content of the coal, availability of low conversion SCR catalysts, removal by existing control equipment and our revised calculations.

Comment: The EPA also cites to the results of a stack test performed at the Navajo Generating Station in November 2009 to conclude that actual sulfuric acid mist emissions are lower than would be estimated using the EPRI Method. However, the air quality control industry generally considers sulfuric acid testing to be very prone to inaccuracy because the test methods used are susceptible to bias. Also, sulfuric acid emissions vary significantly from unit to unit because emissions removal is dependent on many variables including temperature, moisture, process operation, air quality control equipment, ambient conditions, and the quality of the testing. As mentioned above, SJGS and the Navajo Generating Station differ significantly in many of these respects. Therefore, it is not appropriate to use test results from Navajo Generating Station to make assumptions about SJGS.

Response: We believe this comment mischaracterizes our analysis. We did not use test results from the Navajo Generating Station to make assumptions about the SJGS. Rather, we compared sulfuric acid mist emissions calculated for Navajo using the EPRI procedure with a stack test at Navajo in accordance with EPA Method 8A procedures. Thus, we compared Navajo EPRI estimates with Navajo test data to judge the accuracy of the EPRI procedure. This comparison suggests that the EPRI method may overestimate sulfuric acid mist emissions when firing a similar coal if PNM's assumptions are used. This analysis supports the conclusion that the EPRI method and parameters we used provide a better estimation of sulfuric acid emissions than the methodology and parameters utilized by PNM and NMED in their analysis, which overestimates these emissions. We also note that PNM estimates for sulfuric acid emissions that were reported to the Toxic Release Inventory in recent years are much lower than those estimated by PNM for their BART analysis.

Comment: It is appropriate to include sorbent injection costs in the SCR cost analysis because sorbent injection may be required by law. The Prevention of Significant Deterioration (PSD) program under the CAA requires major sources to install additional controls to address any significant net emissions increases resulting from a physical change to an emissions unit. Because the SCR will constitute a physical change to the SJGS emission units, and could have the potential to result in a significant net emissions increase in sulfuric acid mist, additional controls could be required by the PSD program. If triggered, the PSD program would require the installation of ''best available control technology,'' which for sulfuric acid mist emission increases would likely include a sorbent injection system. Although there remains some uncertainty as to whether the SCR would trigger PSD permitting requirements, PNM believes it is appropriate to include the cost of the system in the SCR cost analysis, and the failure to include those costs underestimates the cost of the SCRs by $12,118,000.

Response: For the reasons outlined elsewhere in our response to comments, we believe the level of sulfuric acid generated at the SJGS will be so low that sorbent injection will not be needed. However, it is possible that the installation of SCR on all four units of the SJGS could generate enough additional sulfuric acid that a PSD review could be triggered. EPA is not the permitting authority for sources in New Mexico but we believe it is reasonable to anticipate that a subsequent BACT analysis for sulfuric acid emissions at the SJGS will determine that no additional controls are required because despite the projected increase in sulfuric acid emissions, emissions are expected to remain low. In considering SCR for controlling NOx, EPA specifically considered the issues of sulfuric acid formation. In our review, we believe that the emission limits for NOx can be achieved through the use of lower reactivity catalyst, thus mitigating the formation of sulfuric acid across the catalyst bed. We have set an emission limit for emissions of sulfuric acid that restricts the increase of sulfuric acid. According to the two most recent Toxic Release Inventory (TRI) reports submitted by SJGS, the total sulfuric acid emissions are very low (17.77 TPY for 2009, and 27.5 TPY for 2008). Based on our calculations, we believe the current emissions of sulfuric acid to be significantly lower than these reported values due to the low sulfur content of the coal and the removal of sulfuric acid in the installed control equipment, including wet scrubbers and fabric filters. We project, with the

implementation of SCR using a low reactivity catalyst that total emissions of sulfuric acid will remain below 22 tons/year.[23] In this particular case, sorbent injection technology is unlikely to be cost-effective on a cost per ton basis of sulfuric acid mist removed. Again, we note that the New Mexico Environmental Department is the permitting authority and has the primary responsibility to implement the New Source Review program which includes the PSD permitting process, and the issuance of the applicable permit. NMED will be responsible for determining if PSD will be triggered for increases in sulfuric acid emissions or other NAAQS pollutants and in determining the BACT for such increases.

Comment: EPA failed to account for the additional steel that will be needed due to site congestion at the SJGS. EPA assumed that the ''complexity factor'' applied to the structural steel cost in PNM's cost analysis was a ''contingency factor.'' As such, EPA assumed that PNM had double-counted contingency costs by using both the ''complexity factor'' for structural steel and a more general ''contingency factor'' overall. PNM asks EPA to reconsider the analysis provided by B&V, given that the engineers at B&V made several site visits to SJGS and designed the SCRs for the St. John's River Power Park (SJRPP). The pictures of SJRPP and SJGS provided by B&V illustrate the differences in site congestion. EPA underestimated the cost of its BART proposal by $35,087,000 by failing to accurately account for site congestion.

Response: A complexity factor is a subset of a contingency factor as it estimates unknown costs. PNM applied a complexity factor of 1.2 for Units 1 and 4 and 1.5 for Units 3 and 4. We regard these factors as rough estimates that cannot be fully determined until the SCR is designed. We visited the SJGS plant on May 19, 2011.[24] This visit confirmed that the site is congested. However, this does not confirm that the cost of structural steel for Units 1 and 4 would be 1.2 times higher than at SJRPP, and 1.5 times higher for Units 2 and 3, as this comment contends. The materials provided by PNM do not contain any plot plans or design drawing for SJRPP (or SJGS) that would allow one to conclude anything about the cost of structural steel at one facility compared to the other. Photographs attached to the PNM comments indicate more room for crane access at SJRPP than at SJGS, but this does not address the capital cost of the structural steel framework, only the cost of constructing it.

The BART Guidelines require that ''documentation'' be provided for ''any unusual circumstances that exist for the source that would lead to cost-effectiveness estimates that would exceed that for recent retrofits.'' We specifically asked PNM to identify any retrofit constraints and support them with engineering calculations, drawings, and photographs. PNM has not provided specific documentation that supports the use of their chosen structural steel complexity factors. Nevertheless, based on the information that was provided, we have modified our cost analysis to use B&V's estimate for structural steel, which includes the ''complexity factors'' cited in this comment, as B&V produced designs for both facilities.

Comment: EPA failed to account for the SCR bypass that will be necessary to protect the SCR during startup on oil. EPA assumed that SJGS could initiate startup of its units on oil without fouling the catalyst in the SCR. EPA's justification for the removal of this cost line item was that fuel oil is efficiently burned in modern low NOx burners with oil igniters, citing two coal-fired units that have shown the ability to startup on oil without a bypass and two oil-fired boilers with SCRs that do not have a bypass. Based on these references, EPA concluded that SJGS will be able to startup on oil without risking catalyst fouling resulting from a coating of incompletely combusted fuel oil. The failure to account for the needed SCR bypass system underestimates the cost of installing SCR at SJGS by $126,484,000.

Response: We disagree with this comment. The removal of SCR bypass costs was based on several factors. First, a noted air pollution handbook concluded (before U.S. ozone season trading programs made them routine): ''most applications do not have SCR bypasses, since routines are used during startup and shutdown which preclude their need'' (Cho and Dubow),[25] and regulations sometimes prohibit their use. Also, experience in Japan and Germany has shown them to be costly and not required to prevent damage due to low-load oil firing, thermal gradients, and other conditions. We believe a bypass is not required in a properly designed and operated SCR system to prevent SCR catalyst fouling during startup or operation on oil. Two examples were cited in our TSD as part of our proposal to confirm this information. In addition, Sargent & Lundy, the consultant that prepared the design and cost estimate for SCR for the 3 units at Navajo Generating Station, an existing facility of similar age and retrofit complexity that starts up on oil, did not recommend an SCR bypass in its BART analysis.

Comment: The EPA cost estimate also does not properly estimate annual operating costs for auxiliary power consumption and catalyst replacement rate. B&V estimated the amount of auxiliary power needed to run the SCR to be 16,297 kW (for all four units) at a cost of $0.06095 per kWh, based on a site-specific analysis. Specifically, B&V's calculation was based on the calculation of the additional fan energy (based on flue gas flow rate and estimated pressure drop from the SCR) and the power consumption for the auxiliary equipment (such as the ammonia system). EPA, on the other hand, simply assumed a cost of 5,400 kW at $0.05 per kWh based on a percentage estimate for ''typical'' SCR installations. This error underestimates the cost of auxiliary power consumption when operating SCRs by $5,388,000.

Response: EPA disagrees with the comment. First, the claimed ''site-specific analysis'' was not submitted for inclusion in the record, and thus EPA and the public could not review it. Second, the values that would affect the cost analysis, *e.g.,* duct length, catalyst pressure drop, would be estimates as the SCR system has not yet been designed. In fact, the record does not even contain an arrangement diagram, required to determine duct lengths. Third, the B&V estimate of the amount of auxiliary power needed to run the SCR (16,297 kW) was initially rejected by us as it amounts to 0.9% of the total gross generating capacity of the station, which is high compared to other estimates known to us. An SCR typically uses about 0.3% of a plant's electric output, which would be about 5,400 kW or three times less than assumed in the B&V cost analysis. The BART Guidelines require that unusual costs be documented in the record. PNM did not supply any additional information to support its unusually high estimate.

Fourth, as discussed elsewhere in our response to comments, no support has been provided for PNM's claim of a 10 in. w.g.[26] pressure drop due to the SCR,

[23] Based on our emission limit of 2.6×10^{-4} lb/MMBtu and conservatively assuming each unit operates 100% of the year (8760 hr/yr).

[24] See San Juan Generating Station Site Visit, 5/23/11.

[25] S.M. Cho and S.Z. Dubow, Design of a Selective Catalytic Reduction System for NO_X Abatement in a Coal-Fired Cogeneration Plant, Proceedings of the American Power Conference, April 13–15, 1992, pp. 717–722.

[26] 10/22/10 B&V Cost Analysis Update, Appendix B; 6/7/07 B&V San Juan BART Analysis, p. B–3.

which is at the upper end of the usual range of 3 to 10 in. w. g. Fifth, the unit cost of electricity used by B&V, $0.06095/kWh, is much higher than the auxiliary power cost commonly used in cost effectiveness analyses, and thus was not justified. Auxiliary power is the power required to run the plant, or power not sold. Cost effectiveness analyses are based on the cost to the owner to generate electricity, or the busbar cost, not market retail rates. The B&V estimate is based on the average forecasted cost of replacement power for 2007 to 2012.[27] Thus, even if this is the correct site specific cost, it is the wrong metric for a cost effectiveness analysis. We further note that the use of forecast cost is inconsistent with the BART methodology, which is based on current dollars. We conservatively used the upper end of the range of costs assumed in BART cost effectiveness analyses ($0.03/kWh to $0.05/kWh)[28] or $0.050/kWh. After our analysis was complete, PNM responded to a question from us that its average cost of production is $0.047/kWh ($47.83/MWh). This rounds up to 0.05/kWh, the number we used. Thus, we have made no changes to our estimate of auxiliary power demand.

Comment: In its analysis, EPA recognized that the Cost Manual does provide factors to estimate certain ''direct installation costs,'' namely foundation/supports, handling/erection, electrical, piping, insulation, painting, demolition, and relocation. However, the Control Cost Manual fails to provide factors to estimate these costs for SCR, as recognized in EPA's analysis. EPA indiscriminately took the median of the factors for other control technologies, which vary significantly from SCRs. As a result, EPA's analysis slashes in half the direct installation costs estimated by B&V. For example, the direct costs assumed by EPA for Unit 1 are $8,799,917, but that amount would only cover 159,998 man-hours, or 21 weeks of construction. EPA's own schedule, even though insufficient itself, assumes 38 weeks of construction, nearly double of the amount that EPA's analysis could afford. Thus, EPA's estimate is insufficient for its own estimated construction timeline, much less the 64 to 72 weeks of construction that PNM's experienced consultants predict.

Response: We disagree with this comment. The B&V direct installation costs were calculated by multiplying total purchased equipment costs by various unsupported percentages, a rough estimating practice referred to as ''factoring.'' B&V did not submit into the record the basis for the various factors that they used. The percentages that B&V used are demonstrably high. We compared each of B&V's direct costs with those from a major SCR designer's (Babcock Power) database and from similar SCR projects nationwide. Foundation and supports, costed by B&V as 30% of purchased equipment cost, for example, based on its estimate of purchased equipment cost, are two to three times higher than upper bound costs reported by Babcock Power for similar sized units ($8/MW compared with the B&V estimate of $18/MW to $29/MW for SJGS). Based on these comparisons the B&V's costs were excessive. No documentation has been provided to justify the higher B&V costs.

The Cost Manual estimating procedure for direct installation costs is based on the same factoring approach used by B&V. We tabulated the factors for total direct installation costs for all controls reported in the Manual. These ranged from 30% to 85% of the purchased equipment cost. In comparison, B&V assumed direct installation costs were 103% to 113% of total purchased equipment cost.

We calculated direct installation costs for SJGS using the median of this range or 62% of purchased equipment cost. This is consistent with the upper bound Babcock Power estimate for actual retrofit SCR installations and estimates made by others. The B&V estimate is also high compared to direct installation costs that it reported for the SJRPP SCR, which was otherwise used to extrapolate equipment costs to SJGS. The direct installation costs for the SJRPP SCR were 95% of the total purchased cost. We have revised our cost estimate to use this percentage to conform to the balance of the B&V cost estimate.

The B&V estimate assumes a 150-man crew for the entire 21 weeks, a 50-hour workweek for the duration, and a wage of $55/hour. This represents peak staffing and labor rates, even though the number of workers would vary over time. Thus, our estimate of direct installation costs corresponds to a longer duration than claimed. Regardless, it is important to note that this duration corresponds to construction of a much smaller project (less SCR bypass, preheater modifications, *etc.*) than proposed by B&V. Further, for our proposal, we did not estimate construction duration, but rather the length of time from the effective date of the final rulemaking to startup of the SCR or 36 months. We note that we have revised our proposal to allow 60 months from the effective date of the rule allowing additional flexibility in deploying workers. Thus, the basis of this comment's starting point, an EPA estimate of 38 weeks, is incorrect. In addition, the B&V estimate does not contain a schedule, which is required to estimate the staffing and duration of construction.

Comment: EPA asserts that ''[t]he contingencies included in the B&V cost estimates are double-counted and excessive,'' based on the misimpression that there are three contingencies ''imbedded'' in the analysis. However, two of the three allowances are for known costs, and therefore are not ''contingencies.'' Specifically, the complexity factor for structural steel costs of 1.2 (for Units 1 and 2) and 1.5 (for Units 3 and 4) are known, expected costs, and therefore do not constitute a contingency factor, as noted previously. Also, the $2 million estimated for underground obstructions and the $500,000 estimated for on-site buildings are also known, and therefore do not represent a duplicative contingency factor. Thus, EPA's claim that PNM double-counted its contingency costs is incorrect and underestimates the cost of SCRs at SJGS by $61,978,000.

Response: This comment explains that the ''complexity factor,'' site unknowns, and general building requirements are not contingencies, but rather known factors. Based on this explanation and the information we have about the SJGS, we concur that these complexity factors, and the engineering estimates for underground obstructions and on-site buildings, are reasonable and we have modified our cost estimates to reflect B&V's estimates.

Comment: EPA also claims that the Interest During Construction included in the B&V cost estimates are not allowed by the Cost Manual. Therefore, this cost was eliminated from the cost analysis underlying the proposed FIP. However, this cost item is a real project cost, which will be incurred by PNM to finance the project and must by recovered from the SJGS customers. The rejection of costs associated with Interest During Construction underestimates the cost of the project by $78,300,000.

Response: The B&V cost analysis include a charge for interest during construction of 7.41% of direct plus indirect costs. This charge is generally

[27] E-mail from Norem to Kordzi, October 21, 2010, Re: PNM Responses to Follow-Up Questions from October 14, 2010 Conference Call Regarding BART Cost Estimate, October 21, 2010 (10/21/10 Responses), Response to Question 9, pp. 3–4.

[28] Sargent & Lundy, Sooner Units 1 & 2, Muskogee Units 4 & 5 Dry Flue Gas Desulfurization (FGD) BART Analysis Follow-Up Report, Prepared for Oklahoma Gas & Electric, December 28, 2009, Attach. C, pdf 109; (Gerald Gentleman—$45.65/MWh; White Bluff—$47/MWh; Boardman/Northeastern/Naughton—$50/MWh; Nebraska City—$30/MWh).

known as the Allowance for Funds Used During Construction (AFUDC) and is specifically disallowed under the Cost Manual methodology and specifically disallowed for SCRs.[29] A cost effectiveness analysis is a regulatory analysis that is based on current annual dollars without any inflation. AFUDC is an accounting method. Assets under construction do not provide service to current customers and thus associated interest and allowed return on equity are not charged to current customers. Instead, AFUDC capitalizes these costs and adds them to the rate base so that they can be recovered from future customers when the assets are used. Thus, these charges represent future cash income to the utility. In other words, AFUDC is the accumulated cost of carrying capital and holding it waiting to spend, so money can be made in the future by selling electricity. Future income should not be charged against the cost of a SCR in a BART cost-effectiveness analysis. These costs are not part of the constant dollar approach found in the Cost Manual and should not be included in BART cost-effectiveness analyses.

3. Concerns Over Possible Electricity Rate Increases

Comment: Both the CAA and EPA BART regulations require consideration of the remaining useful life of a source. Requiring the imposition of possibly $1 billion or more of control technology capital costs at SJGS, a nearly 40-year old plant, presents a likely scenario where the remaining useful life of SJGS is less than the time period needed for amortizing the costs of the control technologies. As such, it could make production at SJGS during its remaining useful life uneconomical in comparison with other existing or future plants. If, in light of SJGS' estimated remaining useful life, it is determined that an investment of such magnitude does not make economic sense, owners of SJGS must evaluate alternate long-term options for meeting obligations to provide a cost-effective, reliable supply of electricity to customers. As such, the significant cost of requiring such SCR at SJGS will substantially increase the cost of electricity produced by SJGS. Over two million electric customers in New Mexico and other western states stand to be directly and adversely affected by the EPA proposal. PNM estimates that the average residential customer will experience a 10 percent increase in rates due solely to EPA's proposed SCR technology. As a result of the Proposed Rule, PNM has indicated that possible sources of replacement power may be needed to ensure it can fulfill its obligation to provide electricity to the citizens of New Mexico.

Response: The commenter is correct that the remaining useful life of a facility may impact the BART determination. As we note in the BART Guidelines,

> The ''remaining useful life'' of a source, if it represents a relatively short time period, may affect the annualized costs of retrofit controls. For example, the methods for calculating annualized costs in EPA's OAQPS Control Cost Manual require the use of a specified time period for amortization that varies based upon the type of control. If the remaining useful life will clearly exceed this time period, the remaining useful life has essentially no effect on control costs and on the BART determination process. Where the remaining useful life is less than the time period for amortizing costs, you should use this shorter time period in your cost calculations.[30]

The BART Guidelines further clarify, ''[w]here this affects the BART determination, this date should be assured by a federally- or State-enforceable restriction preventing further operation.''

As part of our review of PNM's BART determination for the SJGS, we met with representatives of PNM and its contractor several times, and communicated numerous times through e-mail and phone. At no point did PNM indicate that it wished to constrain the amortization period for financing BART controls based on the remaining useful life of the facility through the use of a federally enforceable restriction.

Comment: Several local and county governments and municipal power systems expressed concern that the proposed FIP would require a major capital expenditure that could well exceed $750 million, according to PNM. Such significant costs will drastically increase the cost of power produced by the SJGS and have the potential to increase electricity rates in the communities served by the SJGS. Another commenter stated our NO_X BART proposal for the SJGS would cost New Mexico or Albuquerque ratepayers $10.20 more a year, or 85 cents a month, which is the price of a candy bar, so cleaning up this decades old air pollution is affordable and now is the time to do it.

Response: As discussed in our proposal, we disagree with PNM's cost estimate for installing SCR on the four units of the SJGS. Although PNM estimated the total cost to be in excess of $1 Billion, we estimated that cost to be approximately $250 Million. As discussed elsewhere in this notice, taking into consideration various comments, we have refined our estimate to be $344,542,604. In light of the visibility benefits we predict will occur, we consider this to be cost effective. We take our duty to estimate the cost of controls very seriously, and make every attempt to make a thoughtful and well informed determination. However, we do not consider a potential increase in electricity rates to be the most appropriate type of analysis for considering the costs of compliance in a BART determination. Nevertheless, we note that our cost estimate, being about ⅓ that of PNM's will result in significantly less costs being passed on to rate payers.

4. Comments That Opined on Our Reliance on the EPA Air Pollution Control Cost Manual

Comment: The rejection of PNM's escalation factors is unrealistic. By relying too heavily on the Cost Manual, EPA's analysis not only omits the specific line items, it also omits or alters various estimating factors utilized by B&V in PNM's analysis. EPA relied on the Chemical Engineering Plant Cost Index (CEPCI) to escalate costs from the Cost Manual. However, although that index may be a reasonable tool for a chemical plant, it does not properly account for escalation of costs at power plants. In contrast, B&V developed an appropriate escalation factor with the help of an outside consulting firm specializing in financial analysis and forecasting, which incorporates the complete B&V database of ''as-built'' costs, the Bureau of Labor Statistics indices, and the consulting firm's database of costs and indices, all tailored specifically to the power generation industry.

Response: The CECPI, which is published monthly by the magazine, *Chemical Engineering,* has been used for decades in regulatory cost effectiveness analyses and is one of the factors that allows a comparison to be made between cost effectiveness analyses at different facilities. This method was selected by EPA's Office of Air Quality Planning and Standards for use in regulatory cost effectiveness analyses because ''this index specifically covers cost items that are pertinent to pollution control equipment (materials, construction labor, structural support, engineering & supervision, *etc.*).''[31] The

[29] EPA Air Pollution Control Cost Manual, pdf 486, Table 2.5, E (Allowance for Funds During Construction) = 0.

[30] 70 FR 39104, 39169.

[31] E-mail from Larry Sorrels (OAQPS) to Don Shepherd (Park Service) with cc to Anita Lee (EPA

B&V escalation index, on the other hand, is proprietary and not subject to public review.

Comment: A commenter contends that EPA improperly rejected PNM's cost estimates, because EPA thought them inconsistent with the Cost Manual. The commenter states EPA should consider site-specific costs, even when those costs are not included in the Manual. The commenter further states that EPA did not take ''unusual circumstances'' into proper account and expresses the view that EPA did not consider site-specific elements that would eliminate available control technologies from consideration.

Response: We disagree with commenter's view that our cost analysis is improper, but we agree that the Cost Manual is not the only source of information for the BART analysis. For instance, the reference to the Cost Manual in the BART Guidelines clearly recognizes the potential limitations of the Manual and the need to consider additional information sources:

> The basis for equipment cost estimates also should be documented, either with data supplied by an equipment vendor (*i.e.,* budget estimates or bids) or by a referenced source (such as the OAQPS Control Cost Manual, Fifth Edition, February 1996, EPA 453/B–96–001). In order to maintain and improve consistency, cost estimates should be based on the OAQPS Control Cost Manual, where possible. The Control Cost Manual addresses most control technologies in sufficient detail for a BART analysis. The cost analysis should also take into account any site-specific design or other conditions identified above that affect the cost of a particular BART technology option.[32]

The Cost Manual establishes a methodology for calculating cost effectiveness that allows comparison across multiple units. The regulatory cost is expressed in current real or constant dollars, less inflation. B&V did not follow the regulatory cost method. Instead, it used CUECost, a model that estimates control costs using the levelized cost method developed by the EPRI, which is not approved for BART determinations; extrapolation from several other projects; and its own proprietary and confidential databases not available for public review.

As to unusual circumstances, the BART Guidelines call for ''documentation'' to be provided for ''any unusual circumstances that exist for the source that would lead to cost-effectiveness estimates that would exceed that for recent retrofits.'' [33] PNM did not provide any documentation of unusual circumstances related to the BART determinations in any of its cost analysis.

We subsequently toured the SJGS plant site on May 19, 2011.[34] The SJGS site is congested, but not more so than other space-constrained sites where SCR has been retrofit for much less cost than estimated for SJGS.[35] Gibson, a complex, space-constrained retrofit in which the SCR was built 230 feet above the power station using the largest crane in the world [36] only cost $249/kW in 2010 dollars.[37] Similarly, the Belews Creek SCR, one of the largest and most complex SCR retrofit projects in the U.S., involved installing the SCR 280 feet above ground level above the boiler building. This retrofit only cost $202/kW in 2010 dollars,[38] [39] compared to cost estimates of $423/kW to $567/kW for SJGS. B&V's estimates of capital cost to retrofit SCR at SJGS ($446/kW–$599/kW) are higher than actual installed cost for Gibson and many other existing retrofit SCRs, including those with extreme retrofit difficulty. The record including the information we have about the site does not document any unusual circumstances that would justify the unusually high costs claimed by B&V for SJGS. Thus, we do not believe that unusual circumstances are warranted.

Comment: The exclusive use of the Cost Manual underestimates the expected costs for SCRs at SJGS for several reasons. First, the Manual was last updated in 2002 and Section 4.2, Chapter 2, Selective Catalytic Reduction, was actually written in October 2000. In addition, on page 2–40 of the SCR section, the Manual indicates that the costs presented are based on 1998 dollars. Therefore, the Manual does not reflect more recent experience with SCR installations, the cost of which has skyrocketed. Second, the 2002 version of the Manual was the very first version to specifically address NO_X controls at all. According to the introduction to the Manual, EPA was at that time ''entering new and uncharted territory for part of the Manual'' because ''previous editions did not discuss NO_X or SO_2 controls, and [the 2002] edition starts the process of correcting that oversight.'' Finally, EPA also admits in the Manual that it had difficulty obtaining information on control costs because most of the information is proprietary—the very type of information to which B&V has ready access.

Response: As discussed elsewhere in our response to comments, the Cost Manual contains two types of information, general cost analysis methodology and control-specific costing information. This comment addresses the latter. The information on SCR in Chapter 2 of the Cost Manual contains general information on SCR, design procedures, and some cost information. We agree that the cost information does not reflect current market costs. Thus, cost data should be escalated to current dollars using the CECPI before it is used or replaced with site-specific vendor quotes. We did not use any SCR costs data from this chapter in our analysis.

Comment: The EPA cost estimate only differs from the Cost Manual where doing so would serve to reduce the amount of the cost estimate. For example, EPA applied an SCR life span of 30 years instead of the 20 year life span provided in the Cost Manual. The justification for choosing a different life span than provided for in the Manual is that other facilities have requested 30 year life spans in requests for proposal and some unidentified SCRs in Europe have lasted that long. If such general, anecdotal information were sufficient to convince EPA to stray from the Cost Manual, the EPA analysis should be replete with variations from the outdated Cost Manual. The use of a 30-year lifespan underestimates the cost estimate of SCR by $15,268,000.

Response: We disagree with this comment and we used the Cost Manual appropriately, as directed by the RHR. We used it for cost factors that for reasons expressed elsewhere in our response to comments, we feel were miscalculated by B&V, but were not otherwise available in the public domain. We did not use any actual cost data from the Cost Manual. In the case of SCR lifetime, the Cost Manual does not recommend a lifetime for an SCR, but rather sets out a calculation example that uses a lifetime of 20 years. In fact, this same calculation makes many other

Region 9), dated 7/21/10, concerning the SRP Navajo Generating Station SCR cost estimate.

[32] 70 FR 39104, 39166.

[33] *Id.* at 39168.

[34] See San Juan Generating Station Site Visit, 5/23/11.

[35] Revised BART Cost Effectiveness Analysis for Selective Catalytic Reduction at the Public Service Company of New Mexico San Juan Generating Station, November 2010, pp. 28–29.

[36] Bob Ellis, Standing on the Shoulder of Giants, Modern Power Systems, July 2002.

[37] McIlvaine, NO_X Market Update, August 2004. SCR was retrofit on Gibson Units 2–4 in 2002 and 2003 at $179/kW. Assuming 2002 dollars, this escalates to ($179/kW)(550.7/395.6) = $249/kW. *http://www.mcilvainecompany.com/sampleupdates/NoxMarketUpdateSample.htm.*

[38] Bill Hoskins, Uniqueness of SCR Retrofits Translates into Broad Cost Variation, PowerGen Worldwide, May 2003. Available at: *http://www.power-eng.com/articles/print/volume-107/issue-5/features/uniqueness-of-scr-retrofits-translates-into-broad-cost-variations.html.*

[39] Escalated from $145/kW: ($145/kw) (560.3/401.7)–$202/kW. Chemical Engineering, April 2011.

assumptions that we felt were not applicable to SJGS and if used anyway, would have resulted in lower cost estimates, but which were not used in our analysis.

The lifetime of an SCR, which is a metal frame packed with catalyst modules, is equal to the lifetime of the boiler, which might easily be over 60 years. The lifetime of a retrofit SCR is generally set equal to the remaining useful life of the facility. The record is silent on the remaining useful life of the SJGS units. Further, USGS studies of the coal reserves upon which the SJGS relies indicate that the local coal supply is adequate to support a remaining useful life of 30 years.[40] Many utilities routinely specify 30+ year lifetimes in requests for proposal and to evaluate proposals. In fact, an analysis prepared by B&V for another facility assumed a 40 year SCR lifetime.[41] And finally, Sargent & Lundy assumed a design life of 30 years [42] for the nearby Navajo Generating Station which burns a similar coal. We conclude there is nothing in the record to support a 20 year lifetime for the SCR and believe a 30 year lifetime is justified.

Comment: EPA also justifies its refusal to consider additional line items outside the scope of the Cost Manual on the grounds that ''PNM had provided no documentation regarding unique circumstances related to the BART determinations.'' That claim is incorrect. EPA's own analysis cites the documentation PNM submitted to demonstrate the unique circumstances at SJGS, referred to by EPA as B&V's ''Cost Analysis Manual Commentary.'' That document was a response to the cost analysis that was initially prepared by NMED in March 2008 as a response to follow-up questions from NMED regarding the BART determination for SJGS. In addition, PNM also provided significant evidence of the site-specific challenges directly to EPA in response to its questions over the several months during which EPA prepared its BART determination for SJGS. Thus, the assertion by EPA that PNM has failed to sufficiently document the site-specific challenges at SJGS is incorrect.

Response: The specific items in dispute are discussed elsewhere in our response to comments. The information provided in the ''Cost Analysis Manual Commentary'' and additionally provided to NMED and us explains how B&V extrapolated costs that it estimated from other facilities to apply to SJGS. The alleged unique, site-specific constraints at SJGS, that would justify extrapolating costs from these other facilities, the St. Johns River Power Project, which burns coke, and Harding Street, were never explained. The record, for example, does not contain any structural steel and duct layout drawings to justify this high contingency and other factors, nor does it contain vendor quotes specific to SJGS's coal and site constraints. In fact, as noted elsewhere, we specifically asked PNM to document site specific constraints but they did not respond.

B. Comments on Our Proposed NO_X BART Emission Limits

We received a significant number of comments concerning our proposed NO_X BART emission limit of 0.05 lbs/MMBtu for the SJGS. We have summarized our responses to these comments, but refer the reader to our *Complete Response to Comments for NM Regional Haze/Visibility Transport FIP* document for more detail.

Comment: PNM stated the BART limit should not be based on daily averages of thirty (30) calendar days, as we proposed, because it believes it would be inconsistent with the BART Guidelines. If calendar days are used, they argue, the average could include as little as one hour of operation if the unit is offline for an outage that lasts longer than thirty days because the first hour of operation would be the only data recorded in the last thirty calendar days. Instead, PNM requested that we consider changing ''calendar days'' to boiler operating days (BODs) which are days in which the unit ran for at least one hour. That approach would be consistent with the BART Guidelines, which include the following advice to states:

> For EGUS, specify an averaging time of a 30-day rolling average, and contain a definition of ''boiler operating day'' that is consistent with the definition in the proposed revisions to the NSPS for utility boilers in 40 CFR part 60, subpart Da.[43]

The BOD would ensure that, when an outage occurs, the emissions following startup will be averaged with the emissions data from before the outage, rather than with the period of time during which the unit did not have any emissions at all because it was offline.

Response: We agree with this comment that our proposed NO_X emission limit should be based on BODs, rather than a straight calendar average. In response to this comment, we have reanalyzed our proposed determination that the units of the SJGS can achieve a NO_X emission limit of 0.05 lbs/MMBtu on a continuous basis, using the BOD concept. We have done this because we believe the same metric should be used to both determine BART and to determine compliance with BART. The results of that analysis are presented in response to another comment. In summary, we continue to believe that NO_X BART for the units of the SJGS is an emission limit of 0.05 lbs/MMBtu. We have concluded that emission limit should be based on a 30-day BOD rolling average based on any operation in a given day counting toward the average. We believe that averaging scheme complies with the BART Guidelines, which defines a BOD to be ''any 24-hour period between 12:00 midnight and the following midnight during which any fuel is combusted at any time at the steam generating unit.'' [44]

Comment: The U.S. Forest Service (USFS) expressed its support of our NO_X BART emission limit of 0.05 lb/MMBtu. The USFS believe this emission limit is adequate and will improve visibility at Class I areas throughout the Four Corners region. Additionally, the USFS feels SCR has already been determined to be BART at several other coal-fired power plants across the United States.

Response: We agree with the USFS.

Comment: EPA predetermined the cost-effectiveness of SCR at SJGS ''assuming an outlet NO_X of 0.05 lb/MMBtu.'' EPA then proposed that assumed rate as the BART emission limit for SJGS. EPA's assumption is unfounded—the installation of SCRs at SJGS will not enable the units to achieve 0.05 lb/MMBtu on a continuous basis. As such, the proposed 0.05 lb/MMBtu limit cannot be BART for SJGS.

Response: We disagree with this comment. We initially estimated the cost effectiveness of SCR, assuming an outlet NO_X of 0.07 lb/MMBtu, to provide a direct comparison with B&V's analysis. Following this, we determined that a BART emission limit of 0.05 lb/MMBtu was appropriate and then refined the cost effectiveness on that basis. The BART level of 0.05 lb/MMBtu was selected based on an examination of continuous emission monitoring

[40] Gretchen K. Hoffman and Glen E. Jones, Coal Availability Study—Fruitland Formation in the Fruitland and Navajo Fields, Northwest New Mexico, USGS Open-File 464, January 24, 2002, Available at: *http://geoinfo.nmt.edu/publications/openfile/downloads/ofr400-499/451-475/464/ofr_464.pdf*.

[41] E-mail from O'Brien to Van Helvoirt, September 28, 2004, Re: Cost Impact, WPS–011904 at WPS–011905.

[42] 8/17/10 Salt River Project Navajo Generating Station Units 1, 2, 3 SCR and Baghouse Capital Cost Estimate Report (S&L Navajo Cost Analysis), Appendix A, p. 6, Sec. 1.7.

[43] 70 FR 49104, 39172.

[44] *Id.*

systems (CEMS) data for existing units operating with retrofit SCRs, as we explain elsewhere in our response to comments.

Comment: In contrast to EPA's NO_X emission limit assumption of 0.05 lbs/MMBtu, B&V, who has extensive practical experience in actually designing and installing retrofit SCRs determined that a retrofit SCR would only be capable of achieving 0.07 lb/MMBtu on a continuous basis, particularly if required to use the low-oxidation catalyst assumed by EPA to minimize ancillary emission increases associated with SCR.

Response: We do not believe the claim that B&V ''determined that a retrofit SCR would only be capable of achieving 0.07 lb/MMBtu on a continuous basis * * *'' is supported in the record by any calculations or arrangement drawings. Rather, the 0.07 lb/MMBtu value is simply stated in the initial June 6, 2007 B&V BART analysis without any explanation as to how it was determined or why 0.07 lb/MMBtu satisfies BART rather than a lower limit.[45] The basis for this limit has been questioned by NMED, the NPS and us since July 2007, but we do not believe that PNM has provided adequate supporting analysis. We do not view an unsupported statement, such as this, questioned on the record by many parties and inconsistent with retrofit SCR experience at numerous facilities, to be sufficient to support a BART determination of 0.07 lb/MMBtu.

We note the NO_X design basis was 0.05 lbs/MMBtu for the SCR retrofit for the nearby Navajo Generating Station, a facility of a similar age that burns a similar coal, with a more constrained site. As explained elsewhere in our response to comments, we present data that demonstrates that retrofit SCR installations are capable of achieving a NO_X limit of 0.05 lbs/MMBtu on a continuous basis. Therefore, we believe the statement that a retrofit SCR would only be capable of achieving 0.07 lb/MMBtu on a continuous basis, is factually incorrect.

Comment: Several commenters stated that our claim that many facilities are using SCR to actually achieve lower emission rates than 0.07 lb/MMBtu (including the Havana Unit 9, Amos Units 1 and 2, Chesterfield Unit 6, Cardinal Units 2 and 3, Colbert Unit 5, Ghent Units 3 and 4, and Mill Creek Unit 3) is incorrect. This commenter states that while these units have shown the ability to reach 0.05 lb/MMBtu or lower at times, those units are unable to do so on a continuous basis. Thus, the commenter claims, if the units cited by us were in fact subject to a 0.05 lb/MMBtu emission limit, those limits would have been violated many times at each unit.

Response: We disagree with this comment and continue to believe that the NO_X emission limit we proposed for the four units of the SJGS, 0.05 lbs/MMBtu, is achievable on a continuous basis. In reaching this conclusion, we followed the language in the BART Guidelines:

> It is important, however, that in analyzing the technology you take into account the most stringent emission control level that the technology is capable of achieving. You should consider recent regulatory decisions and performance data (*e.g.,* manufacturer's data, engineering estimates and the experience of other sources) when identifying an emissions performance level or levels to evaluate.
>
> In assessing the capability of the control alternative, latitude exists to consider special circumstances pertinent to the specific source under review, or regarding the prior application of the control alternative. However, you should explain the basis for choosing the alternate level (or range) of control in the BART analysis. Without a showing of differences between the source and other sources that have achieved more stringent emissions limits, you should conclude that the level being achieved by those other sources is representative of the achievable level for the source being analyzed.[46]

First, we examined ''the most stringent emission control level that technology [SCR] is capable of achieving.'' As demonstrated below, we concluded that SCR is capable of achieving a NO_X emission limit of 0.05 lbs/MMBtu. Second, we examined the record to determine if there existed ''special circumstances pertinent to the specific source under review'' that would prevent the units of the SJGS from achieving this limit, and found none. Third, concluding there was no ''showing of differences between the source and other sources that have achieved more stringent emissions limits'' that would preclude the application of this limit, we ''conclude[d] that the level being achieved by those other sources is representative of the achievable level for the source being analyzed.'' The following discussion expands on these points.

In our *Complete Response to Comments for NM Regional Haze/Visibility Transport FIP* document, we provide a detailed discussion of why we believe the commenter, PNM, misquotes our cost evaluation report, which was incorporated into our proposal's TSD. In summary, that report contained a previous study of SCR performance during the ozone season for the period 2003–2006. This study showed that several units were achieving a NO_X emission limit of 0.05 lb/MMBtu at that time to meet NO_X SIP Call regulations that were then in force. These SCRs only operated from May to October of each year, the ozone season. The SCRs were bypassed during the remainder of the year as they were not required to meet the NO_X SIP Call.

PNM presents graphs for each of the ozone season 2003–2006 units for the period January 2008 to November 2010. These graphs suggest that 0.05 lb/MMBtu is exceeded on numerous occasions and imply this was due to a limitation of the equipment to maintain control. However, these graphs appear to be based on calendar operating days. This distinction is significant, as the BOD convention discussed by the BART Guidelines[47] smoothes out the 30-day rolling average outage spikes. Also, these charts include large blocks of time during which the SCRs were turned off because they were not required under the trading programs then in force. Lastly, these charts connect the dots across outage periods, when the SCRs are not in use and improperly include the zero hour days in the averages at elevated levels.

To address this, we analyzed data from EPA's Clean Air Markets Division (CAMD), which compiles CEMS data reported under various trading programs. We analyzed the NO_X CEMS data for the period 2009–2010 to identify the best performing retrofit units that operate year-round. We ranked the annual average NO_X emissions for all units in the database for the years 2009 and 2010 from the lowest to the highest NO_X emissions. We then selected those facilities that had at least one unit in the top 30 group in both years to identify retrofits achieving best performance.

We then developed a spreadsheet program that used the CAMD data and calculated and graphed three types of 30-day rolling averages for most of these best performing units, plus those additional units graphed by PNM for the period 2008–2010 for the Ozone Transport Assessment Group (OTAG) units and 2006–2010 for the Texas units (Parish 7, 8). All of the units we analyzed were retrofitted with SCR.

[45] 6/7/07 B&V BART Analysis, Table ES–2, Table 2–3, Table 6–1, 7–1.

[46] 70 FR 39104, 39166.

[47] *Id.* at 39172.

As Exhibit 2 shows,[48] the averaging conventions we used are: (1) A conventional 30-day calendar rolling average; (2) a 30-day BOD rolling average based on any operation in a given day counting toward the average; and (3) a 30-day BOD rolling average based on only full 24-hour days. We believe that averaging scheme (2) complies with the BART Guidelines, which defines a BOD to be ''any 24-hour period between 12:00 midnight and the following midnight during which any fuel is combusted at any time at the steam generating unit.''[49]

The Havana Unit 9 data shows that it has operated under 0.05 lbs/MMBtu from mid-2009 to the end of 2010 on a continuous basis. In fact, this unit has operated under 0.035 lbs/MMBtu for much of that time. The Parish Unit 7 data shows that it has operated under 0.05 lbs/MMBtu from mid-2006 to mid 2010 on a continuous basis. In fact, this unit has operated for months at approximately 0.035 lbs/MMBtu, and for approximately 2 years at approximately 0.04 lbs/MMBtu. The Parish Unit 8 data show that it has operated almost continuously under 0.045 lbs/MMBtu since the beginning of 2006. Other units' data show months of continuous operation below 0.05 lbs/MMBtu. We believe this data demonstrates that similar coal fired units that have been retrofitted with SCRs are capable of achieving NO_X emission limits of 0.05 lbs/MMBtu on a continuous basis.

In addition, it is important to note that most of the NO_X CEMS data in the CAMD database is generated under cap and trade programs, such as the Acid Rain Program, Clean Air Interstate Rule (CAIR), and the NO_X SIP Call or to comply with elevated permit limits, such as from netting out of NSR review. Therefore, these reporting units are not subject to regulatory requirements that compel the continuous operation of SCRs to achieve best available NO_X reductions. Consequently, a simple examination of the raw data will not always by itself reveal the NO_X reduction these limits are capable of achieving.

This is demonstrated by the Parish units in Texas, which are likely the best performing SCR units over the long term. The units operate to maintain a system wide cap, rather than to meet unit by unit limits. The Parish results may not, therefore, reflect the maximum capacity of the SCRs to reduce the plants' NO_X emissions. The Parish SCR acceptance tests indicate that they can operate at design levels, or 0.03 lb/MMBtu. This is evidenced by examination of an excerpt from the hourly NO_X data for Parish Unit 8, which typically operates at a 30-day rolling average of about 0.044 lb/MMBtu and was run for extended periods at 0.03 lb/MMBtu from August 5, 2006 to September 20, 2009 and then at 0.035 lb/MMBtu from September 21, 2006 to December 1, 2006 to demonstrate its capability.[50] In other words, lower NO_X emissions are achievable from the existing fleet of SCR-equipped units than are reflected by a simple examination of the CAMD data.

Comment: A commenter states that while the proposed NO_X limit of 0.05 lbs/MMBtu as BART for SJGS would significantly reduce NO_X emissions from the SJGS and have a positive impact on visibility and public health, a lower NO_X limit of 0.035 lbs/MMBtu is not only technically feasible, but legally-required for SJGS under the CAA. The commenter points to our proposal language that the State of New Mexico ''noted the potential for greater control rates as low as 0.03 lbs/MMBtu'' for SJGS. This commenter references our TSD for the proposed FIP, that SCR technologies ''are routinely designed and have routinely achieved a NO_X control efficiency of 90%.'' Therefore, assuming a 90% removal efficiency, based on SJGS's current rate of emissions (under 0.30 lbs/MMBtu), the commenter concludes modern SCR technology would bring controlled emissions down to 0.03 lbs/MMBtu. The commenter proposed an emission limit of 0.035 lbs/MMBtu, based on a report performed by its own contractor. This report includes vendor guarantees for 90% controls, and presents information that an emission limit of 0.035 lbs/MMBtu is being achieved at other units. The commenter further states that we must present specific circumstances to preclude the application of this emission limit. Lastly, the commenter makes a case that, the feasibility of a lower NO_X emission limit aside, the additional costs associated with achieving such a limit, weighed against the additional mass of NO_X that would be removed, make such a limit cost effective.

Response: We have reviewed the information presented in the commenter's contractor's report. As we discuss elsewhere in our response to comments, we agree there are SCR retrofits that are meeting NO_X emission limits below 0.05 lbs/MMBtu. Our analysis also indicates there are a few SCR retrofits that have demonstrated the ability to do this on the basis of a 30 day BOD average. The commenter's contractor has presented monthly emission data for a number of units which appear to indicate that some are occasionally able to meet monthly emission limits below 0.05 lbs/MMBtu. The Havana 9 unit is particularly highlighted, which appears to indicate that unit has even met such a limit for perhaps 4–5 months at a time. However, in our view, we conclude this is not enough time to demonstrate that the units of the SJGS are able to meet a NO_X limit of 0.035 lbs/MMBtu on the basis of a 30 day rolling average year round.

We further agree that it may be technically feasible, considering both vendor performance guarantees, and the data discussed above, for some SCR retrofits to reliably meet an NO_X limit of 0.035 lbs/MMBtu on a 30 day rolling average (especially if figured on the basis of a BOD). However, we see no data, presented either by the commenter or from our own research,[51] which we have discussed elsewhere in our response to comments, which would lead us to conclude that such a limit has been sufficiently demonstrated in practice.

To our knowledge, there are no air permits in the U.S. that require that a NO_X emission limit of 0.035 lbs/MMBtu be met for a coal-fired unit such as SJGS with retrofitted SCRs on the basis of a 30 day rolling average. Furthermore, the existence of a permit limit is not the only indicator of the technical feasibility of achieving a particular emission limit. However, its absence, combined with no documented instance of an SCR retrofit achieving this level of control on a continuous basis, causes us to conclude that a 30 day rolling average NO_X emission limit of 0.035 lbs/MMBtu for the units of the SJGS is not BART.

Comment: The NPS and the USFS separately stated they believe PNM has underestimated the ability of SCR to reduce emissions. For example, the NPS states that B&V assumed that SCR could achieve 0.05 lbs/MMBtu (annual average) when evaluating retrofitting of SCR at the Craig power plant in Colorado. Both the NPS and the USFS stated that EPA's Clean Air Markets data, and vendor guarantees show that SCR can typically meet 0.05 lb/MMBtu (or lower) on an annual average basis. The USFS stated NO_X emissions can be reduced by 90% with SCR installed at 0.05 lbs/MMBtu emission limit. The NPS included data it claims indicates

[48] Exhibit 2, Best Performing SCR Retrofit Installations, June 8, 2011.

[49] 70 FR 39104, 39172.

[50] We examine this data excerpt in detail in our Complete Response to Comments document.

[51] Exhibit 2, 30 Day Rolling Averages for Selected Best Performing SCR Retrofit Installations.

that SCR can achieve year-round emissions of 0.05 lbs/MMBtu or lower at 26 coal-fired EGUs, eleven of which are dry-bottom, wall-fired units like SJGS. The USFS also referenced this data. The NPS believes PNM has not provided any documentation or justification to support the higher values used in its analyses. They also present information from industry sources that supports their understanding that SCR can achieve 90% reduction and reduce emissions to 0.05 lb/MMBtu or lower on coal-fired boilers.

Response: We agree with the NPS that PNM has underestimated the ability of SCR to reduce emissions. As discussed elsewhere in our response to comments, we are requiring that the units of the SJGS meet an emission limit of 0.05 lbs/MMBtu on the basis of a 30 day rolling BOD average.

Comment: PNM requested that we reevaluate the cost effectiveness of SCRs at SJGS because they feel that our proposed NO_X emission limit of 0.05 lbs/MMBtu on the basis of a 30 day rolling average is not achievable. They reason that we therefore overestimated the emission reductions that the SCRs would achieve, thus underestimating the cost per ton of pollutant removed. In addition, they requested we reevaluate the visibility improvement that it assumed the SCRs would provide. They reason that at a higher NO_X emission limit, the SCRs would not achieve nearly the level of visibility improvement that we expect.

Response: As explained elsewhere in our response to comments, we believe the units of the SJGS can achieve a NO_X emission limit of 0.05 lbs/MMBtu on the basis of a 30 day BOD average. Therefore, we do not believe there is any need to revise either the visibility modeling or the cost analysis on that basis.

Comment: The USFS feels that PNM has underestimated the achievable emission limit that would result with Low-NO_X burners with overfire air, combined with SCR. Based on data from EPA's Clean Air Markets, SCR usually meets an annual average emission limit of 0.05 lbs/MMBtu or lower. Based on the same data, 26 electric generating units have met this emission limit, eleven of which are similar in design as the SJGS. NO_X emissions can be reduced by 90% with SCR installed at 0.05 lbs/MMBtu emission limit. Given the SJGS's size and amount of NO_X emissions, a more stringent emission limit than PNM's proposal is not only achievable, but it will provide for greater reduction in NO_X emissions.

Response: We agree with the USFS that PNM has underestimated the emissions reductions achievable with the addition of SCR. However, we draw a distinction between units that have met an emission limit of 0.05 lbs/MMBtu and those that have reliably demonstrated the ability to continuously meet that emission limit. Therefore, although we agree there are many SCR installations that are capable of meeting an annual NO_X emission limit of 0.05 lbs/MMBtu, we extended our analysis. As we discuss elsewhere in our response to comments, we also analyzed the ability of some of the better controlled SCR retrofits to meet this same limit on a 30 BOD average and found that it was feasible for the SJGS to do so.

Comment: EPA proposes to require the SJGS to meet a NO_X emission limit of 0.05 lbs/MMBtu individually at each of the plant's four units. EPA's own BART rules, however, expressly authorize application of BART emission limits on a plant wide basis, and the proposal offers no justification for deviating from that established and reasonable practice. Because it makes no difference, in terms of visibility impact or visibility improvement, as to which unit or units within a facility the emissions—or the emission reductions—occur at, there is no rational basis for the Agency to preclude the plant wide averaging that is contemplated in EPA's own BART rules.

Response: The commenter correctly notes that the BART Guidelines state that the BART determining authority ''should consider allowing sources to 'average' emissions across any set of BART-eligible emission units within a fenceline, so long as the emission reductions from each pollutant being controlled for BART would be equal to those reductions that would be obtained by simply controlling each of the BART-eligible units that constitute BART-eligible source.'' [52]

As we discuss elsewhere in our response to comments, we received another comment requesting that we revise our proposed NO_X BART limit, which was calculated on the basis of a rolling 30 day calendar average, and adopt instead a limit calculated on the basis of a rolling 30 day BOD average. We agree, and are finalizing our action in accordance with that request. Combining a plant wide average with a BOD average in which individual units may be on different 30 day periods, adds an additional level of complexity to the calculation of a plant wide average. We believe it is possible to integrate the 30 day BOD and plant wide averaging concepts, but due to our consent decree deadline, we do not have the time to construct the algorithm that could be used to guarantee practical enforceability. Therefore, as we discuss elsewhere in our response to comments, we condition the NO_X limit for the units of the SJGS on the basis of a rolling 30 day BOD average. We leave the issue of a plant wide average to a possible future SIP revision that includes a verifiable, workable and enforceable algorithm that ensures the resulting emissions are equal to those reductions that would be obtained by simply controlling each of the BART-eligible units that constitute BART-eligible source.

Comment: One commenter requested we exclude emissions occurring during startup, shutdown, and malfunctions events from having to comply with our proposed NO_X limit of 0.05 lbs/MMBtu because post-combustion controls equipment such as SCRs cannot operate effectively during those events. Alternatively, this commenter requested we consider setting a different standard that is more representative of the emission characteristics of the units during those events or consider requiring work practice standards to minimize such emissions. Another commenter requested that we specifically include startups and shutdowns in this language, making clear that any emission in excess of an applicable emission limit during any such event constitutes a violation of the applicable emission limit. That commenter also requested that we clarify that this provision applies to all pollutants controlled by this FIP, including, NO_X, SO_2, H_2SO_4, ammonia, and particulate matter (PM).

Response: As we have discussed in our response to other comments, we are changing the rolling averaging period for our proposed NO_X emission limit of 0.05 lbs/MMBtu from one based on 30 calendar days, to one based on a 30 BODs. The CEMS data indicate that our proposed NO_X BART limit can be achieved without separately limiting startups, shutdowns, and malfunctions. Further, the startup, shutdown, and malfunction events cited in this comment are a characteristic of current SCR operating modes, *i.e.,* under trading programs with no incentive to optimize design and operation to achieve a permit limit. These spikes result when flue gas temperatures fall below the operating temperature range of the SCR catalyst, or when the ammonia injection system malfunctions. We believe that startup and shutdown spikes are minimized by using the BOD metric, which we assume was why it was requested that we employ it. As there is no explicit provision for the exclusion

[52] 70 FR, 39104, 39172.

of start up, shut down, or malfunction events for NO_X, SO_2, and H_2SO_4, all data will be used in determining compliance with this limit. As explained elsewhere in our response to comments, we are not setting an emission for PM for the units of the SJGS at this time, and we have determined that neither an ammonia limit, nor ammonia monitoring is warranted. We do not see a need to further clarify that the limits we are finalizing must be continuously met.

We also agree with the comment that work practice standards should be developed and used to minimize such emissions. These should include proactive measures such as SCR reactor preheating during a cold start; selecting catalyst to maximize ramp rates and NO_X reduction at low temperatures; and use of both tunable ammonia injection grids (AIGs) and static mixers. We encourage PNM to develop and employ those measures.

Comment: PNM contends our conclusions differ greatly from those that have been made in other states in determining NO_X BART for other electric generating units. PNM submitted a table of the other NO_X BART determinations that have been made by 13 different states as they have developed the proposed RH SIPs that are awaiting EPA approval. PNM stated that in comparison to the determinations made by every other state, the EPA proposal concludes that SJGS must be required to install, (i) the most effective SCR in the nation, (ii) at the cheapest price, and (iii) in the shortest amount of time. PNM concludes that if our proposal is a true indication of our interpretation of the RH program, we will be faced with disapproving every other state RH implementation plan in the country and replacing those plans with FIPs.

Response: As explained in our responses to other comments, we have made adjustments in our NO_X BART determination for the SJGS that pertain to this comment. We have adjusted our cost basis for the installation of SCR on the units of the SJGS, which slightly increased the cost of the controls versus the tonnage of NO_X removed. In addition, we have modified the schedule for compliance with the emission limits to now require compliance within 5 years—rather than 3 years—from the effective date of our final rule. Also discussed in our responses to other comments, although we find that our proposed NO_X BART emission limit should remain at 0.05 lbs/MMBtu, we have modified the averaging time from a straight 30 day calendar rolling average, to a 30 day BOD average.

We disagree with the statement that our conclusions regarding NO_X BART for the SJGS are far different from those that have been made in other states in determining NO_X BART for other electric generating units. As the commenter's own table indicates, other states and EPA regions have made NO_X BART determinations that will be met or are proposed to be met with the addition of SCR, including the Four Corners Power Plant (EPA Region 9), Hayden Units 1 & 2 (CO), Otter Tail Big Stone 1 (although this is a cyclone boiler) (SD), and Naughton Unit 2.

Also, we initially note two points regarding the costs of the controls, while accepting the values listed on the chart at face value. First, the cost effectiveness of all the BART controls, which depending on the facility range from combustion (*e.g.,* OFA, LNB) to post combustion (*e.g.,* SCR, SNCR), are frequently much worse (more expensive) than the cost effectiveness we calculated for SCR on the units of the SJGS. Second, the cost effectiveness values listed for SCR, are frequently similar to the cost effectiveness we calculated for SCR on the units of the SJGS (especially if compared to our revised cost effectiveness).

Lastly, although we strive to ensure that the regulated community is treated equitably with regard to the RHR, the nature of the BART five factor analysis is designed to consider site-specific issues. For instance, we note that the chart does not contain any information, nor is any presented elsewhere, concerning a visibility impact analysis. As required by the BART Guidelines, this must be included in a BART analysis.[53] Without such an analysis, there is no way to justify any control even if it has a very low cost. Conversely, even controls that have either a relatively high capital cost or cost effectiveness in terms of dollars per ton may be justified if they result in a significant visibility benefit. In the case of the SJGS, our BART FIP NO_X emission limit of 0.05 lbs/MMBtu is predicted to result in a combined visibility improvement on 16 Class I areas of 21.69 dv, which we consider very significant.

C. Comments on Our Proposed SO_2 Emission Limit

Comment: One commenter stated an SO_2 emission rate of 0.15 lbs/MMBtu on a 30 day rolling average is not appropriate and does not ensure that SO_2 emissions from SJGS will not interfere with visibility in New Mexico or other states. This commenter believes an SO_2 emission rate of 0.15 lbs/MMBtu does not reflect the level of emissions reductions achievable under BART for wet limestone scrubbers. This commenter also points out that the units of the SJGS are all currently achieving SO_2 limits significantly under 0.15 lbs/MMBtu on a 30 day rolling average and concludes we should not set SO_2 emission rates in a Section 110 FIP that exceed the historic SO_2 emission rates at SJGS. The commenter requests that if we do set a non-BART SO_2 limit in our Section 110 FIP, we set unit-specific limits at least consistent with the recent historic SO_2 emission identified in the table above, or issue formal SO_2 BART determinations for each unit at SJGS under a Section 308 FIP.

Response: We believe the SO_2 emission rate of 0.15 lbs/MMBtu is appropriate to meet the requirements of section 110(a)(2)(D)(i)(II) to ensure that these emissions from SJGS will not interfere with visibility in other states. As discussed in our proposal, we believe that emissions reductions consistent with the assumptions used in the WRAP modeling will ensure that emissions from New Mexico sources do not interfere with the measures designed to protect visibility in other states. We are aware that the SO_2 controls currently installed on the SJGS are in fact achieving greater control than would be evidenced by an emission limit of 0.15 lbs/MMBtu. The commenter's observation of the SJGS's current SO_2 emissions simply means that the SO_2 emissions from the SJGS are better controlled than what we require to prevent interference with visibility under section 110(a)(2)(D)(i)(II). We agree with the commenter that the 0.15 lbs/MMBtu emission limit does not reflect the level of emissions reductions achievable through the use of a wet limestone scrubber and that a source specific BART determination for the SJGS might well result in a determination requiring the installation of scrubber to meet a more stringent limitation. We did not propose to address the BART requirements for SO_2 from the SJGS in this action because SJGS will not be installing new control equipment to meet the 0.15 lbs/MMBtu emission limits. As a result, the issue of requiring different capital expenditures to meet the requirements of section 110(a)(2)(D)(i)(II) as compared to those of the RH program's BART requirement does not arise. Since we did not propose the SO_2 emission rate under the RHR requirements, the comments concerning BART are outside the scope of this action.

[53] 70 FR 39104, 39163.

Comment: In declining to find that its asserted SO_2 limits satisfy BART, EPA's proposal improperly relies on a RH trading program under 40 CFR 51.309 that does not yet exist. Putting aside EPA's legal obligation to make a formal BART determination in its proposed FIP at this time, any emissions trading program that is proposed to replace a BART limit ''must achieve greater reasonable progress than would be achieved through the installation and operation of BART.'' 40 CFR 51.308(e)(2). Because EPA cannot make the required demonstration that New Mexico's future, theoretical trading program will be ''better than BART,'' EPA is illegally sidestepping its current BART obligations under 40 CFR 51.308 (e)(2)(i).

Response: We disagree with the commenter. In accordance with our proposal, we are finalizing SO_2 limitations under section 110(a)(2)(D)(i)(II), not under the RHR. We disagree with commenter's view that we are sidestepping our BART obligations by not proposing to establish SO_2 BART emission limits. Our rationale for not proposing BART requirements for SO_2 in this action appears in our response just prior to this comment. Moreover, we note that the established SO_2 limits do not rely upon a nonexistent trading program. We will address New Mexico's obligation to address SO_2 under the RHR in a future separate action.

D. Comments on Our Proposed H_2SO_4 and Ammonia Emission Limits and Other Pollutants

Comment: The League of Women Voters, Montezuma County, Colorado supports the EPA determination that SCR is cost-effective for all units of the SJGS. They defer to our judgment on the proposed final limit for sulfuric acid emissions. They request that we choose the lower limit of 2 ppmvd, adjusted to 6 percent oxygen for the regulation of ammonia emissions. Their justification for this request is the deterioration in visibility at Class I areas such as Mesa Verde National Park, and the imperative to achieve improvements in visibility as rapidly as possible.

Response: We appreciate the support of the League of Women Voters, Montezuma County, Colorado. As explained elsewhere, we have determined that neither an ammonia limit, nor ammonia monitoring is warranted.

Comment: One commenter stated the same pollutants, including PM 2.5, NO_X, and VOCs (contributing to ground level ozone) that contribute to visibility impairment also harm public health. This commenter also noted that ozone concentrations in parks in the Four Corners region approach the current health standards, and likely violate anticipated lower standards. In fact, ozone levels in many parts of New Mexico, Colorado, and Utah are already in the range of ozone levels deemed to be harmful to human health.

Response: We agree that the same pollutants that contribute to visibility impairment can also harm public health. Although we note public health benefits, we did not rely on these benefits in establishing controls necessary to meet BART in today's action.

Comment: One commenter expressed support for our proposed H_2SO_4 and ammonia limits proposal for the SJGS, and the corresponding installation of CEMS. That commenter also urged us to set the H_2SO_4 emission rate at the lowest rate of 1.06×10^{-4} lb/MMBtu for each unit at the SJGS, suggesting stack test monitoring for H_2SO_4 on a more frequent basis than annual monitoring. The commenter also supported our proposed ammonia emission limit at the lower range of 2.0 ppm, with CEMS. Further, this commenter requested we clarify these emission limits are required under the RH program as part of a BART determination for the facility and must be complied with within 3 years of the date of the final rule. Lastly, we were requested to set a BART PM emission limit of 0.012 lb/MMBtu on a 6-hour block average, and a 10% opacity limit at each unit at SJGS, also within 3 years of the date of the final rule.

Another commenter questioned our authority to regulate ammonia through the RH rule.

Response:

In our response to comments on the assumed ammonia slip level used to estimate sulfuric acid emissions, we have recalculated the expected sulfuric acid emissions rate with no ammonia slip. The sulfuric acid emission rate was recalculated to be 2.6×10^{-4} lb/MMBtu based on an ammonia slip value of 0 ppm, compared to our original value of 1.06×10^{-4} lb/MMBtu at 2ppm ammonia slip. The actual ammonia slip will vary over the life of a catalyst layer. We conclude an assumption of ammonia slip up to 2.0 ppm as the catalyst ages is reasonable for an SCR system that is designed to achieve a NO_X emission limit of 0.05 lbs/MMBtu on a rolling 30 BOD basis, considering the coal the SJGS burns. We also note PNM assumed an ammonia slip of 2.0 ppm in its SCR cost estimation. As the ammonia slip increases, the sulfuric acid emissions will decrease. This revised sulfuric acid emission rate remains significantly lower than that estimated by NMED and is a minimal level of sulfuric acid emissions. Based on these updated calculations and in response to comments, we are requiring the SJGS to meet an H_2SO_4 emission limit of 2.6×10^{-4} lb/MMBtu.

Our intention in our proposal regarding the regulation and monitoring of ammonia was, like H_2SO_4, to minimize the contribution of this compound to visibility impairment. After careful consideration of the comments we received concerning our proposal to require the SJGS to meet an hourly average emission limit of 2.0 parts ppmvd for ammonia, we have determined that neither an ammonia limit, nor ammonia monitoring is appropriate. Instead, we will approach the issue of the impact of ammonia slip on visibility impairment though proper upfront design, rather than after-the-fact regulation. We are requiring that the NO control device (presumably, but not required to be SCR) must be designed to achieve a NO_X emission limit of 0.05 lbs/MMBtu on a rolling 30 BOD basis with an ammonia slip of 2.0 ppm. We believe this strikes the proper balance between the additional cost of ammonia monitoring and reporting and the need to have a reasonable expectation of the amount of ammonia emitted by the SJGS.

The H_2SO_4 emission limit is being required under the RH program as part of a BART determination for the SJGS and must be complied with at the same time as the NOx limits for each unit. With regard to the commenter's request that if emission monitors are truly unavailable for this pollutant, we should require stack test monitoring for H_2SO_4 on a more frequent basis than annual monitoring, we do not believe that an adequate continuous emissions monitor is available for H_2SO_4 and will continue to rely on stack testing. We do not agree that more frequent stack testing is appropriate, due to a consideration of the cost of that testing in comparison to the value of having a greater certainty of the H_2SO_4 emissions that may result. As we discussed in our proposal,[54] we have concluded that the low sulfur coal burned at the SJGS generates very little sulfur trioxide (SO_3), and hence H_2SO_4, which is formed when SO3 combines with water in the flue gas to form H_2SO_4. In addition, SCR catalysts are available with a low SO_2 to SO3 conversion of 0.5%, further limiting the production of H_2SO_4. Therefore, we conclude we have struck the right balance.

[54] 76 FR 499.

E. Comments on the Emission Limit Compliance Schedule

Comment: We received a number of comments both for and against our proposal to require compliance with our proposed emission limits within three years following the effective date of our final action. The League of Women Voters, Montezuma County, Colorado opposed extending the deadline to five years for achieving the proposed emission limits. They stated SCR was first patented in the U.S. in 1957 and has been an operational pollution control technology for over 30 years at large scale facilities like the SJGS. They believe allowing an extra two years may provide the opportunity for ambiguity and technological changes to enter into arguments about engineering solutions and controls, which potentially could feed appeals and litigation by the operator of the SJGS, and thus delay cleanup efforts. The Navajo Nation expressed concern that the proposed compliance schedule is too stringent for SJGS to reasonably meet and could result in a reduction-in-force of a significant number of employees, including Navajo workers, thereby contributing to family hardships and limiting the ability of affected employees, contractors, and subcontractors to meet their financial obligations.

Another commenter asked if there is a smarter way to phase the installation of controls over a longer period of time.

Another commenter stated any proposed truncation of the five-year compliance period should be persuasively justified by a specific analysis of the feasibility and cost-effectiveness of such a schedule in light of the circumstances at the facility in question. According to the commenter, no such justification appears in the proposed rule. The proposal simply asserts that a three year compliance deadline would be applicable because similar compliance schedules have been met at some other facilities.

Another commenter stated that a compliance deadline of three years will result in significant additional costs that we did not account for in our analysis. They stated the proposed FIP attempts to justify a three-year compliance deadline by citing two studies, but those studies do not reflect a realistic schedule for installing SCRs at SJGS. This commenter made several points concerning two studies on SCR timelines we cited in our proposal that the commenter feels call our use of the information into question. The commenter then cites another report it believes is more representative and concludes the site congestion and other site-specific challenges at SJGS will demand an implementation schedule that is similar to SCR installations at Units 6 and 7 of First Energy's Sammis facility, which required 60 and 62 months to complete, respectively.

Response: We have decided, based on our review of several comments, to finalize a schedule for compliance with the emission limits of 5 years—rather than 3 years—from the effective date of our final rule. We view the B&V cost analysis as being a very preliminary, low-level estimate, that is missing much of the information required to develop a site-specific schedule. This estimate does not include, for example, plot plans, a diagram showing SCR layout, an analysis of constructability, construction site plan, or an implementation schedule, which are required to develop a site-specific schedule. Thus, we selected an average compliance time, based on a review of a number of sources, including the following:

- 13 months for 675 MW Somerset Station;
- 18 months for Harding Street;
- 19 months for two 900 MW units at Keystone.
- 26 months for Asheville Power Station with a reported normal range of 27 to 30 months.
- 30 months for 4 units based on 21 months typical for 1 unit, each additional unit at same facility adds 2–3 months. Findings for typical installations.[55]
- 36 months for St John River Power Park, from contract award to startup.
- 42 months for 14 SCRs installed to comply with the Texas Nonattainment SIP.
- 60 months estimated by B&V for 5 units at Four Corners.
- 69 months estimated by Sargent & Lundy for 3 units at Navajo.

The median of these estimates is 33 months and the average is 37 months. The UARG report [56] cited in this comment was published around the same time (October 1, 2010) that we did most of our SCR analysis and was unknown to us at that time. PNM and B&V did not identify it in discussions with us in October–November 2010. That report confirms the information we found through independent investigation, summarized above. It indicates that it took 28 to 62 months to design and install the 14 SCRs in its sample (compared to 18–69 months for the 9 facilities (greater than 33 units) in our sample). The average design/build time for the units in the report is 43 months, compared to an average of 37 months for our retrofit SCR timeframes. None of the units in these two collections overlap. We agree, based on the information we have from the site, that site congestion will require a longer total installation time for all four units than the average found in both of these collections. Please see our *Complete Response to Comments for NM Regional Haze/Visibility Transport FIP* document for more detail concerning our response to this question.

However, we do not believe there is a basis in the record for concluding that installation of SCRs would require a timeframe as long as claimed for Sammis Units 6 and 7. The seven Sammis units were subject to an enforcement action,[57] and the SCRs were installed pursuant to a Consent Decree.[58] The Consent Decree allowed 5+ years, from the date of the Decree in March 2005, to install SCR on two units, SNCR on five units, low NO_X burners, and new SO_2 scrubbers on seven units. Construction was completed faster than the Consent Decree schedule, however, and all of the controls were operating by May 2010.

The Sammis retrofit project at this 2,200 MW plant is generally recognized as the largest air quality control retrofit in the history of the United States and is considered to be ''the most difficult in the country because of the extremely limited space for installation of the new air emission control equipment and systems.''[59] This project is not comparable to SCR retrofits at SJGS, neither in scope, nor complexity, nor site congestion.

Based on an examination of site conditions and available data on historical SCR installation timeframes as described above, we find that a change to our proposed compliance schedule is appropriate. We believe that a longer time frame than the median time frame for construction identified in our survey of SCR retrofits is justified due to site

[55] ClearSkies: *http://www.epa.gov/clearskies/03technical_package_sectiong.pdf.*

[56] ''Implementation Schedule for Selective Catalytic Reduction (SCR) and Flue Gas Desulfurization (FGD) Process Equipment'' October 1, 2010, prepared by J. Edward Cichanowicz for the Utility Air Regulatory Group.

[57] *U.S., et al.,* v. *Ohio Edison Company, et al.,* Opinion and Order, Case No. 2:99–CV–1181, In the U.S. District Court for the Southern District of Ohio, Eastern Division, available at: *http://www.4cleanair.org/OhioEdison.pdf.*

[58] *U.S.* v. *Ohio Edison and Pennsylvania Power Company,* Consent Decree, March 18, 2005, available at: *http://www.epa.gov/compliance/resources/decrees/civil/caa/ohioedison-cd.pdf.*

[59] Michael D. McElwain, Sammis Energy Plant Project Wins Award, Herald-Star, December 13, 2010, available at: *http://www.hsconnect.com/page/content.detail/id/552039/Sammis-energy-plant-project-wins-award.html?nav=5010.*

congestion. We do not believe a timeframe as long as that allowed for the Sammis units is warranted, nor is it allowed by the RHR. Consequently, we are finalizing a schedule which requires compliance with the emission limits within 5 years—rather than 3 years—from the effective date of our final rule.

Comment: A commenter objected to the proposed compliance schedule of 3 years and was concerned that SCR installations often trigger PSD permitting requirements because they constitute physical changes to an existing emission unit that may result in increased emissions of sulfuric acid mist. The commenter stated that obtaining a PSD permit for an SCR can take up to 18 months or more and even if the SCRs do not trigger PSD permitting requirements projects could still trigger state permitting requirements, which can require several months to satisfy. The commenter further stated that the installation of an SCR will involve a significant capital expenditure that will require approval from the New Mexico Public Regulation Commission. The commenter alleged that we failed to take these requirements into account resulting in an unachievable deadline for compliance.

Response: As stated elsewhere in our response to comments, we have modified the compliance schedule. We are finalizing a schedule which requires compliance with the emission limits within 5 years—rather than 3 years—from the effective date of our final rule. We conclude this is adequate time for the inclusion of any possible permitting requirements.

Comment: A commenter stated that our compliance schedule of three years from the effective date of our final rule did not allow time for competitive bidding. To meet a three-year schedule, the commenter argued, PNM would have to simply offer the work to a single vendor, eliminating the opportunity to identify other qualified vendors or provide any incentive to encourage competitive pricing. Therefore, the failure to account for this renders the three-year compliance date unrealistic, and calls into question the underlying cost estimates, which are based on contracts entered into by other utilities that most likely were allowed sufficient time to complete a proper competitive bidding process.

Response: We believe this comment is incorrect. The 3 year schedule we proposed did include time to prequalify bidders. However, as stated elsewhere in our response to comments, we have extended the compliance schedule to 5 years.

Comment: A commenter stated that our cost estimate does not appear to account for the need to have two units offline at the same time to install the SCRs, and the commenter expresses the view that PNM would not be able to meet a three-year deadline for compliance without taking two units offline at once. The commenter listed a number of things that would have to occur in the construction process, such as engineering, vendor procurement, and catalysts procurement, and finally, the fact that construction on each unit needs to take place during an outage. In addition, the commenter argues, a three-year deadline would likely eliminate the ability of PNM to plan the outages for off-peak seasons, when the demand for power and the cost for replacement power are lower. Also, a three-year period would require PNM to prefabricate as much of the SCRs as possible, which would require extremely large prefabrication yards and prefabrication crews, significant overtime hours, expedited material costs, double ''heavy long-lift'' crane costs, and a larger construction workforce overall. The commenter states these costs were not included in its analysis. The commenter lists other complications such as a shortage of skilled labor, air permitting requirements, and other pre-construction activities, the possible need to purchase electricity at higher prices, and strain on PNM's other generating assets. The commenter requests we consider these costs and constraints in its setting a three- to five-year, compliance schedule and set the deadline for compliance to the five years allowed by law, or even longer if PNM is required to respond with a ''Better than BART Alternative.''

Response: As stated elsewhere in our response to comments, we have modified the compliance schedule. We find that compliance with the emission limits must be within 5 years of the effective date of our final rule. A longer schedule will allow PNM to tie in the SCRs during routinely scheduled maintenance outages and to plan outages for off-peak seasons. We have not received any request from PNM that we consider a ''better than BART alternative.''

F. Comments on the Conversion of the SJGS to a Coal-to-Liquids Plant With Carbon Capture as a Means of Satisfying BART

We received comments encouraging us to consider coal-to-liquids (CTL) technology with integrated power generation as an option in determining BART for SJGS. The commenter states that our BART determination proposal would reduce NO_X emissions, but would do little to reduce SO_X or carbon dioxide (CO_2) emissions, leaving SJGS far from compliance with new or future standards. The commenter states our BART proposal could cost $750 million or more (based on PNM's figures), and would have an adverse effect on the cost of electricity. Based on 2006-generation numbers of 12.5 million MWh's, amortized over a 20-year period at 8% interest, and a $750 million modification price, the commenter calculates the cost of electricity would increase by approximately $6 per MWh or 0.6 cents per kWh.

The commenter states that although natural gas fired combined cycle, and integrated gasification combined cycle, have merit no option offers more benefits than a CTL plant with integrated power generation. According to the commenter, the synthetic fuels produced are drop-in replacements for diesel and jet fuel, and contain virtually no sulfur. The US military has conducted extensive tests on these fuels, and finds that they produce far lower emissions than conventional petroleum-based fuels.

According to the commenter, the conversion of the SJGS into a CTL plant with integrated power generation would retain jobs in the mining and plant operations, will create ultra-clean biodegradable synthetic fuels in the CTL process, and will use the waste heat and byproduct gases from the process to cogenerate electric power. The commenter states that emissions of criteria pollutants from the CTL plant manufactured by his company approach those of a NGCC plant and emissions of CO_2 are half those of a NGCC plant.

The commenter calculates that a 50,000 barrel per day CTL plant can co-produces 1200 MW of clean, efficient, low carbon power. This would be baseload generation, the commenter argues, that would be produced 24/7 and could be sold into the California marketplace. The size of the facility could be scaled to meet greater energy needs. The commenter states a plant of this size would consume approximately 30,000 tons per day of coal, which is nominally twice as much coal as is currently consumed, so more jobs will be needed at the mine.

According to the commenter, NO_X emissions would be reduced by 50 to 1, SO_X emissions would be reduced by 20 to 1, and CO_2 emissions would be reduced by 5 to 1. The commenter also notes that ash in the coal is melted in the gasification process, and can be used as an aggregate for paving roadways. In addition, the sulfur from the process can

be collected as elemental sulfur, and sold as a byproduct. Water consumption would be reduced by about ½ in comparison to a conventional power plant of the same MW output, due to the use of a hybrid cooling system (air-cooled condenser in conjunction with a cooling tower).

The commenter points out that KinderMorgan has an existing CO_2 pipeline in the vicinity. The CO_2 from the plant could be sold to KinderMorgan and used for enhanced oil recovery.

A plant of this scale, according to the commenter, would cost approximately $8 billion to construct, assuming all new equipment. However, this cost could be substantially reduced by re-utilization of much of the plant, including coal handling equipment, steam turbines, condensers, cooling towers, and transmission lines. The re-utilization of existing equipment could reduce the capital cost by an estimated 25 to 35% as compared to a totally new facility. The commenter suggests this could be a BART (retrofit) solution. The commenter argues the revenues from this plant would provide a return on investment that exceeds all other considered options by a wide margin. The commenter encourages us to consider conversion to a CTL plant with integrated power generation to be BART for SJGS.

Response: We appreciate the commenter's suggestion that we consider CTL technology with integrated power generation as an option in determining NO_X BART for the SJGS. Although we encourage PNM and the other owners of the SJGS, and the Navajo Nation to examine this concept in detail, we cannot consider it as a potential NO_X BART technology as it would involve a complete redesign of the plant. We note the BART guidelines state that ''[w]e do not consider BART as a requirement to redesign the source when considering available control alternatives.'' [60]

We agree with the commenter that the NO_X BART determination in our proposal would reduce NO_X emissions, yet would do little to reduce SO_2 and CO_2 emissions from the SJGS. SO_2 emissions under the RHR are covered by the New Mexico submittal, which we received on July 5, 2011. We will address the adequacy of that submission in a future action. As discussed in our proposal, we disagree with PNM's cost estimate for installing SCR on the four units of the SJGS. Although PNM estimated the total cost to be in excess of $900 million, we estimated that cost to be approximately $250 million. As discussed elsewhere in our response to comments, in light of information provided by commenters, we have refined our estimate to be $344,542,604. We note that this estimate, being about one-third that of PNM's, will result in significantly lower costs being passed on to rate payers than what has been estimated by PNM.

G. Comments on Health and Ecosystem Benefits, and Other Pollutants

Comment: Several conservation organizations jointly submitted a comment letter pointing out that the same pollutants that contribute to visibility impairment also harm public health and have negative ecosystem impacts. They note that these same pollutants also harm terrestrial and aquatic plants and animals, soil health, and moving and stationary bodies of water by contributing to acid rain, ozone formation, and nitrogen deposition. Another commenter, a retired pediatrician, notes that NO_X as a precursor to ozone, causes numerous respiratory problems and adversely affects children in particular; he supports our action. Another commenter urges us to take into consideration the health impacts of toxic emissions from the SJGS. Two commenters state there are high levels of mercury pollution originating from the SJGS. A commenter also points out that nitrous oxide (N_2O) is a greenhouse gas (GHG) that contributes to climate change. According to the commenter, PNM has accumulated many air quality violations, and no amount of money is worth the poisoning of our air, water, and soil. Another commenter points out that a recent study of the 2010 health impacts of the SJGS estimated 33 deaths, 50 heart attacks, 600 asthma attacks, and over 30 hospital admissions, resulting in an estimated $255 million in health care costs in 2010. A commenter also expresses concern that if EPA lowers the ozone standard in 2011, La Plata County, CO, would not be attaining the standard.

Response: We appreciate the commenters' concerns regarding the negative health impacts of emissions from the SJGS. We agree that the same $PM_{2.5}$ emissions that cause visibility impairment can be inhaled deep into lungs, which can cause respiratory problems, decreased lung function, aggravated asthma, bronchitis, and premature death. We also agree that the same NO_X emissions that cause visibility impairment also contribute to the formation of ground-level ozone, which has been linked with respiratory problems, aggravated asthma, and even permanent lung damage. We agree that these pollutants can have negative impacts on plants and ecosystems, damaging plants, trees, and other vegetation, and reducing forest growth and crop yields, which could have a negative effect on species diversity in ecosystems. Therefore, although our action concerns visibility impairment, we note the potential for significant improvements in human health and the ecosystem.

Although we appreciate the commenter's concern regarding the negative health impacts of toxic emissions from the SJGS, we note that toxic emissions are not considered to be visibility impairing pollutants. Similarly, Mercury is not a visibility impairing pollutant,. N_2O—a GHG—does not belong to the NO_X family, nor is it considered a visibility impairing pollutant.

Comment: One commenter states that power plants are responsible for approximately one-quarter of the NO_X emitted in the U.S. each year, and therefore urges us to adopt a plan with stricter standards to regulate the toxic air emissions from the SJGS to protect public health, decrease emergency room visits and asthma. According to the commenter, the SJGS is one of the greatest NO_X polluters in the nation, contributing to the formation of harmful particulate matter, ground level ozone smog, and acid rain.

Response: We appreciate the commenters' concerns regarding the NO_X emissions from power plants such as the SJGS. We agree that these emissions are detrimental to human health and the environment, with NO_X being a precursor to ground-level ozone and also leading to the formation of acid rain. Although we appreciate the commenter's encouragement that we adopt even stricter standards, after considering all the comments we received, as we have stated elsewhere in this notice, we believe that the standards proposed in our proposal establish BART and will prevent visibility impairment from the SJGS.

H. Miscellaneous Comments

Comment: A commenter stated that it is appropriate and necessary for us to promulgate a FIP that addresses interstate transport of air pollutants from New Mexico, pointing out that the SJGS is located a short distance from several state boundaries. They also state we should have presented a clearer explanation of the events that have taken place related to New Mexico's work on the SIP in the 2003–2010 timeframe. The commenter believes including more detail in the background section of the proposal about the

[60] 70 FR 39104, 39164.

intermediate actions taken by us and NMED in the given timeframe in regards to New Mexico's SIP would have added clarity for the public.

Response: We believe the level of detail we included in the *''Background''* section of our proposal is appropriate and sufficient to give the public a clear picture of the events leading up to our proposal. In particular, the subsection titled *Statutory and Regulatory Framework Addressing Interstate Transport and Visibility* provides detailed information to give the public a clear picture of what we received from New Mexico in terms of the RH SIP and the Interstate Transport SIP.

Comment: A commenter is concerned with degradation of visibility in Mesa Verde National Park over the last decade. The commenter believes that in the Interstate Transport SIP we received on September 17, 2007, New Mexico's statement that no sources in New Mexico impact the protection of visibility in neighboring states seems to be unsupported by the evidence presented by NMED.

Response: We note that it appears that the commenter may have a misconception of what NMED submitted in terms of the Interstate Transport SIP. As explained in our proposal, we received a SIP from New Mexico to address the interstate transport provisions of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS on September 17, 2007. New Mexico did not state in this Interstate Transport SIP that no sources in New Mexico impact the protection of visibility in neighboring states. Instead, New Mexico's Interstate Transport SIP stated that the requirement under section 110(a)(2)(D)(i)(II) that the state not interfere with the visibility programs of other states would be addressed by the submittal of a RH SIP by December 2007. As we state elsewhere in our response to comments and in our proposal, because New Mexico had not submitted a RH SIP or an alternative means of demonstrating that emissions from its sources would not interfere with the visibility programs of other States at the time of our proposal, we proposed disapproval of the September 17, 2007 SIP, and proposed a FIP to fill that gap. We are now finalizing our proposed FIP to ensure that emissions from New Mexico do not interfere with the visibility programs of other States. We received New Mexico's RH SIP under section 51.309 on July 5, 2011, long after statutory and regulatory deadlines. We will review that submission, and address it in a future action.

Comment: A commenter generally agrees with our proposed determination that all the air pollution sources in New Mexico are achieving the emission levels assumed by the WRAP modeling except for the SJGS, but would like to know what data and modeling supports it.

Response: We based our conclusion that all sources in New Mexico are achieving the emission levels assumed by the WRAP in its modeling except for the SJGS by reviewing the WRAP photochemical modeling emission projections used in the demonstration of reasonable progress towards natural visibility conditions and comparing these emission projections to current emission levels from sources in New Mexico.

Comment: A commenter stated that there must be balance in the proposals and regulations that are presented by the federal and state governments. The commenter indicated that although this is an issue of visibility, he is sure we have somehow taken health impacts into consideration in formulating our proposal. The commenter also expressed his belief that our proposal is counter-productive and has a better than average potential to harm the local and state economies. The commenter stated that the technology we are proposing is costly and seems unnecessary, as PNM recently completed a project that put it in compliance with all current health requirements, and only considers visibility in the surrounding national parks and wilderness areas while ignoring the economic impact to the local community. The commenter expressed his belief that cost estimates from the private sector tend to be more accurate than government estimates. The commenter stated that our proposal calls into question the continued viability of the SJGS as an asset to the Public Service Company of New Mexico. The commenter stated that this is not an issue that requires emergency action, and suggests allowing tomorrow's technology provide a solution to today's problems.

Response: We understand the commenter's concern regarding the need for balance in the regulations promulgated by state and federal governments. This decision is based on the RH requirements of the CAA. We have not relied on any potential health impacts in reaching our decision, although we note the potential for significant improvements in public health. The SJGS is one of the largest sources of NO_X in the western U.S. and is within 300 kilometers of 16 Class I areas. Finalizing our proposal is necessary to satisfy CAA requirements, including section 110(a)(2)(D)(i)(II) with respect to preventing emissions from New Mexico sources from interfering with other states' measures to protect visibility. As previously stated, we have an obligation to promulgate a FIP to address the requirements of section 110(a)(2)(D)(i) with respect to visibility and a FIP to address the requirements of RH. The purposes and requirements of these programs are intertwined. As such, we consider it appropriate to promulgate one FIP that addresses the requirements of section 110(a)(2)(D)(i) with respect to visibility and the BART requirements for NO_X for SJGS.

We disagree with the commenter's belief that our proposal is counter-productive. As presented in our proposal, our modeling analysis demonstrates significant visibility improvement at numerous Class I areas from installation of SCR at the SJGS. As we discuss elsewhere in our response to comments, our estimate of the cost of installing SCR is approximately ⅓ what PNM estimated. Regarding the commenter's belief that the technology we proposed seems unnecessary since PNM recently completed a project that ''put it in compliance with all current health requirements,'' we note that as part of our visibility impairment and BART evaluation, we did consider the controls previously installed by PNM as a result of its consent decree with the Grand Canyon Trust, Sierra Club, and NMED on March 10, 2005. These controls included the installation of low-NO_X burners with overfire air ports, a neural network system, and a pulse jet fabric filter.

However, as we discuss elsewhere in our response to comments, these controls were not sufficient to prevent New Mexico sources from interfering with measures required in the SIP of any other state to protect visibility, pursuant to section 110(a)(2)(D)(i)(II) of the CAA. The reduction in NO_X from our NO_X BART determination and the SO_2 emission limits will serve to ensure there are enforceable mechanisms in place to prohibit New Mexico NO_X and SO_2 emissions from interfering with efforts to protect visibility in other states. In addition, the RHR requires us to examine additional retrofit technologies. We have determined that SCR is cost effective and results in significant visibility improvements at a number of Class I areas, over and above the existing pollution controls currently installed. With regard to the commenter's belief that cost estimates from the private sector tend to be more accurate than government estimates, we note that we take our duty to estimate the cost of controls very seriously and

make every attempt to make a thoughtful and well-informed determination. With regard to the commenter's belief that this is not an issue that requires emergency action and that we should allow tomorrow's technology provide a solution to today's problems, we note that Congress added the BART requirements to the CAA in 1977 to focus attention on the visibility impacts from sources such as SJGS. We therefore believe it is appropriate to take action now, and our FIP is necessary to satisfy the requirements of CAA section 110(a)(2)(D)(i)(II) with respect to visibility for the 1997 8-hour ozone standard and the 1997 PM2.5 standard, and to satisfy certain related RH requirements. We also note that as described elsewhere in this preamble, New Mexico has only recently submitted a RH plan that addresses the interstate provisions of the CAA with respect to visibility, and as also explained we cannot review it as part of this action. The FIP clocks of both statutory requirements have expired and we therefore have an obligation to act now under the CAA.

Comment: An owner participant of Units 1 and 2 at the SJGS indicates that our proposal presents significant challenges and risks to its resource planning by handicapping its ability to cost effectively respond to changing conditions. The commenter states that uncertainties such as the impact of potential future regulations, future fuel prices, and customer load growth/decline, have the potential to change the economic viability of their generating resources. The commenter points out that implementation of our proposal would require it to make a significant capital investment in the plant, the cost of which could only be recovered through long-term operation of that asset. This would likely have the effect of ''locking'' SJGS into the generation portfolio for a considerable period of time or risk stranding those investments. According to the commenter, this loss of flexibility would hamper its ability to respond to future scenarios such as changes in the economic viability of coal resources, changes in acceptance of coal resources by State utility commissions, and reduced demand for coal resources. The commenter states that this loss of flexibility is completely unnecessary given that the RH program is intended to make gradual reductions in emissions over a decades-long period of time. The commenter asks us to recognize the significant reductions already made at SJGS or to defer to the SIP submitted by NMED to the Environmental Improvement Board. The commenter suggests that further reductions could be made at the plant, including the possible installation of SCR, over subsequent planning periods. Such an approach would reduce the immediate financial burden on the power plant's customers, allow time for greater certainty in terms of potential carbon limits and customer demand, and retain greater flexibility in future resource decisions.

Response: Regarding costs, EPA reevaluated projections based on comments received to increase them to $344,542,604, which is still much less than industry projections and cost effective. Cost is one of the five factors considered in making BART determinations.[61] Regarding the utility's loss of flexibility, the emission limits we select today are the result of a schedule in the 1977 Clean Air Act to make gradual reductions in emissions over a decades-long period of time

With regard to the commenter's request that we recognize the emissions reductions already made at SJGS or to defer to the SIP recently that was submitted by NMED to the Environmental Improvement Board near the time of the comment, we note that as part of our NO_X BART evaluation for SJGS, we did consider the controls previously installed by PNM as a result of its consent decree with the Grand Canyon Trust, Sierra Club, and NMED on March 10, 2005. However, in making the NO_X BART determination, we were obligated by the RHR to examine additional retrofit technologies. EPA will give priority to the review of New Mexico's recently submitted Haze SIP; however, it was received too late to be taken into consideration in this rule making.

Comment: The Navajo Nation submitted comments stating that the Navajo Nation Environmental Protection Agency is concerned that non-air quality impacts have not been adequately considered in the proposed rule. The commenter states that 20% of the plant workers at the SJGS and 41% of the mine workforce at the San Juan Mine are Navajo Nation tribal members. The commenter is concerned that we have provided no information or analyses to explain how the SJGS will fund the SCR installation costs within the limited timeframe without resorting to a reduction-in-force that would potentially impact Navajo workers, contractors, and subcontractors.

Response: Because SJGS has not proposed to shut down, we do not believe that jobs at the facility will be threatened. EPA's decision to lengthen the compliance deadline from 3 to 5 years should also provide some increases in local employment during that time associated with the installation of pollution controls. The RHR requires that the costs of compliance and the non-air quality environmental impacts of compliance be considered [40 CFR 51.308(e)(1)(ii)(A)]. As described in our proposal, we found that PNM did not identify any significant or unusual environmental impacts associated with the control alternatives that had the potential to affect the selection or elimination of that control alternative. For SCR and SCR/SNCR hybrid technologies, the non-air quality environmental impacts EPA evaluated included the consideration of water usage and waste generated from each control technology.

Comment: A commenter argues that things like wood burning stoves, wood burning fireplaces, and natural occurrences such as dust, wind, fires, and humidity, impair visibility just as much as utilities. The commenter asks us to explain how we propose to control those events that affect air quality.

Response: Natural haze factors are recognized in the current degree of visibility impairment in Class 1 areas. The purpose of this decision is to significantly decrease impairment from the largest man made sources. In addition, the emissions resulting from wood burning stoves and fireplaces are typically included in the emission inventory, which is part of the RH SIP New Mexico recently submitted to us under 40 CFR 51.309. We will review the adequacy of this SIP submission in a separate future proposal.

Comment: The commenter asks us to explain how we intend to analyze the cost benefits to businesses and individuals.

Response: The CAA requires us to consider the cost of installing controls and the visibility benefits as part of the BART analysis, and we have done that. The commenter may wish to consult the Statutory and Executive Orders Review section of this action, which includes our determination that the FIP does not contain a Federal mandate that may result in expenditures that exceed the inflation-adjusted Unfunded Mandates Reform Act of 1995 (UMRA) threshold of $100 million by State, local, or Tribal

[61] States must consider the following factors in making BART determinations: (1) The costs of compliance; (2) the energy and nonair quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. 40 CFR 51.308(e)(1)(ii)(A).

governments or the private sector in any 1 year.

I. Comments in Favor of Our Proposal

Comment: Overall, we received more than 12,000 comment letters in support of our rulemaking from members representing states, tribes, local governments, various organizations and concerned citizens in support of this rulemaking: These comments were received at the Public Hearing in Farmington, New Mexico, by Internet, and through the mail. Each of these commenters was generally in favor of our proposed decision for the SJGS. These comments include urging us to require appropriate retrofit technology at the SJGS for emission control, and limiting NO_X, SO_2, sulfuric acid and ammonia currently or potentially released by the facility. A number of representative comments from this group are summarized below. The *Complete Response to Comments for NM Regional Haze/Visibility Transport FIP* document includes the full text received by these commenters.

We received many letters which were similar in content and format, and are represented by thirteen types of positive comment letters in the docket for this rulemaking. Each of these comment letters supports our proposed decision for the San Juan Generation Station in New Mexico. More than 7,000 of these letters specifically urge us to keep or lower our proposed numeric limits on nitrogen oxides, ammonia, and sulfuric acid pollution in our final decision and urge us to require compliance with the limits within three years.

We received a letter from the State of Colorado in support of this rulemaking. These comments include support for our careful evaluation of NO_X emission control costs for the SJGS, and our proposed promulgation of cost effective emission control for this facility to improve visibility and provide other environmental benefits. The State of Colorado also encouraged us to work closely with the State of New Mexico in selecting the most appropriate NO_X control technology.

We received a letter from the Southern Ute Indian Tribe in support of this rulemaking. The Tribe's comments include support for our proposed action to prevent emissions from New Mexico sources from interfering with other state's measures to protect visibility, and to implement NO_X and SO_2 emissions limits at the SJGS to prevent interference. In addition, the Tribe supports our proposal to regulate emissions sources in neighboring areas that could undermine the Tribes' efforts to maintain air quality on the Reservation. The Tribe is concerned about the impacts of emissions from SJGS on visibility on the Reservation; therefore the Tribe is in favor of reducing the regional transport of ozone and ozone precursors such as NO_X.

We received two resolutions which generally support this rulemaking, one from the City of Durango, Colorado, and another from the Town of Ignacio Colorado. These resolutions include support for requiring the use of BART at the San Juan Generating Station.

Another commenter expressed support of our proposal. The commenter states that for the past 30–40 years, the SJGS has had a largely unrestricted use of the large common air-shed shared by Montezuma County, Colorado and San Juan County, New Mexico. During this timeframe, the residents of Montezuma County and their neighbors have been continually exposed to the air pollution arising from the SJGS, yet the residents of Montezuma County receive no benefit from operation of the plant in terms of electricity (aside from 40 MW purchased from SJGS), tax revenues, and community support.

Another commenter supported all aspects of our proposed rule. The commenter volunteers at Mesa Verde National Park and mentions that many park visitors express disappointment over the degraded air quality and limited vistas from the Park. The commenter states that the 2.88 deciview of visibility improvement we predicted at Mesa Verde National Park with SCR installed at SJGS, would be readily noticed by both residents and visitors to the region. The commenter notes that PNM's Web site claims that SCR is ''unnecessary'' and would ''raise electricity prices for the SJGS's two million customers,'' yet PNM offers no data or other support for its conclusion. The commenter also notes that no significant improvement in Four Corners RH has been seen since PNM completed installation of emission controls pursuant to the 2009 consent decree. The commenter also states that it is legally, socially, and economically appropriate for PNM's customers to pay the full costs of the power they consume, including the air pollution created while generating it. The commenter also states that although PNM characterizes the SJGS as a ''low cost'' producer of power, it fails to acknowledge that a substantial cost of its power, in the form of regional air quality degradation, is borne by the people of the Four Corners region, many of whom do not consume SJGS power and derive no economic benefit from the facility. The commenter believes a three-year implementation schedule for SCR at the SJGS is both appropriate and achievable at a reasonable cost.

Response: We note that several of the specific emissions and timeframe limitations supported by these commenters in the proposal have been modified slightly in this final action based on all of the information received during the comment period. Please see the docket associated with this action for additional detail.

J. Comments Arguing Our Proposal Would Hurt the Economy and/or Raise Electricity Rates

Comment: A commenter stated that if the FIP is adopted, the owners of the SJGS will have three options: compliance, plant shutdown, or plant modification. The commenter states that compliance would result in a capital expense not justified by the likely results of that investment, and would be a terrible, indefensible waste of resources. Plant shutdown would result in the loss of hundreds of jobs in direct plant employment, coal mining, and other support and service sectors. The commenter also points out that plant shutdown would result in the SJGS customers losing their investment in the plant, which they have paid for through rate payment. SJGS customers would have to pay for the development of new generation facilities and fuel contracts or would have to buy power on the open market, and they would also be responsible for the reclamation of the plant site and any coal mine that might be abandoned as a result of plant closure. The commenter states that plant modification would likely take the form of conversion from coal-fired to natural gas-fired, which would also result in loss of jobs, as there would be no need for coal. The commenter indicates that all three options would result in an increase in the cost of electricity to customers, which should be avoided or eliminated in light of the weakened and unstable economic conditions at the national, state, and local levels.

Another part owner of Unit 4 at the SJGS, submitted comments stating that the impact from imposing its share of the costs of installing SCR at the SJGS, may require it to raise electric rates, cut back on planned clean energy investments, or both, all for what appear to be insignificant benefits.

Response: EPA's evaluation of capital expenses by the implementation of the FIP shows them to be justified by the degree of improvement in visibility in relationship to the cost of implementation. The FIP calls for NO_X and SO_2 emission limits at the SJGS to prevent interference with other states' visibility SIPs as well as requiring BART

for NO_X at this source. BART requires that we evaluate (1) cost of compliance, (2) the energy and non-air quality environmental impacts of compliance, (3) any existing pollution control technology in use at the source, (4) remaining useful life of source, and (5) degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

After careful cost review EPA has determined that the significant benefits in visibility resulting from the implementation of the FIP outweigh the increase in costs for the facility.

K. Comments Arguing Our Proposal Would Help the Economy

Comment: We received several comments stating that the proposed FIP would help local economies by creating new and different jobs in the Region and by increasing tourism. In particular, one commenter stated reducing visibility-causing pollutants have far-reaching impacts on local economies, human health, and ecosystems. The commenter stated that decreasing these pollutants will benefit all of these important areas of concern. This commenter noted that tourism is critical to the economy of New Mexico and the Four Corners region, and made several points: Utah's five Class I areas, all of which are national parks, generate a significant portion of this sustainable tourism economy: in 2008, these areas were responsible for 5.7 million recreation visits, over $400 million in spending, and nearly 9,000 jobs. Parks attract businesses and individuals to the local area, resulting in economic growth in areas near parks that is an average of 1 percent per year greater than statewide rates over the past three decades. National parks also generate more than four dollars in value to the public for every tax dollar invested. Therefore, this commenter concluded, improving visibility at these national parks improves the local economies around them.

This commenter also noted that an additional economic incentive behind protecting air quality is the necessary investment in pollution control technologies as they are a job-creating mechanism in itself. Each installation creates short-term construction jobs as well as permanent operations and management positions.

Response: We agree with the comments. Although we did not consider the potential positive benefits to local economies in making our decision today, we do expect that improved visibility would have a positive impact on tourism-dependent local economies. Also, retrofitting the SJGS with SCR is a large construction project that we expect to take 3 to 5 years to complete. This project will require well-paid, skilled labor which can potentially be drawn from the local area, which would seem to benefit the economy.

L. Comments Requesting an Extension to the Public Comment Period

Comment: We received comments requesting that the comment period be extended, with most requesting an additional 60 days. We also received comments requesting additional public hearings.

Response: Originally the comment period for our proposal was due to close on March 7, 2011. In response to requests we extended the public comment period to April 4, 2011. In doing so, we took into consideration how an extension might affect our ability to consider comments received on the proposed action and still comply with the terms of a consent decree we have with WildEarth Guardians.[62] We do note that our February 17, 2011, public hearing in Farmington, New Mexico was well attended and provided an opportunity for people to comment on our proposal.

M. Comments Requesting We Defer Action in Favor of a New Mexico SIP Submittal

Comment: Various commenters have stated that the NMED should take the lead in implementing the RH requirements of the CAA based on the fundamental principle that the CAA and the RHR emphasize that states, not EPA, are to take the lead in implementing the RH program, and we should wait taking action until NMED submits to the Agency their revised RH SIP and adopt such submittal instead of promulgating a FIP.

Response: Congress crafted the CAA to provide for States to take the lead for implementing plans, but balanced that decision by requiring EPA to approve the plans or prescribe a federal plan should the State plan be inadequate. Our action today is consistent with the statute. As explained in our proposal, we received a SIP from New Mexico to address the interstate transport provisions of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS on September 17, 2007. New Mexico's September 17, 2007 submittal addressed the requirement that the state not interfere with the visibility programs of other states by stating that it would submit a RH SIP by December 2007.

On January 15, 2009, EPA published a ''Finding of Failure to Submit State Implementation Plans Required by the 1999 Regional Haze Rule.'' 74 FR 2392. We found that New Mexico and other states had failed to submit for our review and approval complete SIPs for improving visibility in the nation's national parks and wilderness areas by the required date of December 17, 2007. We found that New Mexico failed to submit the plan elements required by 40 CFR 51.309(g), the reasonable progress requirements for areas other than the 16 Class I areas covered by the Grand Canyon Visibility Transport Commission Report. New Mexico also failed to submit the plan element required by 40 CFR 51.309(d)(4), which requires BART for stationary source emissions of NO_X and PM under either 40 CFR 51.308(e)(1) or 51.308(e)(2). This notice initiated a 2-year deadline, referred to as the ''FIP clock,'' for New Mexico to submit a SIP or for EPA to issue a FIP. The FIP would provide the basic program requirements for each State that has not completed an approved plan of their own by January 15, 2011. The CAA requires EPA to promulgate a FIP if a State fails to make a required SIP submittal or if we find that the State's submittal is incomplete, does not meet the minimum criteria established in the CAA or we disapprove in whole or in part the SIP submission. CAA section 110(c)(1).

In addition, WildEarth Guardians sued EPA alleging that we failed to perform the non-discretionary duty to either approve a SIP or promulgate a FIP for New Mexico, among other States, to satisfy the requirements of CAA section 110(a)(2)(D)(i) with regard to the 1997 National Ambient Air Quality Standards for 8-hour ozone and fine particulate matter. We have entered into a consent decree with WildEarth Guardians to resolve this matter.

This consent decree specifically requires us—no later than August 5, 2011—to sign a notice either approving a SIP, promulgating a FIP, or approving a SIP in part with promulgation of a partial FIP, for New Mexico to meet the requirement of 42 U.S.C. 7410(a)(2)(D)(i)(II) regarding interfering with measures in other states related to protection of visibility. As required by the consent decree, since New Mexico did not submit a complete proposed SIP to address the visibility requirement by May 10, 2010, then by November 10, 2010, EPA was required to propose one of three actions: A FIP; approval of a SIP (if one has been submitted in the interim); or partial promulgation of a

[62] *WildEarth Guardians* v. *Lisa Jackson,* Case No. 4:09–CV–02453–CW.

FIP and partial approval of a SIP. In the absence of a SIP, EPA proposed a FIP on January 5, 2011. We received the New Mexico submittal on July 5, 2011,after the close of the record for the proposed FIP EPA will give priority to the review of New Mexico's SIP but we cannot consider it and meet the consent decree deadline.

N. Comments Generally Against Our Proposal

Comment: Various commenters generally stated they do not support the proposed rulemaking. Their reasons included: It will affect the town's economy, affect the coal power plant industry, electricity costs will increase, they have no direct health problems from actual emissions, direct and indirect jobs/businesses would be affected, current air pollution control equipment meet EPA and health standards. Others commented that our decision is arbitrary as no other similar facilities have the same requirements imposed by the FIP and that there will be no benefit to the community. One commenter argues that SJGS already meets the visibility standards required by the CAA.

Response: While we appreciate the effort and time of the commenters, the comments did not include documentation, rationale, or data for EPA to respond beyond our responses provided elsewhere.

O. Comments on Legal Issues

1. EPA's Authority

Comment: Various commenters argued that combining Interstate Transport and RH BART requirements in the proposed action exceeds our authority and does not satisfy the regulatory requirements of each program, and each program has different requirements and purposes.

Response: We do not agree that it exceeds our authority to combine action on RH BART requirements as part of our action on the required State submittal to meet section 110(a)(2)(D) of the CAA. EPA has two separate sources of authority and obligations to take this action, *i.e.,* a statutory obligation to promulgate a FIP to meet the requirements of section 110(a)(2)(D)(i)(II) and a statutory obligation to promulgate a FIP to meet RH program requirements of the CAA. Nothing in the CAA precludes EPA from addressing both requirements simultaneously, and indeed, to address both in the same action is rational to ensure the most efficient use of resources by both the Agency and the affected source. The SJGS is subject to both provisions of the CAA, and both provisions concern emissions of NO_X (among other pollutants). To separate our actions could potentially lead to the same source needing to install two successive levels of control measures, the first in order to meet the requirements of section 110(a)(2)(D)(i), and then the second in order to meet the requirements of the RH program.

The CAA requires each state to develop a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS. CAA section 110(a)(1). The statute explicitly requires that each state's SIP shall include, among other things, adequate provisions prohibiting any source from emitting any air pollutants in amounts which will interfere with measures required to be included in the applicable implementation plan for any other State to protect visibility. CAA section 110(a)(2)(D)(i)(II).

On April 25, 2005, we published a ''Finding of Failure to Submit SIPs for Interstate Transport for the 8-hour Ozone and $PM_{2.5}$ NAAQS.'' 70 FR 21147. This notice included a finding that New Mexico and other states had failed to submit SIPs to address any of the four prongs of section 110(a)(2)(D)(i), including the provisions relating to interstate transport of air pollution affecting visibility, and started a 2-year clock for us to promulgate a FIP, unless a State made a submission to meet the requirements of section 110(a)(2)(D)(i) and we approved the submission. CAA section 110(c)(1). That two year period has expired.

The CAA also requires each state to develop a SIP to protect visibility. CAA section 169. On January 15, 2009, we published a ''Finding of Failure to Submit State Implementation Plans Required by the 1999 Regional Haze Rule.'' 74 FR 2392. In that notice we found that New Mexico and other states had failed to submit complete SIPs for improving visibility in the nation's national parks and wilderness areas by the required date of December 17, 2007. Specifically, we found that New Mexico failed to submit the plan elements required by 40 CFR 51.309(g), the reasonable progress requirements for areas other than the 16 Class I areas covered by the Grand Canyon Visibility Transport Commission Report. In addition, we also found that New Mexico had failed to submit the plan element required by 40 CFR 51.309(d)(4), which requires BART for stationary source emissions of NO_X and PM under either 40 CFR 51.308(e)(1) or 51.308(e)(2). This finding of failure to submit started a 2-year clock for us to promulgate a FIP, unless the State made a RH SIP submission and we approved it. That two year period has also expired.

On September 17, 2007 we received a SIP from New Mexico to address the interstate transport provisions of CAA 110(a)(2)(D)(i) for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS. In that submission, the state indicated that it intended to meet the requirements of section 110(a)(2)(D)(i) with respect to visibility by submission of a timely RH SIP. Those RH SIPs were due no later than December 17, 2007.

As of the time of our proposal for this action on January 5, 2011, the state had not make the RH SIP submission as represented in its section 110(a)(2)(D) submission, and had not make a RH SIP submission or alternate section 110(a)(2)(D) submission indicating that the state intended to meet visibility prong by any other means.

We received a RH SIP submittal from the state on July 5, 2011. Unfortunately, due to the timing of that submittal, we cannot evaluate it as part of this action. We note that this RH SIP submittal arrived approximately 3½ years past the due date of December 17, 2007, and well past January 15, 2011, the date by which we were obligated either to approve a RH SIP submission or to promulgate a RH FIP, as a result of the 2009 finding of failure to submit the RH SIP. Moreover, the July 5, 2011, submission also occurred more than four years after the date by which we were obligated either to approve a SIP submission or to promulgate a FIP to address the state's failure to submit a submission for section 110(a)(2)(D)(i)(II).

We are under a consent decree deadline with WildEarth Guardians that requires the Agency to take action by August 5, 2011, either to approve the New Mexico section 110(a)(2)(D) SIP, or to promulgate a FIP, to address the 110(a)(2)(D)(i)(II) visibility prong. Because of the lateness of the July 5, 2011 submission, it is not possible to review and potentially fully approve the July 5, 2011, SIP submission by proposing a rulemaking and promulgating a final action by August 5, 2011, as required by the consent decree.

The CAA requires us to promulgate a FIP if a State fails to make a required SIP submittal or if we find that the State's submittal is incomplete, does not meet the minimum criteria established in the CAA or we disapprove in whole or in part the SIP submission. CAA section 110(c)(1). As previously discussed, we have made findings related to the New Mexico SIP submission needed to address interstate transport and the requirement that emissions from New Mexico sources do

not interfere with measures required in the SIP of any other state to protect visibility, pursuant to section 110(a)(2)(D)(i)(II) of the CAA.

Therefore, as New Mexico failed to submit an approvable SIP that addresses the interstate provisions of the CAA with respect to visibility, and has made a very late RH SIP submission giving us no time to complete the regulatory process necessary to evaluate that submission in light of the deadlines imposed by the above-mentioned consent decree, we have the statutory authority and the obligation to promulgate a FIP that meets one or both requirements.

In addition, we think that it is appropriate to take action on the visibility requirements of section 110(a)(2)(D)(i)(II) and RH program requirements simultaneously in these circumstances because the purposes and requirements of the interstate transport provisions of the CAA with respect to visibility and the RH program are intertwined. The requirements of CAA section 110(a)(2)(D)(i)(II) explicitly provide that states must have SIPs with adequate provisions to prevent inference with the efforts of other states to protect visibility, which includes the protections contemplated by the RH program. This section of the CAA requires each SIP ''to include adequate provisions prohibiting any source from emitting any air pollutants in amounts which will interfere with measures required to be included in the applicable implementation plan for any other State * * * to protect visibility.'' These required SIP measures to protect visibility are set forth in sections 169A & 169B of the CAA and EPA's implementing regulations for the RH program.

Section 110(a)(2)(D)(i)(II) does not explicitly define what is required in SIPs to prevent the prohibited impact on visibility in other states. However, because the RH program requires measures that must be included in SIPs specifically to protect visibility, EPA's 2006 Guidance [63] recommended that RH SIP submissions meeting the requirements of the visibility program could satisfy the requirements of CAA section 110(a)(2)(D)(i)(II) with respect to visibility.

Subsequently, when some states did not make the RH SIP submission, in whole or in part, or did not make an approvable RH SIP submission, we have evaluated whether states could comply with section 110(a)(2)(D)(i)(II) by other means. Thus, we have elsewhere determined that states may also be able to satisfy the requirements of CAA section 110(a)(2)(D)(i)(II) with something less than an approved RH SIP, see *e.g.* Colorado (76 FR 22036 (April 20, 2011)) and Idaho (76 FR 36329 (June 22, 2011)). In other words, an approved RH SIP is not the only possible means to satisfy the requirements of CAA section 110(a)(2)(D)(i)(II) with respect to visibility; however, such a SIP could be sufficient. Given this reasoning, we do not agree with commenters' contentions that the two programs have completely different requirements and purposes and that it is unreasonable for EPA to seek to address these issues in the same action.

Comment: Various commenters have stated that we proposed to act on an interstate transport SIP requirement, while borrowing portions of the RH SIP requirements, and that such partial implementation of programs is inappropriate and conflicts with the structure and purpose of the CAA.

Response: We disagree with the premise of the commenters that we cannot address more than one statutory requirement in the same notice and comment rulemaking. See response to comments, above, regarding our general authority and obligation to act on section 110(a)(2)(D)(i)(II) and RH SIP requirements. We also specifically disagree that acting on portions of the RH SIP requirements in this action is inappropriate and conflicts with the structure and purpose of the CAA. We have authority to act on submissions, or portions of submissions, as appropriate to meet the requirements of the CAA, in accordance with section 110(k)(3). In this instance, we have determined that it is appropriate to take action addressing the NO_X BART requirements for an individual source, and thereby to meet a portion of our outstanding statutory FIP obligation for the RH program, at the same time as acting on the section 110(a)(2)(D)(i)(II) SIP submission with respect to the visibility prong to meet that statutory FIP obligation.

We note that we have previously acted on other portions of the section 110(a)(2)(D)(i) SIP submission from the state. In prior actions, we approved the New Mexico SIP submittal for: (1) The ''significant contribution to nonattainment'' prong of section 110(a)(2)(D)(i) (75 FR 33174, June 11, 2010); and (2) the ''interfere with maintenance'' and ''interfere with measures to prevent significant deterioration'' prongs of section 110(a)(2)(D)(i). (75 FR 72688, November 26, 2010). Were it in fact ''inappropriate'' to act on portions of SIP submissions, or were it contrary to the structure and purpose of the CAA to do so, as the commenters argue, we would not have taken such prior actions on portions of the state's section 110(a)(2)(D)(i) submission. Moreover, no one objected to those actions on these grounds.

We also contend that promulgating FIPs to address specific CAA requirements is consistent with the purposes of the statute. One of the primary goals of the CAA is to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare. CAA section 101(b)(1). Failing to submit an approvable SIP submission, as required by section 110 of CAA, is contrary to the purposes and goals of the CAA. The CAA requires us to promulgate a FIP if a State has failed to make a required submission or finds that a plan does not satisfy the minimum established criteria, or disapproves a SIP submission in whole or in part. CAA section 110(c)(1).

In this action, we are disapproving a portion of the New Mexico Interstate Transport SIP with respect to the requirement that emissions from New Mexico sources do not interfere with measures required in the SIP of any other state to protect visibility. On September 17, 2007 we received a SIP from New Mexico to address the interstate transport provisions of CAA 110(a)(2)(D)(i) for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS. In this submission, the state indicated that it intended to meet the requirements of section 110(a)(2)(D)(i) with respect to visibility by submission of a timely RH SIP. As previously explained above, we received a RH SIP submission from the state on July 5, 2011. Because of the lateness of the submission, and in light of our obligations under the WildEarth Guardians consent decree to have completed rulemaking on the visibility prong of Section 110(a)(2)(D)(i), it is not possible to review such SIP submission, propose a rulemaking, and promulgate a final action prior to the August 5, 2011 deadline.

Therefore, as previously stated, we have both a statutory obligation to promulgate a FIP to address the requirements of section 110(a)(2)(D)(i) with respect to visibility and a statutory obligation to promulgate a FIP to address the requirements of RH. As also previously stated, the purposes and

[63] *See,* ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i)for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division, OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006 (the ''2006 Guidance'').

requirements of these programs are intertwined. As such, we consider it appropriate to promulgate one FIP that addresses both the requirements of section 110(a)(2)(D)(i) with respect to visibility and the BART requirements for NO_X from SJGS. Although there are additional RH SIP requirements to be addressed, and we intend to address these requirements in the near future, there is no requirement in the CAA that we take action to address a state's failure to submit an approvable RH SIP in only one action.

Comment: Some commenters argued that the proposed FIP is too all encompassing, exceeds the authority vested in EPA under Section 110 of the CAA because it provides too stringent a control for attaining visibility standards, and will have broader impact than the purpose of the CAA to not interfere with neighboring state implementation plans.

Response: In general, for the reasons we have outlined elsewhere in our responses to comments, we disagree that our FIP is too all encompassing or exceeds our authority under section 110(a)(2)(D)(i) of the CAA. Under that provision, we may not approve the SIP submission from the state unless the SIP contains provisions adequate to prohibit emissions from sources in that state from interfering with measures required to protect visibility in other states. As explained in this action, we have determined that emissions sources in New Mexico meet this requirement, except for the SJGS. For this source, we have determined that additional and federally enforceable controls are required in order to meet the NO_X emissions used in the WRAP photochemical modeling and that federally enforceable emission limits are required in order to meet the SO_2 emissions used in the WRAP photochemical modeling, as part of this action in order to be in compliance with section 110(a)(2)(D)(i). Our action is also based in part on our authority to address the NO_X BART requirements for the SJGS. To meet this separate requirement, we have determined that specific NO_X controls are required for the SJGS.

Comment: Various commenters argued that EPA failed to present ''a coherent or defensible justification'' for its interpretation of section 110(a)(2)(D)(i)(II) in the proposal, and that EPA failed to explain adequately its interpretation of CAA section 110(a)(2)(D)(i)(II) and the relationship between that provision, as interpreted by the Agency, and CAA sections 169A and 169B. In addition, the commenter asserted that EPA has no basis to disapprove the state's section 110(a)(2)(D) submission with respect to the visibility prong, because the state's submission was consistent with EPA's 2006 guidance to states for these SIP submission.

Response: We disagree with these assertions. First, in the proposal we explained our views as to the proper interpretation of section 110(a)(2)(D)(i)(II). We explained that section 110(a)(2)(D(i)(II) requires states ''to have a SIP, or submit a SIP revision, containing provisions 'prohibiting any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will * * * interfere with measures required to be included in the applicable implementation plan for any other State under part C [of the CAA] to protect visibility. 76 FR 493 (January 5, 2011). We explicitly stated that ''[b]ecause of the impacts on visibility from the interstate transport of pollutants, we interpret the 'good neighbor' provisions of section 110 of the Act described above as requiring states to include in their SIPs measures to prohibit emissions that would interfere with the reasonable progress goals set to protect Class I areas in other states.'' *Id.*

In the proposal, we expressed our view that section 110(a)(2)(D)(i)(II) ''does not explicitly specify how we should ascertain whether a state's SIP contains adequate provisions to prevent emissions from sources in that state from interfering with measures required in another state to protect visibility'' *Id.* at 496. We clearly stated that the statute is thus ambiguous and that the Agency must interpret that provision in this action. *Id.* We are explaining our reading of the ambiguity in the statute in this notice and comment rulemaking.

Thereafter, we articulated in detail the underlying premise for our 2006 guidance, and the recommendations that states address this requirement through submission of the RH SIP. We specifically explained the basis for our belief that the development of those SIPs would provide an appropriate forum in which states would have evaluated the need for emission controls to protect visibility, and in particular would have considered emissions from sources in other states and their degree of control as part of developing their respective programs to protect visibility. The proposal articulated our basis for proposing to interpret the requirement of section 110(a)(2)(D)(i)(II) to mean that the state's SIP must contain at least those emission reductions that other states would have relied upon from New Mexico sources in the development of their reasonable progress goals in their respective visibility programs. Moreover, our proposal articulated that evaluation of the analysis conducted by the WRAP is one means of gauging whether New Mexico has adequately controlled its sources for this purpose.

We also disagree with the assertion that we have failed to explain adequately our interpretation of the visibility prong of section 110(a)(2)(D)(i) in light of the requirements of section 169A and 169B of the Act. As explained in our proposed action, the CAA establishes a visibility protection program that sets forth ''as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution.'' CAA section 169A(a)(1). In section 169A(a)(1) of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution.'' In 1980, we promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, *i.e.,* ''reasonably attributable visibility impairment.'' 45 FR 80084 (December 2, 1980). These regulations represented the first phase in addressing visibility impairment. We deferred action on RH that emanates from a variety of sources until monitoring, modeling and scientific knowledge about the relationships between pollutants and visibility impairment were improved. *Id.*

Congress added section 169B to the CAA in 1990 to address RH issues, and we promulgated regulations addressing RH in 1999. 64 FR 35714 (July 1, 1999), codified at 40 CFR part 51, subpart P (the RHR). The RHR revised the existing visibility regulations to integrate provisions addressing RH impairment and established a comprehensive visibility protection program for Class I areas. The requirements for RH, found at 40 CFR 51.308 and 51.309, are included in our visibility protection regulations at 40 CFR 51.300–309. States were required to submit the first SIP addressing RH visibility impairment no later than December 17, 2007. 40 CFR 51.308(b).

We disagree with the argument that because section 169A and B create a specific program for protection of visibility, that compels the conclusion that section 110(a)(2)(D)(i)(I) could not

have any substantive bearing on this issue. Such an argument is at odds with the clear provisions of the statute, and with the structure of the CAA. Section 110(a)(2)(D)(i)(II) of the CAA requires that SIPs shall include adequate provisions ''prohibiting * * * any source * * * within the State from emitting any air pollutant in amounts which will * * * interfere with measures required to be included in the applicable implementation plan for any other State under part C * * * to protect visibility.'' (Emphasis added). Because sections 169A and 169B establish the national goal for visibility protection, including RH issues, we infer that when Congress included protection of required visibility programs in other states as part of section 110(a)(2)(D)(i), it was a conscious reference to the sections in the CAA that address that matter. Indeed, in section 110(a)(2)(D)(i)(II), Congress directed us to prevent interference with the ''measures required to be included in the applicable implementation plan for any other State under part C of this chapter * * * to protect visibility,'' and the RH program is unequivocally among those required measures to protect visibility. Thus, it is reasonable for EPA to evaluate whether the SIP of a given state prohibits emissions, consistent with what other states will have developed their own visibility programs in reliance upon.

It is illogical to conclude that Congress would have explicitly directed us to assure that state SIPs contain provisions to protect visibility programs in other states, but that we not have the authority to require such provisions as part of a section 110(a)(2)(D)(i)(II) SIP submission, or if necessary to supply them as part of a FIP. Such an argument is also clearly inconsistent with the other prongs of section 110(a)(2)(D)(i). The mere existence of other statutory programs to provide for attainment and maintenance of the NAAQS required in part D of the Act, does not negate the requirement that states also meet the requirement of the ''significant contribution to nonattainment'' and ''interference with maintenance'' prongs of section 110(a)(2)(D)(i)(I), and the authority of EPA to require substantive provisions in the SIP, or to promulgate a FIP to provide them, as may be necessary. We have exercised such authority and issued SIP calls or promulgated FIPs to assure that state SIPs meet the requirements of section 110(a)(2)(D)(i).[64] Because of the impacts on visibility from the interstate transport of pollutants, we thus interpret the ''good neighbor'' provisions of section 110 of the Act described above as requiring states to include in their SIPs measures to prohibit emissions that would interfere with the reasonable progress goals of the RH program set to protect Class I areas in other states of the RH program.

Finally, we disagree with the commenter's views concerning the state's September 2007, submission complying with the Agency's 2006 guidance, and even if it had complied with that guidance, the purported legal significance of that fact for purposes of this action. As the commenters themselves conceded, the state's 2007 submission stated that it would make a timely RH SIP submission by December of 2007 as its intended means of meeting the requirements of section 110(a)(2)(D)(i)(II) for visibility, but due to intervening events the state did not in fact do so prior to our proposed action. Contrary to the commenter's views, that submission was not factually consistent with the recommendations of the guidance.[65]

More importantly, however, our 2006 guidance reflected our recommendations for how states could potentially meet the section 110(a)(2)(D)(i)(II) requirement at that point in time. As of August 2006, we stated our belief that it was ''currently'' premature for states to make a more substantive SIP submission for this element, because of the anticipated imminent RH SIP submissions. We explicitly stated that ''at this point in time'' in August of 2006, it was not possible to assess whether emissions from sources in the state would interfere with measures in the SIPs of other states. As subsequent events have demonstrated, we were mistaken as to the assumption that all states would submit RH SIPs in December of 2007 and mistaken as to the assumption that all such submissions would meet applicable RH program requirements and therefore be approved shortly thereafter. Thus the premise of the 2006 Guidance that it would be appropriate to await submission and approval of such RH SIPs before evaluating SIPs for compliance with section 110(a)(2)(D)(i)(II) was in error. Our 2006 Guidance was clearly intended to make recommendations that were relevant at that point in time, and subsequent events have rendered it inappropriate in this specific action.

In short, we must act upon the state's submission in light of the actual facts, and in light of the statutory requirements of section 110(a)(2)(D)(i). Whereas our prior recommendations were prospectively anticipating the submission of the RH SIP as a means of the state imposing the controls necessary on New Mexico sources necessary to prevent interference with the required visibility programs of other states, those recommendations are inappropriate at this juncture. In order to evaluate whether the state's SIP currently in fact contains provisions sufficient to prevent the prohibited impacts on the required programs of other states, we are obligated to consider the current circumstances and investigate the level of controls at New Mexico sources and whether those controls are or are not sufficient to prevent such impacts.

We similarly disagree with the commenters' argument that it is still ''premature'' to evaluate the compliance of the state's SIP at this time, and that we ''must await the date on which regional haze SIPs have been submitted and approved.'' First, this approach is illogical, as it fails to address what would happen if a state were never to submit the required RH SIP, or were never to submit a RH SIP that was approvable. On its face, the commenter's argument is simply inconsistent with the objectives of the statute to protect visibility programs in other states if a state never submits an approvable RH SIP. Second, this approach is flatly inconsistent with the timing requirements of section 110(a)(1) which specifies that SIP submissions to address section 110(a)(2)(D)(i), including the visibility prong of that section, must be made within three years after the promulgation of a new or revised NAAQS. We acknowledge that there have been delays with both RH SIP submissions by states and our actions on those RH SIP submissions, but that fact does not support a reading of the statute that overrides the timing requirements of the statute. We believe that there are means available now to evaluate whether a state's section 110(a)(2)(d)(i)(II) SIP submission meets the substantive requirement that it contain provisions to prohibit interference with the visibility programs

[64] *See, e.g.,* ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone; Final Rule,'' 63 FR 57356, October 27, 1998, (the NOx SIP Call).

[65] Subsequent to the proposal for this action, and subsequent to the commenter's comments, the state did make a RH SIP submission on July 5, 2011, one month before we have to finalize rulemaking either by promulgating a FIP or reviewing, proposing a rulemaking and promulgating a final action fully approving the SIP, as required by the August 5, 2011 consent decree deadline. Nevertheless, the commenter was clearly in error given that there was no submission purporting to meet the requirements of the RH program as of the time of its comments.

of other states, and therefore that further delay, until all RH SIPs are submitted and fully approved, is unwarranted and inconsistent with the key objective to protect visibility.

Section 110(a)(2)(d)(i)(II) directs EPA to evaluate the SIP of a state for adequate controls on emissions from the state to prevent interference with measures ''required to be included in the applicable state implementation plan'' of other states. Thus, this evaluation is supposed to consider what other states should have in their SIPs as of this point in time, and is not limited by the fact that other states may or may not have made the required RH SIP submission, nor by the fact that we may or may not have approved those RH SIP submissions at this point in time. Instead, we must evaluate the state's section 110(a)(2)(D)(i)(II) submission in light of the programs that states are required to have, and that clearly includes the RH program required in other states. As discussed above, we believe that one means to evaluate this issue is to determine whether the level of controls in the SIP are consistent with the expectations for controls at New Mexico sources relied upon by other states in the development of their own respective visibility programs and consistent with the needs for emissions reductions that we ourselves conclude are needed for purposes of the RH program.

Comment: The proposed FIP requires exceedingly stringent and expensive compliance obligations that are not adequately legally supported because the proposed FIP fails to adequately satisfy the interstate transport provisions of Section 110(a)(2)(D)(i) of the CAA or the provisions of the RHR.

Response: We disagree that the FIP is not legally supported. The FIP satisfies provisions in both section 110(a)(2)(D)(i)(II) of the CAA regarding interstate transport of pollutants affecting visibility in other states and for the NO_X BART determination for the SJGS, the RHR.

We find that the emissions from the SJGS in New Mexico are interfering with the other states' required measures to protect visibility. Therefore, we are imposing through the FIP, specific emission limits upon the SJGS to prevent such interference. We are imposing an SO_2 limit and a NO_X limit. To provide greater certainty to the SJGS that controls needed to prevent interference with other states' visibility programs, as well as the controls needed to meet the RHR's BART requirements, do not conflict with each other and end up imposing unnecessary greater costs upon the SJGS, we are imposing a BART NO_X emission limit that meets both requirements at this time, rather than postponing action on this RH SIP requirement. We are only determining that the SJGS is subject to BART and promulgating the NO_X BART FIP for the SJGS. We are not addressing whether New Mexico has met the requirements of the RHR for any other sources; we are not addressing whether the SJGS is meeting the RH BART requirements for any other pollutants; and we will address those requirements in later actions.

We have the specific authority to promulgate a FIP imposing a NO_X BART emission limitation upon the SJGS because we previously found that New Mexico had failed to submit a complete RH SIP by December 17, 2007. 74 FR 2392 (January 15, 2009). This finding started a two year clock for the promulgation of a RH FIP by EPA or the approval of a complete RH SIP from New Mexico. CAA section 110(c)(1). The FIP obligation imposed upon us became effective on February 15, 2011. Part of that FIP obligation includes making a NO_X BART determination for the SJGS. To prevent a possible conflict between a NO_X visibility transport emission limitation FIP for the SJGS and the NO_X RH BART emission limitation FIP for the SJGS, we chose to promulgate now, rather than later, the NO_X RH BART determination for the SJGS. We are combining the requirements of section 110(a)(2)(D)(i)(II) for NO_X with a NO_X BART evaluation (40 CFR 51.308) to be efficient and provide greater certainty to the source as to the appropriate NO_X controls needed to meet those two separate but related requirements.

This FIP also will impose a federally enforceable limit on the emissions of SO_2 from the SJGS based upon the WRAP determination of each member state's contribution to visibility impairment of SO_2 emissions, of which New Mexico is a member. The SJGS's existing SO_2 permit does not provide the necessary emission limits and enforceable mechanisms to ensure the SO_2 emissions used in the WRAP photochemical modeling for the SJGS units will be met. Therefore, we assumed the SO_2 emission limit used in the WRAP modeling and, by this action, make it enforceable. This is necessary to ensure that New Mexico sources do not interfere with efforts to protect visibility in other states pursuant to the requirements of section 110(a)(2)(D)(i)(II) of the CAA.

Comment: One commenter argued that EPA took too narrow an interpretation of the term ''interfere'' in the visibility protection context of Section 110(a)(2)(D)(i)(II) for New Mexico, and that EPA should account for a broader range of causes of visibility impairment when considering regulating interference with other states' visibility. According to the commenter, EPA's action should consider future growth in emissions from area sources such as oil and gas development as part of evaluating interference with the visibility programs required in other states' SIPs because the proposed New Mexico RH SIP already reduces NO_X emissions sufficiently. The commenter also argued that pollutants other than NO_X cause interference with other states' visibility programs and should be considered instead of reducing NO_X emissions under BART because the commenter believes NO_X emissions contribute a minor portion to overall visibility impairment.

Response: We disagree with the assertion that we took too narrow a view of the term ''interfere'' in Section 110(a)(2)(D)(i)(II). In the FIP proposed and finalized in this action, we are concluding that the New Mexico SIP contains adequate provisions to prevent such impacts on the visibility programs of other states, except for the emissions from the SJGS. By promulgating a FIP to impose NO_X and SO_2 emission limits necessary at the SJGS to prevent such interference, as well as to meet the requirement for BART for NO_X for this same source, EPA is addressing the requirements of the statute. In reaching this conclusion, we considered the term ''interfere'' based upon the facts, information, and data available to the Agency at this time.

As we discuss in our proposal, we relied on WRAP modeling to determine the appropriate emission limits for sources in New Mexico in order to determine if New Mexico's emissions were interfering with other state visibility SIPs. The states in the West, including New Mexico, worked together through the WRAP to determine their contribution to visibility impairment at the relevant Federal Class I areas in the region and the emissions reductions from each State needed to attain the reasonable progress goals for each area. Western states are relying on the WRAP assumed reduction in emissions levels modeled for sources in New Mexico including the SJGS in order to meet their RH reasonable progress goals. All of the sources except for SJGS met the WRAP assumed reduction in emissions levels modeled for New Mexico's assigned contribution to the region's visibility impairment of Federal class I areas. Thus, we proposed a FIP to prevent emissions from New Mexico sources from interfering with other

states' measures to protect visibility, and to implement NO_X and SO_2 emission limits necessary at one source, the SJGS, to prevent such interference, as well as BART for NO_X for this source.

We determined that enacting a NO_X BART determination for SJGS was necessary because the WRAP analyses showed that NO_X emissions in general and SJGS NO_X emissions, specifically, contribute significantly to haze in the West. SJGS is by far the largest source of NO_X emissions in NM. Our FIP requires substantial reductions in NO_X emissions from this source. We agree that oil and gas development can result in emissions that could have an impact on visibility due to increases in NO_X emissions. However, we are basing our evaluation of the potential impacts of emissions from New Mexico sources on the WRAP analysis, and consideration of the sources that other states would have assumed that New Mexico intended to control as part of that modeling. The state's initial submission for section 110(a)(2)(D)(i) indicated that the state intended to meet its obligations with respect to the visibility prong by means of the RH SIP. Therefore, we have examined the issue in light of what other states would have assumed such a SIP would achieve. Moreover, even if the impacts from the oil and gas sector were significant, this fact would not justify a decision to not act on the BART requirements for NO_X for the SJGS, because NO_X emissions from SJGS are a significant source of NO_X emissions that interfere with other state's required visibility programs. In addition, based on the facts and information currently available, we believe the most effective means of ensuring that emissions from New Mexico do not interfere with other states' visibility programs is to require further and federally enforceable NO_X reductions and federally enforceable SO_2 limits at SJGS.

We also specifically disagree with the commenter's statement that NO_X emissions contribute only a minor portion to overall visibility impairment. As we noted in our proposal, our modeling indicates that the visibility impairment due to the SJGS's emissions is primarily dominated by nitrate particulates. As our NO_X BART modeling demonstrates, reducing NO_X emissions from the SJGS will result in a 21.69 dv, cumulative improvement, across 16 Class I areas. As the RHR states, ''States should consider a 1.0 deciview change or more from an individual source to ''cause'' visibility impairment, and a change of 0.5 deciviews to ''contribute'' to impairment.'' [66] Therefore, we do not view a cumulative visibility impairment of 21.69 dv as an insignificant contribution. The commenter suggests we consider future growth in emissions from area sources such as oil and gas development as part of our control strategy. We agree with the commenter that oil and gas activity in New Mexico produces NO_X and other emissions. We understand the WRAP is currently reviewing and refining the emissions inventory for this sector. We will address this matter further in our review of New Mexico's RH SIP.

2. BART Requirements

Comment: One commenter states ''EPA's BART determination for the San Juan Generating Station contravenes EPA's rules and conflicts with the structure and purpose of CAA Section 169A.'' Following this comment, there appears a parenthetical ''see'' reference to comments that had been submitted from two other commenters.

Response: The comment does not give any underlying rationale or facts for its assertion that our action contravenes our rules and conflicts with CAA Section 169A. We disagree with the statement, because the NO_X BART determination for the SJGS was made in accordance with our rules and CAA requirements. The references to subsections of other submitted comments do not appear to match with the comments we had received. We cannot further evaluate or respond to this comment. In any event, the other comments are separately addressed in this document.

Comment: One commenter states that our proposed rule must be withdrawn because it fails to justify implementation of a SCR BART limit. This commenter cites to a portion of *American Corn Growers* v. *EPA,* 291 F.3d 1, 19 (DC Cir. 2002), where the DC Circuit wrote of state's having ''broad authority over BART determinations.'' The commenter also points to that court's discussion of legislative history, where it stated that ''* * * Congress intended the states to decide which sources impair visibility and what BART controls should apply to those sources.'' *Id.* at 8. From this, the commenter states that the authority of states to establish BART cannot be constrained by us.

Response: While a State has broad authority over a BART determination when it is the decision maker, we similarly have broad authority when promulgating a FIP. Because, as discussed earlier in this notice, New Mexico did not timely formulate and submit its BART determinations, we have the authority and responsibility to make a NO_X BART determination for SJGS.

Comment: One commenter argues that an evaluation of the amount of reasonable progress expected to be achieved in the Class I areas by other control measures is required before the amount of reasonable progress needed from BART at the SJGS should be determined. Under the CAA, BART is not expected to be the maximum degree of emissions reduction technologically feasible. In fact, it may be lower if reasonable progress from other CAA programs is sufficient.

Response: We believe BART to be a severable piece of the RHR that can be evaluated on its own. BART can be a part of a reasonable progress strategy, and controls imposed under other CAA requirements can be considered to be BART. In fact, as we discuss elsewhere in our response to comments, we did evaluate the existing controls at the SJGS, but found them inadequate to satisfy NO_X BART. However, there is not any requirement in the RHR that would require we first make an evaluation of reasonable progress prior to conducting a BART evaluation, nor is there any consideration of lessening the degree of a potential BART control in light of other CAA programs.

Comment: One commenter alleges our proposed rule improperly requires BART for the San Juan Generating Station under Section 110 of the CAA and not Section 169A. While we propose to act under the ''good neighbor'' provision in Section 110 of the CAA, the commenter alleges, EPA ''appears to selectively borrow'' the BART requirement from the RH program established under Section 169A to do what ''neither section could do alone.'' One commenter states Congress intended BART to be one part of a ''comprehensive, long-term strategy for addressing RH in Class I areas.'' The commenter asserts that BART is more stringent than 169A requires, because it is being used ''out of context'' in a limited Section 110 program designed to ensure one state does not interfere with another state's air quality plans. The commenter feels the approach we use is a partial or piecemeal implementation of the RH program, which is contrary to the integrated, comprehensive decision-making that 169A envisions. Because requirements of Section 110 and the Section 169A were not kept separate from each other, the commenter feels our proposal is substantively and procedurally flawed and fails to

[66] 70 FR 39104, 39120.

properly implement the programs under both sections.

Response: We are not requiring NO_X BART for the SJGS under section 110 of the CAA. We are requiring NO_X BART for the SJGS under section 169A and the RHR. Further, we disagree with the statement that BART requirements were selectively borrowed from the RH program or that any provisions were selectively borrowed or considered out of context. In making the BART determination, we first looked to RHR requirements and determined SJGS is BART eligible for NO_X at each affected emissions unit. We then established BART for those units under the RH Rule and the Guidelines for BART Determinations found in Appendix Y of 40 CFR part 51. Because our BART determination is in accordance with the guidelines, it is not any more stringent due to the additional action under Section 110. Moreover, as discussed elsewhere, we do not agree our determination is procedurally or substantively flawed because it is not comprehensive enough. While other commenters have suggested that we should proceed to determine BART for other pollutants, we are finalizing a NO_X BART determination for the SJGS and will address other RH requirements in a separate future action. Therefore, we do not agree that the action under Section 110 and the determination under Section 169A have created any conflict or flaw in the implementation of either program.

Comment: A commenter states that although a similar analytical approach is appropriate, the outcome of the BART analysis for the SJGS should differ from the proposed BART determination for the Four Corners Power Plant. Commenter agrees that a consistent method of analysis should apply. However, it disagrees that the outcomes of the analyses must be the same, given the meaningful differences between the two facilities. For example, the site congestion is a much greater concern at the SJGS than at Four Corners. EPA should reconsider the emission limit it assumed for San Juan in the site-specific, plant-wide manner employed by Region 9.

Another commenter states the proposal fails to consider other BART-eligible sources or other emission control strategies. In addition, the commenter is concerned that our proposed FIP for the SJGS may have been inappropriately influenced by the FIP proposed for Four Corners Power Plant by Region 9. Although the overall analytical approach must be consistent, the commenter argues, the final determinations should be different to reflect the differences between those two facilities.

Response: We agree with the commenters that a consistent method of analysis should apply for all BART evaluations, and we believe the use of the BART Guidelines ensures that occurs. However, we see no reason to conclude the outcomes of these analyses should be prejudged to necessarily have any relationship to each other. We note that the differences the first commenter mentions, such as existing pollution control equipment and site congestion, were factored into our SJGS NO_X BART visibility modeling (baseline emissions) and cost evaluation, respectively. Also, concerning the amount of review time (*e.g.,* comment period), our consent decree deadline prevents us from extending the comment period more than we already have, which was almost a month over our initial 60 day period. We disagree with the first commenter that we failed to properly consider the NO_X emission limit the units of the SJGS can reliably attain. Elsewhere in our response to comments, we present detailed information that documents these units can reliably meet a NO_X BART emission limit of 0.05 lbs/MMBtu. In our analysis, we see no information in the record that causes us to conclude there are any site specific issues that would prevent the units of the SJGS from attaining this emission limit. Lastly, as we discuss elsewhere in our response to comments, we have modified the compliance schedule. We find that compliance with the emission limits for the SJGS should be within 5 years of the effective date of our final rule. We note that the compliance schedule for the Four Corners Power Plant is now being analyzed under a ''better than BART'' scenario according to section 51.308(e)(2)–(3), which provides for a possibly longer time period for the installation of controls.[67]

Comment: The proposed FIP for SJGS is entirely inconsistent with the FIP proposed for six units in Oklahoma by EPA. Given the similarity of the BART determinations made by the state of Oklahoma and the BART determination prepared for San Juan by PNM's consultant, and the significant difference between those determinations and EPA's proposed FIP, commenter asks EPA to reconsider its BART analysis for SJGS using the method of analysis applied in Oklahoma.

Response: We disagree that the results (*e.g.,* emission limits and controls) of our proposed NO_X BART determinations for Oklahoma[68] and the NO_X BART determination we proposed for the SJGS should be similar. The cost of controls must be compared to the expected visibility benefits, and those benefits from the potential installation of SCR on sources in Oklahoma were predicted to be much less than what we expect to result from the installation of SCR at the SJGS. In fact, the visibility benefit (or lack thereof) from the installation of SCRs on the Oklahoma BART sources is so small that we did not see the need to refine the cost estimate by investigating the feasibility of a lower NO_X emission limit. Our conclusion in no way implies we accepted the SCR cost estimate at face value—only that we did not see the need to refine it. With regard to the different BART compliance schedules between our proposals, we believed in SJGS's case that the expected visibility benefits were so significant that the controls should be installed ''as expeditiously as practicable.'' 40 CFR 51.308(e)(1)(iv). As we discuss elsewhere in our response to comments, we have modified the compliance schedule. We are finalizing a schedule which requires compliance with the emission limits within 5 years—rather than 3 years—from the effective date of our final rule.

Comment: Some commenters have stated that the proposed FIP does not satisfy other requirements of the RH Program.

Response: We are acting on a portion of the State's SIP revision addressing Interstate Transport requirements, specifically visibility. We are not acting upon a state RH SIP submittal. The only RH requirement on which we are acting is to make a NO_X BART determination for the SJGS and promulgate a NO_X BART FIP for the SJGS under the RHR. We have made clear in our proposal that we will later act on the rest of the RH requirements.

Comment: One commenter states that the requirement to install SCR at the SJGS is a fatally flawed and unnecessary approach to RH reduction, and that the FIP is not consistent with the law, science, economics, or prudent engineering practice.

Response: While we appreciate Commenter's general concern about the control equipment for RH reduction, the Commenter did not provide any specific examples in the record to be able to adequately respond to this generalized statement. It should be noted that EPA's action establishes emission limits that

[67] Supplemental Proposed Rule of Source Specific Federal Implementation Plan for Implementing Best Available Retrofit Technology for Four Corners Power Plant: Navajo Nation, 76 FR 10530.

[68] *Id.*

may be met with SCR but it does not mandate specific control equipment.

Comment: A commenter states that our BART analysis should be only about visibility and not public health concerns, which can be misleading.

Response: We agree with the commenter that our action should be, and in fact is, about protecting visibility. We derive our authority for this action both under section 110(a)(2)(D)(i)(II) of the CAA and the RHR. In so doing, although we do note the ancillary public health benefits resulting from controlling the same pollutants that cause visibility, we have not considered those benefits in arriving at our decision.

3. Executive Orders Comments

Comment: The MSR Public Power Agency (MSR) disagrees with our findings under the Unfunded Mandates Reform Act of 1995 that the proposed FIP does not contain a federal mandate that may result in expenditures by state, local, or tribal governments that exceed the inflation-adjusted threshold of $100 million ($100 million in 1995 dollars) or more in any one year thus triggering a written assessment of the costs and benefits of the proposed FIP. MSR believes that the cost of retrofitting the four units at the SJGS is closer to PNM's estimated cost of $908 million.

Response: The Unfunded Mandates Reform Act (UMRA) requires that Federal agencies assess the effects of Federal regulations on State, local, and tribal governments and the private sector. In particular, UMRA requires that agencies prepare a written statement to accompany any rulemaking that ''includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (annually adjusted for inflation) in any one year'' (Section 202(a)). Our revised cost estimate indicates that the Total Annual Cost is $39,265,670.[69] Therefore, we have determined that we are below this threshold, even without adjusting it for inflation. In other words, even if the entire Total Annual Cost of the installation of SCRs on the units of the SJGS were ascribed to one entity, we do not believe the UMRA threshold would be triggered.

Comment: Once commenter states that we should not ignore Executive Order 12866.

Response: This action is not a ''significant regulatory action'' under the terms of Executive Order 12866, (58 FR 51735, October 4, 1993) as it only applies to one facility and is not a rule of general applicability. Therefore, this action is not subject to review under the Executive Order.

Comment: One commenter states that the proposed rulemaking is contrary to Executive Order 13563 (Improving Regulation and Regulatory Review) of January 18, 2011 and as such we should consider the cost of promulgating the rule and take the least burdensome path among different options.

Response: Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing contemporary regulatory review that were established in Executive Order 12866 of September 30, 1993. The President issued the referenced Order on January 18, 2011, after we issued our proposed rulemaking. In general, the Order seeks to ensure the regulatory process is based on the best available science; allows for public participation and an open exchange of ideas; promotes predictability and reduces uncertainty; identifies and uses the best, most innovative, and least burdensome tools for achieving regulatory ends; and takes into account benefits and costs, both quantitative and qualitative. However, nothing in the Order shall be construed to impair or otherwise affect the authority granted by law to the Agency. Although this Order was issued after our proposed rulemaking, in our review process the cost of compliance was one of the elements addressed to ensure that the requirements to achieve the goals stated in the CAA were beneficial and not burdensome to the regulated entity. Please refer elsewhere in our response to comments for a detailed analysis of the elements required by our regulations for BART determinations.

Comment: The Navajo Nation EPA commented that the FIP proposal has tribal implications as specified in Executive Order 13175, and that consultation is required because of the impacts to Navajo workers, contractors, and subcontractors at San Juan Generating Station and the San Juan Mine.

Response: Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, Nov. 9, 2000), relates to consultations with tribal governments by federal agencies. As directed by the Executive Order, EPA has recently issued a new policy entitled EPA Policy for Consultation and Coordination with Indian Tribes (May 4, 2011), which re-establishes and clarifies EPA's process for consulting with tribes. We have concluded that this final rule does not have tribal implications, as specified in Executive Order 13175, because this action does not impose federally enforceable emissions limitations on any source located on tribal lands, and neither imposes substantial direct compliance costs on tribal governments, nor preempts tribal law. However, in response to this comment, we engaged in government-to-government consultation at the request of the Navajo Nation regarding this rule and the Nation's previously submitted comments.

4. Other General Legal Comments

Comment: A number of commenters have requested that we should approve the New Mexico Interstate Transport SIP previously submitted in 2007 as it satisfies both our policy and our Consent Decree with WildEarth Guardians. Another commenter states that we have no sound basis in any event for disapproving New Mexico's SIP revision under the visibility clause of section 110(a)(2)(D)(i)(II), as that SIP revision simply carries out our own guidance to the states.

Another commenter stated that our proposal to adopt a FIP before NM completes its ongoing rulemaking process to adopt a RH SIP is premature and deprives the state of its significant discretion to establish and administer its own RH program.

Response: We disagree that we should approve the SIP submitted in 2007 because it satisfies both our policy and the WEG Consent Decree. Our consent decree with WEG requires that by August 5, 2011, we must approve a SIP, promulgate a FIP, or approve a SIP in part with promulgation of a partial FIP for New Mexico to meet the requirement of section 110(a)(2)(D)(i)(II) regarding interfering with measures in other states related to protection of visibility. As stated elsewhere in this notice, New Mexico's 2007 submittal fails to meet this requirement. That SIP anticipated the timely submission of a substantive RH SIP, which was due by December 17, 2007, as the means of meeting this requirement. Because until recently that RH SIP was not submitted, we had no choice but to seek other means of satisfying our WEG consent decree deadline of August 5, 2011.

Because states were late in their RH SIP submissions, on January 15, 2009, we published a ''Finding of Failure to Submit State Implementation Plans Required by the 1999 regional haze rule.'' 74 FR 2392. In New Mexico's case, this finding included sections 40 CFR 51.309(g) and 40 CFR 51.309(d)(4). Section 51.309(d)(4)(vii) states that the implementation plan must contain any

[69] See Exhibit 1 RTC Revised Cost Analysis, lines 91, Cost Analysis Fox.

necessary long term strategies and BART requirements for stationary source PM and NO_X emissions. Any such BART provisions may be submitted pursuant to either § 51.308(e)(1) or § 51.308(e)(2).

This finding started a 2-year clock, which expired on January 15, 2011, for the promulgation of a RH FIP by us, unless those states, including New Mexico, made a RH SIP submission and we approved it. Therefore, we had full authority to promulgate a FIP for the State of New Mexico that included a NO_X BART determination for the SJGS. In response to the second commenter, we do not view it as premature to take action on one element of the RH requirements at this time. We chose to exercise this authority to conduct a NO_X BART review of the SJGS, as a partial route forward in satisfying our consent decree with WEG.

Although we subsequently received the New Mexico submittal on July 5, 2011, we simply have arrived at a point where we do not have the time to stop our action, review that SIP, propose a rulemaking, take and address public comment, and promulgate a final action as defined in the consent decree.

Comment: One commenter alleges that our statement that the SJGS is more than 30 years old and needs to update its control equipment is inaccurate.

Response: As explained elsewhere in this notice and our proposal, our data supports the need for the SJGS to retrofit their sources of emissions to meet the requirements of the CAA.

Comment: One commenter argues that the Administrative Procedures Act is not adequate regarding impacts on small governmental entities.

Response: This final rulemaking only addresses the disapproval of a portion of the SIP revision submitted by the State of New Mexico for the purpose of addressing the visibility prong of the Interstate Transport rule. See elsewhere in our response to comments for a detailed description of what is addressed in this Final Action. Therefore, comments related to the Administrative Procedures Act and how it is not adequate regarding the impacts to small businesses are outside the scope of our proposed action.

Comment: One commenter alleges that ''Federal forces'' create air regulations to solve a problem that doesn't exist and threatens our county's livelihood.

Response: This rulemaking is the result of CAA requirements that a SIP must have adequate provisions to prohibit emissions from adversely affecting another state's air quality through interstate transport and that certain facilities install BART to protect visibility in national parks and wilderness areas. The visibility problem in these areas of great scenic importance has been recognized as a significant issue by policymakers from Federal, State and local agencies, industry and environmental organizations.[70] Technical data, that are part of the record, evidence that emissions of SO_2 and NO_X from the SJGS are interfering with efforts to protect visibility in other states, as well as impacting Class I areas within NM.

P. Modeling Comments

Comment: The San Juan Coal Company (SJCC) commented that EPA compared the emission levels of both New Mexico's 2018 projected emissions and New Mexico's current emissions that were developed for the WRAP photochemical modeling. EPA relied upon that comparison to determine that all of the sources in New Mexico are achieving the emission levels assumed by WRAP in its modeling except for the SJGS. SJCC alleged that EPA's summary of that analysis presents no relevant data to support the Agency's conclusion. Because the WRAP inventories are so extensive and difficult to research and review, EPA at a minimum should have provided copies of the State's emissions inventories that were reviewed and the specific emissions data for SJGS that supports EPA's conclusion. SJCC stated that EPA should not have put the burden of interpreting the WRAP technical support documents on the reader. Furthermore, in light of the substantial number and different types of emission sources throughout New Mexico, our conclusion is suspect. EPA must produce the specific emissions information for SJGS and for all other emission sources in the State, which isolates SJGS as the only reason for New Mexico's interstate interference with visibility protection.

Response: While we did point in the proposed rule to the WRAP Web site as a reference for the emission data that we reviewed and compared, we also developed a complete TSD, and included some of the spreadsheets for 2002, *i.e.,* the ''current'' emissions and for the projected 2018 emissions, in the docket for the proposed rule. Specifically, in Chapters 2 (BART Eligible Determination), 3 (Subject-to-BART Determination) and 4 (BART Guidelines and Modeling Protocols) of the TSD we discussed the WRAP's CALPUFF screening modeling and why we identified SJGS as the only source in New Mexico that was not sufficiently controlled to eliminate interference with the visibility programs of other states.

Our review and the State's first focused on BART eligible sources because these are sources first considered for control in State Regional Haze Plans. In May 2006, NMED conducted an internal review of sources that met the regulatory definition ''BART-eligible'' source set forth in 40 CFR 51.301.[71] The State identified 11 facilities that were BART-eligible. The WRAP performed the initial BART CALPUFF screening modeling for the state of New Mexico. The modeling was performed for each of the 11 sources and their combined SO_2, NO_X, and PM emissions. The purpose of this BART CALPUFF screening modeling was to determine whether any of these 11 sources ''emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility'' in any Federal Class I area. Consistent with the BART Guidelines, this WRAP initial BART CALPUFF screening modeling evaluated the 98th percentile visibility impacts at any Class I area from each of these 11 sources. Using 0.5 dv as the significance threshold, of the 11 sources, only one source's visibility impacts at any Class I area due to its combined SO_2, NO_X, and PM emissions was above the 0.5 dv significance threshold (*i.e.,* PNM's SJGS Boilers #1–4). Of the 10 other sources, none were above a 0.33 dv impact. Consequently, only the PNM's SJGS Boilers #1–4 were determined by NMED to be emitting pollutants contributing to impairment of visibility in any Federal Class I area and therefore were subject to BART. We note in the BART Guidelines that states (and by extension EPA when promulgating a FIP) have flexibility in determining an appropriate threshold for determining whether a source contributes to any visibility impairment for the purposes of BART. However, this threshold should not be higher than 0.5 dv. As discussed in the TSD, based on modeling sensitivities, even if we re-ran the BART CALPUFF screening modeling for the other 10 sources, the conclusion reached by both New Mexico and EPA would be unlikely to change. Therefore, these facilities are not subject to BART. As such, New Mexico did not propose additional controls for these facilities nor did the WRAP modeling include additional reductions for these 10

[70] *See* RHR, 64 FR 35714 (July 1, 1999).

[71] BART-eligible sources are those sources, which have the potential to emit 250 tons or more of a visibility-impairing air pollutant, that were put in place between August 7, 1962 and August 7, 1977, and whose operations fall within one or more of 26 specifically listed source categories.

sources. These 10 sources are sufficiently controlled to eliminate interference with other states' visibility programs.

Our review and the States' particularly focused on sources potentially subject to BART because in developing RH plans, sources subject to BART were a particular focus for States in projecting emission reductions. After the running of the WRAP initial BART CALPUFF screening modeling that identified the one source subject to BART, the WRAP ran photochemical modeling for all the sources in the entire region for the base year (2002) and the future year (2018). The WRAP participating states based their RH reasonable progress goals and long-term strategies upon this photochemical modeling and its inputs, particularly the future year projections for all of the sources in the region. All the participating WRAP states agreed to the emissions input for the base and future years. These states are relying upon the WRAP photochemical modeling's future year projected emissions from all the sources in the region to establish their Reasonable Progress Goals. In consultation with New Mexico, the WRAP photochemical modeling included anticipated reductions in emissions at the SJGS. Through the WRAP consultation process, New Mexico provided the anticipated future year projected emissions from SJGS to be 0.27 lb/MMBtu for units 1 and 3 and 0.28 lb/MMBtu for units 2 and 4. Other WRAP states are relying on the levels modeled for the SJGS units, developed in consultation, in their demonstration of reasonable progress plans towards natural visibility conditions. New Mexico, however, did not adopt limits to insure that the levels assumed for SJGS in the WRAP modeling would be achieved. This discrepancy from what other States assumed is a particular concern because, as discussed previously, SJGS, was found in the BART modeling to, by itself, contribute significantly to visibility impairment.

Our review of the WRAP BART CALPUFF screening modeling and analysis for sources potentially subject to BART in New Mexico is well documented in the TSD as described above. In addition, as part of our review, we evaluated the methodologies used by WRAP in developing their future year emissions projections for the WRAP photochemical modeling. The spreadsheets on the WRAP Web site document the future year projections used by the WRAP in their photochemical modeling. Except for SJGS, the WRAP projections in the photochemical modeling were supported by accepted and agreed upon emissions inventory projection methodologies in combination with regulations or other limitations and were based on the data available at the time. This information was publicly available for review on the WRAP Web site.

Therefore, we adequately explained why our action is limited to the SJGS. In addition, the information we relied on to reach our conclusions is available to the public and was validated by a voluntary group of state, federal and local air agencies dealing with regional air quality issues. Relying on WRAP data provides consistency of analyses throughout the Western states, and assures that our decisions are not arbitrary. Thus, EPA's decision is based on data to support that the SJGS is the only source that requires the enforceable measures in this action to ensure reductions needed to meet the anticipated level of emissions relied upon in the WRAP modeling.

Comment: SJCC contests EPA's conclusion that SJGS is the only source in New Mexico continuing to contribute to visibility impairment in other states because EPA reached this conclusion without comparing all the New Mexico sources' current emissions in the WRAP modeling with their projected 2018 emissions. In addition, EPA did not use the annual emissions value in the ''core emission inventories'' presented in the WRAP modeling for the SJGS reported in tons per year (tpy). The commenter states that EPA performed its comparison by using emission rates in terms of units of pounds per British thermal unit (lbs/MMBtu) for the SJGS. The commenter continues to allege that in addition to using lbs/MMBtu rather than the annual emissions, EPA apparently, further adjusted SJGS's current emissions that were in the WRAP modeling to account for a shorter averaging time because the WRAP averaging periods were unenforceable. This methodology was not applied to any other source. SJCC claims that if EPA had applied this methodology to the other New Mexico sources, it is extremely likely that EPA would have needed to adjust their current levels as well. Therefore, EPA's comparison analysis is flawed, and EPA cannot assume that the SJGS is the only source in the State (or within the WRAP region for that matter) whose current emissions have not been specified on a basis that is consistent with how projected 2018 emissions were expressed for the WRAP modeling.

Response: As discussed in our proposal and elsewhere in this notice, the analysis conducted by the WRAP provides an appropriate means for evaluating whether emissions from sources in a state are interfering with the visibility programs of other states, as contemplated in section 110(a)(2)(D)(i) of the Act. In developing their visibility projections using photochemical grid modeling, the WRAP states assumed a certain level of emissions from sources within New Mexico. The visibility projection modeling was in turn used by the states to establish their own respective reasonable progress goals. We evaluated the planned emission reductions from point sources in New Mexico assumed in the WRAP 2018 modeling. But for SJGS, the WRAP projections were supported by accepted and agreed upon emissions inventory projection methodologies and/or regulations or other limitations and were based on the data available at the time. As a result of the initial BART analysis performed by the WRAP, identifying SJGS as subject-to-BART, and consultation with New Mexico, the WRAP photochemical modeling included anticipated reductions in emissions at the SJGS. The reductions at SJGS were the only additional reductions that other states relied upon occurring that NMED would require in their RH/BART SIP. The WRAP's photochemical modeling that was performed to yield daily (24-hour) visibility impairment impacts adjusted the future year NO_X emissions from SJGS after input from NMED and PNM to 0.27 lb/MMBtu for units 1 and 3 and 0.28 lb/MMBtu for units 2 and 4.

PNM has subsequently indicated that they cannot meet these relied-upon emission rates without installing additional control equipment and the actual achievable emission rate is approximately 0.30 lb of NO_X/MMBtu on a longer-term basis (30 day rolling average) as currently reflected in their permit and 0.33 lb of NO_X/MMBtu on a shorter-term basis. Clearly, the difference between what was assumed by the WRAP and what is actually being achieved and is enforceable should not be ignored.

We disagree that our use of lbs/MMBtu versus the annual emissions rate compromised our evaluation. There is no compromise in integrity using the lbs/MMBtu versus using an annual emission rate, since the annual NO_X emission rate for each EGU in the WRAP photochemical modeling is calculated using the short term emission rate of lbs/MMBtu multiplied with the heat input and hours of operation. In the future case photochemical modeling for most sources, the actual base emissions from 2002 were projected to the future using differing techniques to project the

amount of growth and yield an estimate of the future emissions, taking into account the source type, any applicable regulations and limitations, and data available at the time. As discussed in another response to comment, the WRAP modeling was conducted in a collaborative effort, and the participating states agreed with these methodologies for generating the future year emission inventories. To apply the same exact procedures in calculating future emissions that were applied to the SJGS to all other sources in New Mexico would be inconsistent with the methodology that the WRAP used. We used the same methodology to calculate emissions for EGU's that were installing controls as the WRAP did for other EGUs installing controls. We used the short-term 0.33 lb/MMBtu emission rate as it directly relates to the averaging period for evaluating the visibility impairment, which is daily. For EGUs, the WRAP utilized a forecasting technique to yield 2018 emission estimates by applying a growth factor to the 2002 firing rate up to a capacity threshold of 0.85.[72] For NO_X and SOx emissions from EGUs, the WRAP also used data from 2004 to be representative of emission rates for 2018. However, for EGU sources where the installation of controls was anticipated, such as the SJGS, they utilized the short-term emission factor that would result from the addition of controls (lb of pollutant per MMBtu) and then multiplied by the heat input to yield an annual tpy value that was reported in the WRAP's emission spreadsheets. While the commenter is correct that the WRAP's spreadsheets for photochemical modeling report data is in tpy, the WRAP calculation method uses the same basis for calculation that we used in our analysis, a lb of pollutant per MMBtu. We did our emission calculations for the SJGS using the same methodologies as the WRAP for other EGUs installing controls and, therefore, disagree with the commenter's allegation that the SJGS were calculated unfairly.

We disagree with the characterization that we adjusted the SJGS current emissions in the WRAP. From the comment it is unclear if the commenter's concerns were just about emission rate/calculations for the photochemical modeling or the CALPUFF modeling. Because the comment is unclear, we have addressed their comment for both types of modeling. At issue is the emission rate that needs to be calculated from the SJGS in order to determine visibility impacts from the facility. For the CALPUFF modeling, the July 2005 BART rules recommend using the actual 24-hour maximum emission rate over the last several years as the basis for the baseline emissions, and when a source is controlled in the future the emission rate that would represent a maximum 24-hour potential emission rate after install of controls is used for the future control scenario. Therefore, the values used in the CALPUFF modeling pursuant to EPA regulation and guidance are a short-term (24-hour) emission rate to reflect visibility impairment impacts. For the baseline, we took the existing enforceable permit level, which is a 30-day average and converted it to a 24-hour maximum emission rate to use in CALPUFF to determine the visibility impacts from the SJGS. PNM and NMED's CALPUFF modeling, conducted to estimate daily visibility impairment at Class I areas for the baseline conditions, utilized an emission factor rate of 0.33 lb/MMBtu as the level that they could show compliance on a short-term basis.[73] We utilized the same emission rate in our CALPUFF modeling of the base case visibility impacts.

In the photochemical modeling, the emission rate used in the baseline inventory was based on a NO_X emission rate of 0.27 or 0.28 (depending on the boiler Unit) and a 0.33 lb/MMBtu based rate as the maximum 24-hour emission rate in the CALPUFF modeling. We also note that these baseline emission rates were used by the state in consultation. In summary on this issue, EPA believes the commenter did not fully understand how emission rates were modeled for the two modeling platforms in comparison to how the WRAP calculated future year emission rates for EGUs, and we believe we have followed our regulations and guidance in accurately assessing the impacts with appropriate emission rates.

As part of our action for 110(a)(2)(D)(i) of the CAA, we are also setting a SO_2 limit in our action to be protective of the 0.15 lb/MMBtu limit for SJGS units that was included in the WRAP photochemical modeling and relied upon by WRAP states. SJGS has installed control equipment that is achieving below this level currently, but does not have an enforceable limit that limits the SJGS units to 0.15 lb of SO_2/MMBtu.

Comment: The SJCC found the wording of EPA's conclusion comparing New Mexico's current emissions and projected 2018 emissions to be confusing. If all sources in New Mexico, other than SJGS are currently achieving projected 2018 emissions, as EPA asserts, then that means the only emissions reductions that will occur during the first RH planning period from all emission sources in New Mexico will be from SJGS, which SJCC asserts is incorrect. To support this interpretation, the SJCC turned to the New Mexico emissions inventories used in the WRAP modeling and noted that the WRAP modeling projects a reduction in NO_X emissions of about 10,500 tpy from the SJGS by 2018. The SJCC notes that in comparison, the State's (then) proposed RH SIP estimated that statewide NO_X emissions will decrease by 64,814 tpy by 2018. Based upon these numbers and comparing them, the SJCC concludes that the statement that all sources in New Mexico, except SJGS, are achieving the emission levels assumed by the WRAP modeling is incorrect. Rather, the SJCC asserts, information shows that other New Mexico sources besides the SJGS could be ''interfering'' with other states' measures to protect visibility. The SJCC concludes that although EPA's interpretation of ''interference'' may be reasonable on its face, the application of its explanation of its meaning indicates otherwise. EPA's explanation provides no credible justification for singling out the SJGS as the only New Mexico source of emissions that is interfering with other states' visibility-protection measures.

Response: The statement that other sources were achieving the necessary reductions may have been unclear. In developing its emissions inventory, WRAP states estimated the emissions growth and all reductions that were expected to occur from point, area, and other sources, from all regulatory requirements. For New Mexico point sources other than the SJGS, the current federally enforceable emission limits for these sources are consistent with those relied upon in the WRAP modeling. For the SJGS, the WRAP states considered the impact of the RH BART requirements. As discussed in our proposal and elsewhere in this notice, we evaluated the planned emission reductions from point sources in New Mexico assumed in the WRAP modeling and concluded that the SJGS was the only source in New Mexico that was expected to get reductions beyond the current, *i.e.,* baseline levels, because

[72] Document that was included in our proposal docket, ''Developing the WRAP Point and Area Source Emissions Projections for the 2018 Reasonable Progress Milestone for Regional Haze Planning'', Paula G. Fields, Martinus E. Wolf, Tom Moore, Lee Gribovicz.

[73] NMED Proposed Regional Haze SIP, *available* at *AppxA_NM_SJGS_NOxBARTDetermination_06212010.pdf* and modeling files provided by NMED to EPA for Review June/July 2009.

that source was determined to be subject to BART. The 10,500 tpy NO_X reduction mentioned by the commenter refers to the reduction in NO_X emissions at the SJGS anticipated by the WRAP and included in the future case photochemical modeling.

For other sources, such as the ones the SJCC points to as accounting for the remainder of their 64,814 total reduction of NO_X emissions in New Mexico, the WRAP states considered other rules on the books, projected reductions from other federal rules (including those addressing mobile sources), national consent decrees, and mobile source fleet turnover, among other things. These projections were reviewed and agreed to by the WRAP states as a part of their joint development of a complete WRAP emission inventory in support of their RH SIPs, and were relied upon by the WRAP states as a part of the reasonable progress goals. The commenter is correct that other sources in New Mexico are projected to reduce their emissions as well. Those projections are based on the states' best estimate of the growth of emissions from some sources and the future impact of all combined regulatory programs. We conclude, for the purpose of satisfying section 110(a)(2)(D)(i)(II), those projections were reasonable and adequately incorporated into the WRAP modeling.

As to the comment on how we defined ''interference'' in the context of CAA § 110(a)(2)(D)(i)(II), please refer to our response to comments to legal issues (Section O.1 of this notice), where we have a full response as to how we view the term ''interfere'' in the context of the interstate transport requirements of the CAA. In that response we state that by promulgating a FIP to impose NO_X and SO_2 emission limits necessary at the SJGS to prevent such interference, as well as to meet the requirement for BART for NO_X for this same source, EPA is addressing the requirements of the CAA. In reaching this conclusion, we considered the term ''interfere'' based upon the facts, information, and data available to EPA at this time.

Comment: PNM commented that our choice of an SO_2 baseline and future emission rate of 0.15 lbs/MMBtu was incorrect, and that an SO_2 emission rate of 0.18 lbs/MMBtu is more appropriate. PNM alleges that this is based on the current, federally enforceable emission limit. PNM asserts that our justification for using the lower SO_2 rate is that the lower rate is expected in the future. The commenter argues that utilizing the current SO_2 limit is the more appropriate modeling method even though the use of the current limit would actually result in higher expected visibility improvements.

Response: We conducted CALPUFF visibility modeling to analyze the impacts on visibility impairment from the NO_X BART proposed controls. Due to the nonlinear nature and complexity of atmospheric chemistry and chemical transformation among pollutants, all relevant pollutants should be modeled together to predict the total visibility impact at each Class I area receptor.[74] In order to estimate the benefits from the NO_X BART proposed controls, we included the SO_2 emissions as relied upon in the WRAP modeling in our CALPUFF modeling. The SO_2 emission limit of 0.15 lb/MMBtu that we input into the NO_X BART visibility modeling is based upon what was relied upon in the WRAP modeling. Our FIP makes this WRAP-relied upon SO_2 limit of 0.15 lb/MMBtu federally enforceable. PNM's requested baseline emission rate of 0.18 lb/MMBtu of SO_2 is not what was relied upon in the WRAP modeling.

Per EPA's BART Guidelines, maximum actual emissions should be utilized in the visibility modeling of the base case, and all installed control technology should be considered. Future case modeling should include post control maximum emission rates.[75] We note that the SJGS currently has SO_2 control technology installed and has current actual SO_2 emissions below our proposed FIP limit. As a result, the facility will not have to install additional controls to meet our SO_2 FIP limit. As we are setting the 0.15 lb/MMBtu SO_2 emission limit in the FIP for SJGS, we modeled an emission rate of 0.15 lb/MMBtu for SO_2 for both the baseline (current) and control (future) cases in estimating the anticipated visibility improvement due to installation of the NO_X BART proposed controls. By holding the SO_2 emissions constant in the revised baseline (current) and future (control) cases, the modeled predicted improvements in visibility due to the NO_X BART proposed controls are kept separate from any potential changes in visibility due to changes in SO_2 emissions. This means the final CALPUFF analysis reflects only the benefits due to the additional NO_X reductions beyond the baseline. This also reflects the SJGS's flexibility to increase its SO_2 emissions up to the SO_2 FIP limit of 0.15 lb/MMBtu. It provides a more representative estimate of anticipated visibility improvements from installation of NO_X controls.

Comment: A commenter disagrees with the general modeling approach and assumptions relied upon in EPA's modeling analysis. The commenter contends that we performed numerous different visibility models and chose the one with the highest visibility improvements, even though the chosen model results are the least consistent and the least realistic of the modeling runs prepared. The commenter claims that EPA's chosen value suggests that visibility improvements associated with installing SCRs at SJGS will be three times higher than the model that would assume more realistic, site-specific background ammonia concentrations and the Method 6 post-processing that has been relied upon by PNM, NMED, and WRAP and by EPA itself with regard to SO_2 (by relying on the WRAP modeling). The commenter argues that EPA's rejection of PNM's modeling is unjustified and unnecessarily inflates the expected visibility improvements associated with SCRs. The commenter states that EPA did not raise any of its concerns to PNM or NMED until the issuance of the proposed FIP despite discussions with NMED over several years regarding proper modeling techniques.

Response: This comment is incorrect. In January 2010, NMED proposed as NO_X BART, the installation of SCR on the four units at SJGS and relied upon modeling much of which was completed in the 2006–2007 timeframe. SCR is generally considered the most stringent control technology available for NO_X. The Guidelines for BART Determinations under the Regional Haze Rule's modeling guidelines in 40 CFR part 51 App. Y, IV. D. 5 indicate that selection of the most stringent controls available may allow a source or the state agency to skip conducting visibility impairment modeling. Therefore, because NMED selected SCR, the most stringent control generally available, consistent with our RHR requirements (Step 1, Number 9 in the Guidelines), we did not perform a close review of the modeling in the State's proposal during

[74] Memo from Joseph Paisie (Geographic Strategies Group, OAQPS) to Kay Prince (Branch Chief EPA Region 4) on Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations, July 19, 2006

[75] Page 39129 of BART Rule, ''We believe the maximum 24-hour modeled impact can be an appropriate measure in determining the degree of visibility improvement expected from BART reductions (or for BART applicability)'', Pages 39107–3918 of BART Rule For assessing the fifth factor, the degree of improvement in visibility from various BART control options, the States may run CALPUFF or another appropriate dispersion model to predict visibility impacts. Scenarios would be run for the pre-controlled and post-controlled emission rates for each of the BART control options under review. The maximum 24-hour emission rates would be modeled for a period of three or five years of meteorological data.

the State's public process. Unfortunately, NMED decided not to finalize their proposal and then withdrew it from further state rulemaking in May 2010.

When we developed the proposed FIP for NO_X BART, we conducted our own visibility impact analysis (the degree of visibility improvement reasonably anticipated due to NO_X BART at SJGS). In conducting modeling for our proposed NO_X BART FIP, we utilized current practices and model versions that were acceptable to us at the time they were conducted in the latter half of 2010. In order to minimize technical concerns with the CALPUFF modeling system version, modeling options selected in CALMET, calculation of emissions (including sulfuric acid mist), and background ammonia levels employed by PNM, we remodeled visibility impacts using the CALPUFF version that we have determined to be appropriate for regulatory purposes. Please see our *Complete Response to Comments for NM Regional Haze/ Visibility Transport FIP* document for more details. We remodeled the visibility impacts of SJGS to address these issues with PNM and NMED's modeling, utilizing an acceptable version of CALPUFF. In doing so, we maintain consistency with the most current modeling guidance EPA and the FLM representatives have provided to the states.

We performed numerous modeling runs in order to evaluate the sensitivity of model results to the chosen model inputs and post processing methods to generally inform the process. The justification for selecting the revised IMPROVE equation (''Method 8'') over the original IMPROVE equation (''Method 6'') is discussed in a separate response to comment. Background ammonia concentrations are also discussed further in a separate response to comments. We disagree with the commenter's assertion we simply picked the modeling results that best supported our position, without regard to consistency and/or realism. Every parameter and model input was evaluated and selected separately, based on accepted methodology of EPA and the FLM representatives, guidance and available data. During selection of model versions and inputs, EPA R6 staff conferred with other EPA modeling experts and FLM representatives on these modeling issues to ensure that our modeling would be done in accordance with current day CALPUFF modeling practices for visibility impairment analyses. A discussion of model selection and inputs was presented in our proposal and in the TSD and further discussed in the *Complete Response to Comments for NM Regional Haze/ Visibility Transport FIP* document.

Results for all modeling scenarios are provided in the Appendix 3 to the TSD, entitled ''EPA's CALPUFF Visibility Modeling Results.'' These results demonstrate the sensitivity of the model to underestimation of background ammonia and the sensitivity to the use of the original IMPROVE equation. Utilizing the different methods and different ammonia levels does result in different predicted impact levels, but the overall change in visibility impairment, *i.e.,* the net visibility improvement, due to the proposed NO_X BART FIP emission limit is a significant value in all cases. In other words, while the ammonia levels affect visibility improvement, throughout the range of ammonia background being modeled, the NO_X BART controls adopted here result in significant and important visibility improvement. For example, our sensitivity modeling predicted significant visibility improvement at Mesa Verde due to the proposed NO_X BART emission limit, ranging from 38 to 56% improvement, depending on the background ammonia and post-processing method selected.

Comment: We received comments that alleged that our CALPUFF modeling analysis failed to fully and appropriately account for the visibility improvement already achieved by recent SO_2 and NO_X emission reductions from SJGS. PNM contracted with B&V to perform a BART analysis for the SJGS. The commenters claim that this analysis used EPA's BART guidelines and showed that the low NO_X burners installed on all four units at SJGS during the environmental upgrade project between 2007 and 2009 meet the requirements for NO_X BART.

Response: Our technical modeling analysis accounted for the visibility improvements achieved by existing controls at the SJGS by incorporating the SO_2 and NO_X enforceable permit limits established under the March 10, 2005 consent decree between PNM and the Grand Canyon Trust, Sierra Club, and NMED (2005 Consent Decree) into the baseline emissions modeling scenario. Our analysis of the visibility improvements due to the installation of NO_X controls as part of our proposal reflected the visibility improvement due to installation of additional NO_X controls beyond those installed as required by the 2005 Consent Decree (completed in 2009). Furthermore, we note that neither NMED nor EPA reviewed or approved a NO_X BART analysis including a CALPUFF modeling analysis performed by B&V prior to the installation of controls under the 2005 consent decree. Low-NO_X burners do not satisfy the requirements for NO_X BART for the SJGS; they are not supported by the NO_X BART five-factor analysis.

Comment: We received comments suggesting that modeling should be performed using an emission rate of 0.07lbs NO_X/MMBtu, for operation of SCR, rather than the 0.05 lbs/MMBtu emission rate.

Response: Our modeling of the visibility impacts and benefits of the installation of SCR as being NO_X BART are based on the determination of the emission limit technically feasible and achievable at the SJGS. This determination is discussed in response to additional comments received on the emission limit achievable by SCR at SJGS.

Comment: We received comments that claim that the installation of SCR at the SJGS would result in imperceptible visibility improvements.

Response: We performed visibility modeling as part of the NO_X BART determination analysis. A change of 1 deciview is generally regarded as a perceptible change in visibility (70 FR 39118; July 6, 2005). Our modeling indicates that significant improvements in visibility are anticipated from the installation of SCR to satisfy NO_X BART requirements. As discussed in the TSD, our visibility modeling shows that improvement due to installation of SCR is significant and at a level that is certainly perceptible, including a 3.11 dv improvement at Canyonlands and 2.88 dv at Mesa Verde and an improvement of 1 deciview or greater at 7 other Class I areas. Installation of SCR will result in significant and perceptible visibility improvements at a number of Class I areas.

Furthermore, in a situation where the installation of BART may not result in a perceptible improvement in visibility, the visibility benefit may still be significant. ''Failing to consider less-than-perceptible contributions to visibility impairment would ignore the CAA's intent to have BART requirements apply to sources that contribute to, as well as cause, such impairment'' (70 FR 128; RH Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations, July 6, 2005). Installation of SCR will result in significant and perceptible visibility improvements at a number of Class I areas. However, a perceptible visibility improvement is not a requirement of the BART determination as a visibility improvement that is not perceptible

may still be determined to be significant.

Comment: A commenter asserted that EPA's proposed reductions of NO_X emissions from the SJGS, to satisfy the requirements of section 110(a)(2)(d)(i)(II) of the CAA, are excessive and not supported by the record. The commenter claimed that EPA failed to provide quantitative details on how those emissions reductions were calculated. Furthermore, the emission reductions achievable by EPA's proposed NO_X BART appear to be substantially more than the amount of reductions required for New Mexico to comply with its visibility-related obligation under section 110(a)(2)(D)(i)(II). The commenter alleges that EPA did not provide information on the extent that SJGS's emissions must be adjusted and did not provide a straightforward, side-by-side comparison of SJGS's ''current'' emissions with and without those emissions being adjusted by the Agency; thus, the actual amounts of the emissions ''discrepancies'' that EPA stresses in its preamble are unidentified.

The commenter challenges EPA's statement that those discrepancies are ''significant'' based on ''changes in visibility projections'' and states that EPA failed to provide modeling results quantifying the visibility impact associated with those emission ''discrepancies.'' The commenter states our ''discrepancies'' are not differences between SJGS's projected emissions used in the WRAP modeling and an EPA-adjusted level of ''current'' emissions. Rather, those emissions ''discrepancies'' are the differences between SJGS's current levels of NO_X and SO_2 emissions used in the WRAP modeling and their EPA-adjusted counterparts, *i.e.,* current levels of those emissions adjusted to values that EPA believes should have been used in the modeling. The commenter questioned how, if New Mexico's 2002 NO_X emissions were 312,193 tpy (Plan02d) and SJGS corresponding emissions were 30,353 tpy of NO_X, only the amount of EPA's adjustment could significantly impact out-of-state visibility impairment when the State's total NO_X emissions will likely be at least 10–100 times greater than the ''adjustment'' amount. The commenter then indicated that it is impossible to independently evaluate the strength of our conclusion regarding the extent to which emissions from SJGS must be ''adjusted,'' because the specific numbers, which purportedly support that Agency conclusion, have not been provided. The commenter then indicated that a judgment of whether EPA's ''discrepancies'' are significant cannot be evaluated until EPA identifies (1) the magnitudes of those discrepancies and (2) the resultant modeled difference in visibility impairment due to those discrepancies.

The commenter alleges that at no time have we specified the amount of emissions reductions that may be necessary to satisfy New Mexico's obligation under section 110(a)(2)(D)(i)(II) of the CAA. The commenter estimated the amount of NO_X reductions in the WRAP modeling for the SJGS as 10,590 tpy and then approximated the amount of NO_X emission reductions from SJGS under EPA's scheme to prevent New Mexico's ''interference'' as approximately 2,200 tpy of NO_X after considering the consent decree reductions of 8,411 tpy since 2002. They then commented that if SJGS's current (Plan02d) 2002 NO_X emissions are ''adjusted'' in accordance with EPA's approach, those required emission reductions to reach SJGS's projected level used in the WRAP modeling would increase by an unknown quantity, but they then assumed that the discrepancy is 100% greater than 2,200 tpy, yielding an additional 4,400 tpy NO_X reduction needed by 2018 to prevent interference. Commenter indicated that EPA's proposal under § 110(a)(2)(D)(i)(II) to retrofit SJGS's generating units with SCR could achieve roughly 4 times the amount of NO_X emission reductions actually required and EPA's proposed NO_X emission reductions from the SJGS are excessive.

Response: We disagree with the assertion that EPA must separate the required NO_X emission reductions required by SJGS to meet section 110(a)(2)(D)(i)(II) requirements from the NO_X emission reductions required to meet the NO_X BART determination for SJGS. EPA also disagrees that we are required to conduct a modeling analysis to determine if the NO_X reductions necessary for SJGS to meet the 110(a)(2)(D)(i)(II) visibility requirement would result in significant visibility improvement. As we discuss elsewhere in this notice, there is no necessity that we must evaluate these requirements separately and no requirement that we perform a 110(a)(2)(D)(i)(II) visibility analysis. See Legal response to comments, above, regarding our general authority and obligation to act on section 110(a)(2)(D)(i)(II) and RH SIP requirements.

The commenter takes issue with the fact that we did not specifically quantify the difference in emissions between the WRAP modeling and what is being achieved by SJGS, and explain why the discrepancy was believed to be significant. We disagree. We provided in the proposal and TSD a full discussion of how the NO_X emissions in the WRAP modeling were not being achieved by SJGS, and how NO_X emissions relied upon in the WRAP modeling for the SJGS, and agreed upon during consultation, are not federally enforceable. Therefore, we are establishing federally enforceable NO_X emission limits that will eliminate interstate interference and at the same time address the RH BART requirement for NO_X for SJGS. The commenter then asserts that a side by side comparison should have been provided in tons/year. We disagree that is necessary to quantify this comparison in tons/years. The modeling for electric generating units (EGUs) may have been reported out as tons/year (tpy) in the WRAP emission modeling summary tables, but the WRAP actual modeling itself used a short-term emission rate (*i.e.,* lb/MMBtu). See our other response to comment that addresses tpy versus lb/MMBtu modeled emissions in more detail.

In the case of SJGS, the WRAP's photochemical modeling that was performed to yield daily (24-hour) visibility impairment impacts included future emission estimates based on emission rates of 0.27 and 0.28 lb of NO_X/MMBtu and 0.15 lb of SO_2/MMBtu. After NMED's consultation with other states, PNM indicated to the State that SJGS could not meet the two future WRAP emission rates for NO_X without installing additional NO_X controls. PNM claims that the actual emission rate was approximately 0.30 lb of NO_X/MMBtu on a longer-term basis as reflected in the permit and 0.33 lb of NO_X/MMBtu on a short-term basis as reflected in PNM's visibility impact modeling for SJGS. PNM and NMED's CALPUFF modeling, conducted to estimate daily visibility impairment at Class I areas, utilized an emission factor rate of 0.33 lb/MMBtu for estimation of daily impact as the level that they could show compliance on a short-term basis.[76]

We did not model the difference between the current enforceable emission limits and those emission limits relied upon in the WRAP modeling for SJGS. We find that New Mexico sources, other than the SJGS, are sufficiently controlled to eliminate interference with the visibility programs of other states because the federally enforceable emission limits for these sources are consistent with those relied upon in the WRAP modeling. The SO_2 and NO_X emissions relied upon in the

[76] *Id.*

WRAP modeling for the SJGS, however, are not federally enforceable. Therefore, we are establishing federally enforceable emission limits for SO_2 and NO_X for the SJGS to eliminate interference with the visibility programs of other states. There is no requirement to perform a 110(a)(2)(D)(i)(II) visibility analysis.

We note that the 98% largest deciview impact we modeled using 0.33 lb/MMBtu NO_X and 0.15 lb/MMBtu SO_2 was 5.15dv at Mesa Verde Class I area. We also modeled visibility impacts using 0.33 lb/MMBtu NO_X and 0.18 lb/MMBtu SO_2 in our initial modeling to compare model results with those presented by PNM and NMED. We note that reducing SO_2 emissions from 0.18 to 0.15 lb/MMBtu resulted in a minimal change in visibility impacts at all Class I areas (0.03 dv at Mesa Verde), demonstrating a limited sensitivity to changes in SO_2 emissions compared to the large changes in visibility due to decreasing NO_X emissions at SJGS, as shown in our modeling of the 0.05 lb of NO_X/MMBtu emission rate (SCR case). The use of 0.15 lb/MMBtu SO_2 emission rate is discussed in a separate response to comment. Considering that the 0.33 lb/MMBtu NO_X value is approximately 20% greater than the 0.27/0.28 rate, the significant visibility impacts, and the NO_X sensitivity demonstrated by the modeling, it is clear this difference in emission rates can have a significant impact on visibility. Even on a long-term basis, the difference between relying upon 0.30 lb/MMBtu compared to the 0.27/0.28 lb/MMBtu would have a significant impact. Although the atmospheric chemistry is not strictly linear in this case, if modeled, the combined difference in NO_X and SO_X emission rates would likely result in an impact between several tenths of a deciview and 1 deciview. Clearly, the difference between what was assumed by the WRAP and what is actually being achieved by the SJGS should not be ignored. Since we determined a much lower emission rate for BART, we did not need to directly evaluate the impacts of just achieving the emission rate levels included in the WRAP modeling.

The commenter claims that the SJGS total emissions in 2002 were approximately 10% of the statewide New Mexico NO_X emission total. The commenter implies that the reductions found to be needed at SJGS are exceedingly small in comparison to the total State emissions and therefore should not be singled out for control. The commenter fails to consider the proximity of SJGS to Class I areas and the fact that its emissions are concentrated relative to the more diffuse emissions of many sources in the State, such as area and mobile sources. We conduct modeling to quantify visibility impairment impacts because sources that are close to a Class I area and have elevated stacks result in greater plume impact on the Class I area, and will have a greater impact on visibility impairment per ton of NO_X, compared to a much greater tonnage of NO_X emissions from a variety of sources that are 100s of kilometers away. Much of the New Mexico NO_X emissions are spread throughout the state and nearer to the metropolitan areas of Albuquerque and Santa Fe and over 200 kms from Class I areas in other states, in comparison to the SJGS which is just 42 km from the Mesa Verde Class I area. Our modeling indicated that the SJGS had a very large impact in our baseline emissions modeling (5.15 deciviews at Mesa Verde) which highlights why we conduct modeling instead of analyzing emission ratios, which is apparently what the commenter erroneously implies we should do.

The commenter did not provide specific details or cite any guidance as to how EPA erred in estimating emissions for modeling. We disagree with the comments that we have unfairly adjusted the emission calculations to overstate the benefit of our proposal. We have conducted our calculations consistent with EPA methods and guidance, and the WRAP EGU modeling projections.[77] As documented in our TSD, we used the most recent materials, including EPRI's spreadsheets, and current EPA guidance to estimate emissions for our analyses and disagree with the commenter's vague comment that we unfairly adjusted the emissions to what we thought they should be.

Comment: We received comments from the NPS and USFS supporting the reporting of the cumulative visibility impact of SJGS and the cumulative benefits of SCR. NPS and USFS believe it is appropriate to consider both the degree of visibility improvement in a given Class I area as well as the cumulative effects of improving visibility across all of the Class I areas affected. The BART guidelines do not consider the geographic extent of visibility impairment. NPS and USFS believe the most practical approach to this problem is to consider the cumulative impacts of a source on all Class I areas affected, as well as the cumulative benefits from reducing emissions. They state that cumulative benefits have been a factor in the BART determinations by Oregon and Wyoming, as well as EPA in its proposals for the Navajo Generating Station and the Four Corners Power Plant. They also note that the improvements in visibility impairment due to reductions in NO_X emissions in other analyses have been largest at Class I areas other than the closest Class I area, therefore evaluation of all Class I areas within the modeling domain is appropriate.

Several commenters were opposed to the use of a ''cumulative deciviews'' or ''total'' visibility improvement metric. These commenters claim that the ''cumulative deciviews'' metric is misleading and that the modeling impact improvements would take place at different locations within a Class I area, within different Class I areas, and probably on different dates so a ''cumulative deciviews'' result would not be observed by one viewer. They continued that one viewer would not perceive visibility impacts in more than one Class I area simultaneously, or even within relatively short periods of time, in nearly every case. Furthermore, the visibility impacts to a region should not depend on the number of Class I areas present. The commenters state it is improper to consider a ''cumulative'' deciview improvement over more than one Class I area.

The commenters also suggest that the use of a ''total dv'' metric is inconsistent with BART guidelines (40 CFR part 51 Appendix Y, IV.D.5). The guidelines state that it is appropriate to model impacts at the nearest Class I area as well as other nearby Class I areas to determine where the impacts are greatest. Modeling at other Class I areas may be unwarranted if the highest modeled effects are observed at the nearest Class I area. The commenters claim the analysis should be focused on the visibility impacts at the most impacted area, not all areas. The commenters add that states have already successfully dealt with this practice. To illustrate, they point to the Colorado Air Quality Control Commission declining to take a ''cumulative'' approach to deciviews, even though commenters had argued the concept should influence decision making about BART.

Response: We agree with the NPS and the USDA Forest Service on the utility of a cumulative visibility metric in addition to the other visibility metrics we utilized and we do not agree that our approach is inconsistent with BART guidelines. Our visibility modeling shows that a number of Class I areas are

[77] Document that was included in our proposal docket, ''Developing the WRAP Point and Area Source Emissions Projections for the 2018 Reasonable Progress Milestone for Regional Haze Planning'', Paula G. Fields, Martinus E. Wolf, Tom Moore, Lee Gribovicz.

individually and significantly impacted by emissions from the SJGS. The number of days per year significantly impacted by the facility's NO_X emissions is expected to decrease drastically at each Class I area (Table 6–8 of the TSD) as the result of installation of NO_X BART emission controls at the SJGS. Clearly, the visibility benefits from NO_X BART emission reductions will be spread among all affected Class I areas, not only the most affected area, and should be considered in evaluation of benefits from proposed reductions.

The portion of the BART Guidelines (40 CFR 51 Appendix Y, IV.D.5) that the commenter referenced states: ''If the highest modeled effects are observed at the nearest Class I area, you may choose not to analyze the other Class I areas any further as additional analyses might be unwarranted.'' [78] This section of the BART Guidelines addresses how to determine visibility impacts as part of the BART determination. Several paragraphs later in the BART Guidelines it states: ''You have flexibility to assess visibility improvements due to BART controls by one or more methods. You may consider the frequency, magnitude, and duration components of impairment,'' emphasizing the flexibility in method and metrics that exists in assessing the net visibility improvement.

As discussed in a separate response to comment, for any CALPUFF visibility modeling in a SIP, a protocol addressing procedures and analyses should be determined with the appropriate reviewing authority and affected FLMs. As identified in the BART Guidelines, an important element of the modeling protocol is the choice of receptors used in the model, and the decision of when additional analyses including modeling the effects at Class I areas beyond the nearest area are warranted and necessary. As indicated in the TSD and RTC for this notice, we conferred with EPA OAQPS and FLM representatives on the details of conducting the CALPUFF modeling in this action, and concluded, like PNM and NMED previously concluded in their 2009 modeling, that because of the size of the source and the number of Class I area potentially affected, we should evaluate modeling receptors at all Class I areas within 300 km of the source. We also received comments from FLM representatives supporting the way we conducted our modeling including our evaluation of multiple Class I areas.

Our baseline modeling indicated that visibility impacts from the SGJS were above 0.5 deciviews at all 16 Class I areas within 300km of the SJGS and above 1 deciview at 14 of the 16 Class I areas.[79] These significant visibility impacts support the conclusion that further analyses were warranted. In this specific case, our analysis indicated the largest baseline impact was at the closest Class I area (Mesa Verde) but also indicated very large impacts at other Class I areas. In fact, we found that the largest overall decrease in visibility impact resulting from the proposed NO_X emission reductions occurred at a much more distant Class I area (Canyonlands). Therefore, had we stopped our analysis after modeling the visibility improvement at Mesa Verde, we would not have discovered that the largest visibility improvement is predicted to occur elsewhere.

In fully considering the visibility benefits anticipated from the use of an available control technology as one of the factors in selection of NO_X BART, it is appropriate to account for visibility benefits across all affected Class I areas and the BART guidelines provide the flexibility to do so. One approach as noted above is to qualitatively consider, for example, the frequency, magnitude, and duration of impairment at each and all affected Class I areas. Where a source such as the SJGS significantly impacts so many Class I areas on so many days, the cumulative 'total dv' metric is one way to take magnitude of the impacts of the source into account.

Therefore, under the BART Guidelines, and based upon these facts, we decided additional analyses were not only warranted but necessary. The BART Guidelines only indicate that additional analyses may be unwarranted at other Class I areas, and in no way exclude such analyses, as the commenter suggests. We concluded that a quantitative analysis of visibility impacts and benefits at only the Mesa Verde area would not be sufficient to fully assess the impacts of controlling NO_X emissions from the SJGS.

Again, nothing in the RHR suggests that a state (or EPA in issuing a FIP) should ignore the full extent of the visibility impacts and improvements from BART controls at multiple Class I areas. Given that the national goal of the program is to improve visibility at all Class I areas, it would be short-sighted to limit the evaluation of the visibility benefits of a control to only the most impacted Class I area. As noted previously, NMED and PNM's BART analyses also presented visibility impact and improvement projections at all 16 Class I areas. We believe such information is useful in quantifying the overall benefit of BART controls.

Comment: A commenter disagreed with our use of the revised IMPROVE equation (Method 8) post-processing methodology for the CALPUFF model results to calculate visibility impairment for the SJGS NO_X BART determination from predicted pollutant concentrations. To be consistent with the WRAP modeling, the commenter claims we instead should have used the original IMPROVE equation (Method 6). The commenter further alleges that our use of Method 8 resulted in much higher visibility impacts and improvements than would have been predicted using Method 6. The commenter also claims that our NO_X BART modeling analysis is internally inconsistent because we rely on Method 6 for SO_2 (using the WRAP modeling) and on Method 8 modeling for NO_X. Furthermore, the commenters assert that the use of Method 8 is generally justified by EPA by referring to the ''regulatory version,'' however, Method 8 processing is not supported by the ''regulatory version'' EPA used in its analysis.

Response: Method 6 and Method 8 refer to two different versions of algorithms used to estimate visibility impairment from pollutant concentrations. Method 8 is a more recently available, more refined version of the original equation and is now considered by us and FLM representatives to be the better approach to estimating visibility impairment. Compared to the original IMPROVE equation, this revised IMPROVE equation has less bias, accounts for more pollutants, incorporates more recent data, and is based on considerations of relevance for the calculations needed for assessing progress under the RHR.[80] We are aware that Method 8 tends to show more improvement in visibility than Method 6 when reductions in very small particles are achieved, such as those that are formed by emissions of NO_X. We believe that this, however, more accurately reflects real visibility conditions.

We are also aware that at the time the States were working together in the WRAP to develop their RH SIPs, Method 6 was widely employed to develop RPGs and for initial BART

[78] 70 FR 39170.

[79] 70 FR 39118. Impacts of 1 deciview or greater are considered to cause a visibility impairment.

[80] Revised IMPROVE algorithm for Estimating Light Extinction from Particle Speciation Data, IMPROVE, January 2006 (*http://vista.cira.colostate.edu/improve/Publications/GrayLit/gray_literature.htm*) ; Hand, J.L., Douglas, S.G., 2006, Review of the IMPROVE Equation for Estimating Ambient Light Extinction Coefficients—Final Report (*http://vista.cira.colostate.edu/improve/Publications/GrayLit/016_IMPROVEEeqReview/IMPROVEeqReview.htm*).

analyses. By the time Method 8 was widely available, some States were far enough along in their SIP development that a switch to the newer method would have been disruptive. Because of this, we did not object to the use of Method 6 in the WRAP photochemical modeling or subject-to-BART screening modeling. In the case of New Mexico, Method 6 was used in WRAP modeling to determine which sources are subject to BART. Using Method 6, New Mexico determined that the SJGS was subject to BART because of its significant impact on Class I areas. We reached the same conclusion using either Method 6 or Method 8 in our modeling. New Mexico and the other WRAP States also used Method 6 to develop reasonable progress goals for the Class I areas in the region.

For the purposes of ensuring that New Mexico's emissions do not interfere with other States' plans for visibility improvement, the choice of IMPROVE Method is not relevant. The commenter seems to imply that because the WRAP modeling largely used Method 6, we should use Method 6 for all our analyses, including our source specific analyses for NO_X BART. However, regardless of which IMPROVE equation is used, New Mexico did not provide federally enforceable limitations on SJGS' SO_2 and NO_X emissions to achieve the reductions expected by other States. Without these reductions, other States will not achieve the progress at their Class I areas which they expected under the collaborative WRAP process.

As discussed previously, we have concluded that it is appropriate to address the requirements for NO_X BART for SJGS at the same time we address New Mexico's obligations under the visibility prong of 110(a)(2)(D)(i). As part of the BART analysis, we performed CALPUFF modeling to assess the impacts of the NO_X BART proposed controls on the single source at issue on visibility impairment. Because Method 8 is the preferred method for analyses being conducted at this time,[81] we estimated the CALPUFF visibility impacts using this peer reviewed algorithm. We also evaluated modeling results using Method 6 to quantify the sensitivity of our results to the choice in visibility impairment algorithm. We note that using either Method 8 or Method 6, substantial visibility benefits were projected for the installation of SCR and support the conclusion that SCR is the appropriate BART control.

We disagree with the comment concerning Method 8 and the ''regulatory version'' of the model. CALPOST is the post-processing tool used to apply an algorithm to estimate visibility impairment from pollutant concentrations from CALPUFF. We determined CALPOST version 6.221, which includes the option to apply either the Method 6 or the Method 8 algorithm, was the appropriate CALPOST version for our analysis. Since we determined Method 8 was the better method for estimating impairment, we chose to use the version of CALPOST that allowed the calculation using either Method 6 or Method 8. We note that this CALPOST version was approved and supported by the FLMs to allow for application of the revised IMPROVE equation (''Method 8'').[82] As discussed in more detail in a separate response to comment in this Section N and our *Complete Response to Comments for NM Regional Haze/ Visibility Transport FIP* document, the ultimate decision on the acceptable model version, formulation, and set-up of CALPUFF and CALPOST for visibility modeling is our responsibility in a FIP situation.

Comment: We received a number of comments concerning the version of the CALPUFF modeling system EPA has used. We utilized CALPUFF Version 5.8 suite for visibility modeling. The commenter indicated revised CALPUFF model Versions 6.112 and 6.4 are available and submitted modeling analyses using these versions of CALPUFF with the suggestion that their modeling should be used instead of ours. A number of commenters stated that Version 5.8 is outdated and overestimates visibility impacts. The commenters argue that the latest version, CALPUFF Version 6.4, which includes updated chemistry and technical enhancements to improve the model's performance and accuracy, should be used to evaluate visibility impacts. They alleged that this version includes updated chemistry that is more robust and performs better and technical enhancements to improve the model's performance and accuracy.

Additionally, commenters included information on a February 16, 2011 meeting held with the EPA in Research Triangle Park (RTP), North Carolina along with representatives of the western states utility organization WEST Associates, the American Petroleum Institute (API), and TRC (the developer of CALPUFF). The FLMs participated in this meeting by teleconference. It was agreed at the meeting that the FLMs will take the lead on a review and testing of the CALPUFF model code changes including the new chemistry modules, and Model Change Bulletins (MCBs) and coordinate with EPA.

Response: The commenter indicated that a revised version of the model is available and submitted modeling analyses using CALPUFF model Versions 6.112 and 6.4. Comments received justifying the use of these versions of CALPUFF alleged that they were more scientifically robust and included updated chemistry and technical enhancements to improve the model's performance and accuracy. We disagree that the newer versions of CALPUFF should be used in this action to determine potential visibility impacts. The newer version(s) of CALPUFF have not received the level of review required for use in regulatory actions subject to EPA approval and consideration in a BART decision making process. Based on our review of the available evidence we do not consider the models to have been shown to be sufficiently documented, technically valid, and reliable for use in a BART decision making process. In addition, the available evidence would not support approval of these models for current regulatory use. There are known technical problems with CALPUFF 6.112 and furthermore, the development of new model versions requires technical and policy evaluations to ensure the models meet regulatory requirements.

The commenter's modeling using different model versions with as yet unapproved mechanisms and the non-guideline techniques indicated different results than past modeling submitted by PNM and the results of our modeling of SJGS.[83] The visibility impacts of their modeling results are much lower compared to results of past PNM, NMED and EPA modeling. These discrepancies are large enough to lend further

[81] U.S. EPA. Additional Regional Haze Questions. U.S. Environmental Protections Agency. August 3, 2006, *available* at *http://www.wrapair.org/forums/iwg/documents/Q_and_A_for_Regional_Haze_8-03-06.pdf#search=%22%22New%20IMPROVE%20equation%22%22;* WRAP presentation, ''Update on IMPROVE Light Extinction Equation and Natural Conditions Estimates'' Tom Moore, May 23, 2006; U.S. Forest Service, National Park Service, and U.S. Fish and Wildlife Service. 2010. Federal land managers' air quality related values work group (FLAG): phase I report—revised (2010). Natural Resource Report NPS/NRPC/NRR—2010/232. National Park Service, Denver, Colorado.

[82] U.S. Forest Service, National Park Service, and U.S. Fish and Wildlife Service. 2010. Federal land managers' air quality related values work group (FLAG): phase I report—revised (2010). Natural Resource Report NPS/NRPC/NRR—2010/232. National Park Service, Denver, Colorado, *available* at *http://www.nature.nps.gov/air/Pubs/pdf/flag/FLAG_2010.pdf.*

[83] Comparison of model results presented by commenter with values in our TSD Chapter 6.

credence to the need for a full review of the revised modeling systems before considering the modeling results for any decision making.[84] [85] EPA was fully justified in following its modeling approach, which was consistent with current EPA and FLM guidelines, as well as similar to modeling recently performed by NMED and PNM. EPA used the approved version of the model in accordance with the appropriate procedures, as discussed further in other response to comments and is confident in using our results as one of the five factors in making a BART determination.

In considering the comment that we should use the latest version of CALPUFF (6.4) or an earlier version 6.112, we considered the regulatory status of CALPUFF for visibility analyses and what analyses are needed to utilize an updated CALPUFF modeling system. The requirements of 40 CFR 51.112 and 40 CFR part 51, Appendix W, Guideline on Air Quality Models (GAQM) and the BART Guidelines which refers to GAQM as the authority for using CALPUFF, provide the framework for determining the appropriate model platforms and versions and inputs to be used. Because of concern with CALPUFF's treatment of chemical transformations, which affect AQRVs, EPA has not approved the chemistry of CALPUFF's model as a 'preferred' model. The use of the regulatory version is approved for increment and NAAQS analysis of primary pollutants only. Currently CALPUFF Version 5.8, is subject to the requirements of GAQM 3.0(b) and as a screening model, GAQM 4. CALPUFF Versions 6.112 and 6.4 have not been approved by EPA for even this limited purpose.

Under the BART guidelines, CALPUFF should be used as screening tool and appropriate consultation with the reviewing authority is required to use CALPUFF in a BART determination as part of a SIP or FIP. The BART Guideline cited and referred to EPA's GAQM which includes provisions to obtain approval through consultation with the reviewing authority. Moreover, we also note that in EPA's document entitled *Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, PM2.5, and Regional Haze* (EPA–454/B–07–002), that Appendix W does not identify a particular modeling system as 'preferred' for modeling conducted in support of state implementation plans under 40 CFR 51.308(b). A model should meet several general criteria for it to be a candidate for consideration. These general criteria are consistent with the requirements of 40 CFR 51.112 and 40 CFR 51, Appendix W. Therefore, it is correct to interpret that no model system is considered 'preferred' under 40 CFR 51, Appendix W, Section 3.1.1 (b) for either secondary particulate matter or for visibility assessments. Under this general framework, we followed the general recommendation in Appendix Y to use CALPUFF as a screening technique since the modeling system has not been specifically approved for chemistry. The use of CALPUFF is subject to GAQM requirements in section 3.0(b), 4, and 6.2.1(e) which includes an approved protocol to use the current 5.8 version.

As noted previously, the summary of results provided by the commenter indicate much lower results compared to the current regulatory approved version of the modeling system. The significant difference in results is an indicator that there are important changes in the science between these new versions and the current EPA version. We must have a full understanding of these changes before 'approving' their use. The information provided indicates the new science includes chemistry for which this model was never approved so these changes would necessitate a notice and comment rulemaking and not a simply update as previously done for this model to address bug-fixes and the like. We believe that with such modifications to the modeling system, CALPUFF (Version 6.4) used in this manner could no longer be considered a screening technique under Section 4 of GAQM. The CALPUFF Version 6.112 would be considered an alternative model and would be subject to the requirements of Section 3.2 of GAQM. As covered in more thorough detail below and in our RTC, these alternate versions of CALPUFF (6.112 and 6.4) are subject to the provisions of GAQM.

Based on the technical information that has been provided, these model versions could not be approved because the information provided is not sufficient and does not comport with the requirements of Section 3.2, including 3.2.2(b)(3) and (e), of GAQM. The model developer has relied upon several articles (Escoffier-Czaja and Scire, 2007; and Scire, *et al.,* 2003) which describe the general reliability of the CALPUFF modeling system and post-processing techniques for use in visibility assessments. Based on our review of this information, we do not believe it provides sufficient information for EPA to assess the suitability of the newer versions of the modeling system as would be done in reviewing models in accordance with GAQM Section 3.2.2(e) requirements.

First, it is important to understand that each of the papers were presented as part of general proceedings at conferences, and therefore do not reflect the thoroughness of a formal peer review process that would be associated with submission to mainline scientific journals. Therefore, we do not consider these references suitable for establishing the validity of the model or post-processing techniques or demonstrating that these models have undergone independent scientific peer review as necessary for reviewing models in accordance with Section 3.2.2(e)(i) of GAQM.

Second, the evaluation techniques utilized by the developer are not appropriate for evaluation of the chemical mechanisms of the CALPUFF system. Appendix A.3 of GAQM describes CALPUFF as generally considered suitable for treatment of dispersion of non-reactive pollutants from a single source or small group of sources for distances beyond 50-km to 200- to 300-km. CALPUFF usage, in the context of the Southwestern Wyoming Air Quality Task Force (SWWYTAF) modeling dataset presented in both Escoffier-Czaja and Scire (2007) and Scire *et al.* (2003), is treated as a full photochemical modeling system such as the Comprehensive Air Quality Model with Extensions (CAMx) or the Community Multiscale Air Quality Model (CMAQ). However, the evaluation techniques presented in the aforementioned references evaluate the model as a near-field dispersion model, presenting information on sulfate and nitrate performance in quantile-quantile plots (Q–Q plots) only for the Bridger-Teton IMPROVE monitoring site. This technique is not satisfactory for purposes of model performance evaluations for full science chemistry models. Recommended methods and metrics for evaluation of photochemical models are discussed at length in EPA's Guidance on the Use of Models and

[84] 70 FR 39123, 39124. ''We understand the concerns of commenters that the chemistry modules of the CALPUFF model are less advanced than some of the more recent atmospheric chemistry simulations. To date, no other modeling applications with updated chemistry have been approved by EPA to estimate single source pollutant concentrations from long range transport.'' and in discussion of using other models with more advanced chemistry it continues, ''A discussion of the use of alternative models is given in the Guideline on Air Quality in appendix W, section 3.2.''

[85] EPA report, ''Assessment of the VISTAS Version of the CALPUFF Modeling System'', EPA–454/R–08–007, August 2008 available at (*http://www.epa.gov/ttn/scram/reports/calpuff_vistas_assessment_report_final.pdf*).

Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze (EPA–454/B–07–002). Therefore, we do not consider the analysis techniques presented by the model developer sufficient to demonstrate that the model is not biased, as would be done to justify use of a model in accordance with Section 3.2.2(e)(iv) of GAQM.

Finally, no modeling files were provided for review, no protocol or other complete documentation was provided outlining the methods and procedures of operating the alternative model in agreement with the appropriate reviewing authority (EPA Region 6) prior to submission of comments, contrary to requirements of Section 3.2.2(e)(v) of GAQM.

Therefore, on the basis of available information submitted to the public record, we could not approve the use of the alternative model versions in accordance with Section 3.2.2(e) requirements of GAQM. We believe our modeling accurately describes the visibility impacts of the SJGS, the benefits of BART controls, and was based on established and well-recognized methods.

It would be problematic for us to allow the use of any unapproved model variants with potentially significant changes to chemistry treatment without additional information regarding the model's formulation, performance, and acceptability. In promulgating the BART guidelines we made the decision in the final BART Guideline to recommend that the model be used to estimate the 98th percentile visibility impairment rather than the highest daily impact value as proposed. We made the decision to consider the less conservative 98th percentile primarily because the chemistry modules in the CALPUFF model are simplified and likely to provide conservative (higher) results for peak impacts. Since CALPUFF's simplified chemistry could lead to model over predictions and thus be conservative, EPA decided to use the less conservative 98th percentile.[86] The modeling that PNM's contractor performed for PNM was based on CALPUFF versions that have been updated with an allegedly more robust chemistry and purportedly performs better according to the commenter than the current version of the model approved for regulatory actions (CALPUFF version 5.8). If these versions of CALPUFF can be shown to be reliable and acceptable to EPA, it would likely be appropriate to the use Highest Daily impact (1st High instead of the 8th High) based on the presumption that the updated chemistry of CALPUFF model would result in less conservative results than Version 5.8. In past agreements in using the CAMx photochemical model, which has a robust chemistry module, the Region has recommended the use of the 1st High value when sources were being screened out of a full BART analysis based on the CAMx results.[87]

The current version of CALPUFF approved for regulatory action was last updated by EPA on June 29, 2007. The CALPUFF modeling system approved at that time included CALPUFF version 5.8, level 070623, CALMET version 5.8 level 070623, and CALPOST version 5.6394, level 070622. CALPUFF is still considered a screening model for visibility assessments. Therefore, we followed the requirements of Appendix W for screening models in our modeling.[88] We conducted our modeling with the version 5.8 suite with a few exceptions that were discussed among modeling experts from EPA Region 6, EPA/OAQPS and FLM representatives. Our modeling procedures were discussed more fully in our TSD.

We note that the CALPUFF Versions 6.4 and 6.112 have not been reviewed by EPA for potential regulatory use. PNM's contractor has indicated that a meeting was held with EPA/OAQPS representatives on Feb. 16, 2011 and FLM representatives participated via conference call. The commenter indicates that EPA was going to let the FLM representatives take the lead on review and testing of the new version of CALPUFF (6.4) and coordinate with EPA regarding this issue. Mr. Tyler Fox, Group Leader of the Air Quality Modeling Group at EPA/OAQPS has indicated that EPA will take the lead on the review of the new version (CALPUFF Version 6.4) and that the new addition of a more sophisticated chemistry mechanism is a paradigm shift in treatment of chemistry in CALPUFF and requires additional rule making and public review since CALPUFF was never approved for chemistry in the GAQM and EPA is currently evaluating several models to address current modeling needs for models that can be used for analyses of secondary formation pollutants for ozone, $PM_{2.5}$ secondary, and regional haze/visibility impairment.[89] At this time, EPA and the FLM representatives are in the process of planning to move forward on reviewing all available models to determine their suitability for these analyses. We note that we have reviewed the materials shared at the meeting and discussed the planned steps forward from the meeting, but that CALPUFF Versions 6.4 and 6.112 have still not been evaluated to determine their suitability for use in various contexts.

Based on the applicable GAQM and BART Guidelines regulations, the combination GAQM (2005) citations (6.2.1(e) and 3.0(b)), and the BART Guidelines outline that for any visibility modeling performed with the CALPUFF model in a SIP, a protocol addressing procedures and analyses should be developed with the appropriate reviewing authority and affected FLMs. Approval of an alternate model usually includes consultation with the modeling group at EPA/OAQPS even though ultimate authority in most cases is the Regional Office. In the case of a SIP or a FIP, the EPA Regional Office has the final approval decision on what constitutes appropriate/acceptable modeling. Development of an acceptable protocol with a Regional Office for review and approval of an alternative model (*i.e.* updated model version, *etc.*) can be a very significant task and could take 6 months to a year or longer to complete a protocol that detailed submission of information for review including model sensitivity runs, evaluation of model performance, *etc.,* so this can be a sizable hurdle in order for EPA to ensure that we are basing decisions on sound science and the best tools for actions. Approval of updated CALPUFF versions has been such a large task that EPA/OAQPS has typically taken the lead in approval of CALPUFF updates for regulatory use. In this case, PNM did not work out a protocol to address any of these needed elements for EPA Region 6 to conduct a review of PNM's proposed use of an alternate model and the modeling results. The new versions of CALPUFF, version 6.112 or 6.4, that the commenter used to provide modeling analyses have not gone through a full regulatory review in accordance with 40 CFR part 51 Appendix W Section 3.2.2.

[86] "Most important, the simplified chemistry in the model tends to magnify the actual visibility effects of that source. Because of these features and the uncertainties associated with the model, we believe it is appropriate to use the 98th percentile—a more robust approach that does not give undue weight to the extreme tail of the distribution." 70 FR 39104, 39121.

[87] Comment Letter from EPA Region 6 to TCEQ dated February 13, 2007 regarding TCEQ Final Report "Screening Analysis of Potential BART-Eligible Sources in Texas", December 2006.

[88] GAQM (2005 update) part 3.0(b), and 4.2.1.1 and 4.2.1.2. Section 4 dealing with screening versions of modeling analyses was updated in the 2005 GAQM notice.

[89] Personal communications with Mr. Tyler Fox to verify guidance given at meeting pertaining to alternate CALPUFF versions. July 29, 2011.

Furthermore, the currently available information does not support the approval of these versions of the CALPUFF model for use in making BART determinations. In addition, if these versions of the model were used, EPA would have to reconsider whether using the 98th percentile impact for determining impairment was appropriate. Therefore, EPA does not believe the use of CALPUFF version 6.112 or 6.4 is appropriate for this rulemaking. We believe we have made the appropriate choice in using CALPUFF version 5.8.

Comment: The USDA Forest Service (USFS) provided comments supporting our assumptions regarding the value of the background ammonia (a constant 1.0 ppb concentration) used for the visibility analysis. In contrast, PNM claims that the use of variable monthly ammonia values ranging from 0.2 ppb in the winter months to 1.0 ppb during the summer would better reflect the seasonal variations in ammonia concentrations than would a constant, assumed ammonia concentration. PNM further argued that the use of variable monthly ammonia concentrations would still be conservative. Therefore, PNM alleges, since a variable monthly ammonia scheme is more representative and conservative, it should be used instead of EPA's constant ammonia levels. PNM also claims that the use of the Ammonia Limiting Method (ALM) is appropriate given the ''conservatism (averaging about a factor of two) of the assumed ammonia relative to observations.'' PNM further comments that our supporting documentation also states that ''alternative levels may be used if supported by data'' and therefore we have no basis for criticizing the variable, monthly ammonia levels used in the modeling prepared by PNM. PNM further comments that EPA's decision to rely on constant high background ammonia concentrations unjustifiably results in higher visibility improvements than expected by PNM's more realistic modeling results.

Response: We agree and concur with the use of the 1 ppb ammonia levels from USFS representatives. We disagree with the comments supporting the use of variable, monthly ammonia concentrations. There are several factors to consider with selecting the appropriate ammonia background for estimating visibility impacts, including the length and temporal resolution of the ammonia data collected, whether the ammonia data varies depending on location of collection in comparison to proximity of SJGS plumes, the fluctuation of levels throughout the year, and the importance of plume chemistry from the point of NO_X and SO_2 emissions that react with emitted and background ammonia as the plumes transport to downwind receptors. We have examined the available ammonia data collected, including the data cited to in the comments.[90] Our selection of the *IWAQM Phase 2* default ammonia background constant value of 1 ppb (rather than the variable monthly ammonia concentrations suggested by the commenter) better represents ammonia concentrations directly around the SJGS emission sources. The ammonia near the source that is available to interact with the plume as it is emitted is of greater concern for determining visibility impacts from the source due to the atmospheric chemical reactions that occur as the pollutants and ammonia are transported together to a Class I area. Therefore, it is more appropriate to use a background level for ammonia that is representative of the area around the source rather than the ammonia levels at the isolated downwind Class I areas.

The pollutants emitted by the source, such as sulfate and nitrate, will react with available ammonia present near the release point and this ammonia and ammonia reaction products will be transported along with the emitted pollutants to the downwind receptors. The available monitoring data indicates that ammonia levels are higher around the SJGS emission sources and decrease at Mesa Verde, thus supporting that conclusion that when SJGS plumes are transported to Mesa Verde (and other Class I areas), as expected, the SJGS emissions react with ammonia levels near the SJGS resulting in decreasing ambient ammonia levels downwind from the SJGS. The annual average ammonia values at the Substation and Farmington sites, which are the passive monitor readings that are closest to the SJGS, are above the 1 ppb levels that we have chosen to model. This supports our decision to use a constant 1.0 ppb ammonia value as being representative of the area around the source rather than the ammonia levels at the isolated downwind Class I areas. Therefore, the level we modeled is more appropriate. As discussed originally in the TSD and also in our *Complete Response to Comments for NM Regional Haze/ Visibility Transport FIP* document, we have taken into consideration the issues raised by the commenter and conferred with the author of the 2008 Sather report, and concluded that the ammonia levels we used in the model are appropriate.

We disagree with the use of the ALM. There is a lack of documentation, adequate technical justification, and validation for the development and use of the ALM. This is discussed further in a separate response to comments.

Comment: PNM contracted with Mr. Joe Scire to review and prepare a report on PNM's BART modeling submitted to NMED during its 2010 state proposed rulemaking process. PNM included this Report as part of its comments to EPA. PNM asserts that the Report confirms that PNM's modeling was consistent with the methodology developed for CALPUFF and it was prepared consistent with the WRAP protocol for BART modeling and the WRAP BART modeling. The commenter argues that since EPA has accepted the WRAP modeling and used it to support its own positions with regard to SO_2 in the proposed FIP, and given the fact that PNM's modeling was prepared in a manner consistent with the WRAP modeling, EPA should not need to alter PNM's modeling. Moreover, the modeling results achieved by us are merely a function of our modeling methods, not true differences in visibility impacts.

In addition to the commenter's position that the PNM modeling was conducted appropriately, PNM claims that the Report shows more recent developments in modeling science and chemistry could be used to make a more accurate and realistic prediction of the visibility improvements that might result from installing SCRs at SJGS. The recommendations included modeling results from the use of (1) two updated CALPUFF models, Ver. 6.112 and a version with updated chemistry (Ver. 6.4); (2) a refined modeling grid (1 km versus 4 km), and (3) Ammonia Limiting Method (ALM). PNM claims use of the ALM would take into account the spatial variations of background ammonia concentrations and account for the consumption of background ammonia by background sources of sulfate and nitrate; and that modeling at a higher resolution of 1 km (compared to 4 km) is better, to ''better represent the wind flow in a complex terrain regime.'' Using these modeling techniques, PNM argues that these alternate modeling results show that the greatest visibility improvement that could be achieved at any Class I area by installing SCRs at SJGS would be less than 0.5 dv per unit, and thus less than what a human could perceive.

Response: The commenter indicates that we used the WRAP photochemical

[90] Sather, *et al.* ''Baseline ambient gaseous ammonia concentrations in the Four Corners area and eastern Oklahoma, USA,'' Journal of Environmental Monitoring (September 2008) (''The Sather 2008 report'').

modeling to support our action on SO_2 controls and from this, somehow concludes we should accept PNM's BART CALPUFF visibility modeling, allegedly consistent with WRAP protocols for assessing the visibility impacts of SJGS. In this instance, the commenter appears to confuse two types of modeling. As we discuss elsewhere in this notice, we did rely on the WRAP's photochemical modeling in considering whether New Mexico sources, specifically SJGS, interfered with other States' visibility plans. The WRAP's CALPUFF screening modeling was used to determine which BART-eligible sources were subject to BART. As a result of the WRAP CALPUFF screening modeling, New Mexico identified one source subject to BART and, as discussed elsewhere, projected emission reductions that were relied upon by the WRAP in their photochemical modeling. The photochemical modeling was used to consider the emissions from all sources in the regions and was used to establish the reasonable progress goals for the WRAP States. The source-specific CALPUFF visibility modeling, on the other hand, requires a site specific modeling approach designed to evaluate visibility impacts to inform decisions in a BART determination for a specific source. Our CALPUFF visibility modeling, performed using an accepted CALPUFF model version and following applicable guidance and EPA/FLM recommendations, showed significant visibility benefits due to the use of SCR as NO_X BART at SJGS.

As discussed elsewhere, since NMED was previously proposing to install the most stringent controls, we did not raise some of our concerns with past modeling, since the BART guidelines allow some flexibility in the need to conduct modeling when the most stringent controls are being required. In our review of PNM's earlier BART CALPUFF visibility modeling, we did note some inconsistencies between PNM's CALPUFF modeling protocol and the EPA approved modeling techniques for source-specific modeling to support a BART determination. As stated in the TSD that accompanied our proposal, however, we agree with the commenter that the PNM CALPUFF modeling generally followed the BART protocol for BART screening analyses developed by the WRAP.[91] After the WRAP CALPUFF screening modeling had been generated, some problems with the changes from the previous CALPUFF modeling system that were included in CALPUFF Version 6.211 and another version referred to as the ''VISTAS version'' had been identified.[92] Version 6.211 has been found to set up situations where the boundary layer could artificially collapse creating unrealistic meteorological conditions and significantly impacting the modeled dispersion (refer to the TSD for additional details). This assessment leads to EPA's approval of CALPUFF 5.8 as the approved version, announced on June 29, 2007. Furthermore, PNM did not consult with Region 6 to establish a protocol for additional CALPUFF modeling as part of the BART visibility analyses, and while they chose to generally follow the protocol developed by the WRAP specifically for BART screening analyses, PNM deviated in some ways. In addition, a site specific protocol for SJGS should have included additional refinements in model settings and incorporation of data. We specifically noted several deviations from appropriate practice in PNM's implementation of the meteorological processing model for CALPUFF, named CALMET, in addition to model versions issues. PNM's CALMET modeling utilized radii of influence values inconsistent with EPA/FLM guidance, and did not follow the EPA/FLM guidance about including upper air observational data. Finally, the CALPUFF modeling system (including CALMET) versions used by PNM did not follow EPA and FLM recommendations and guidance. NMED received comment on not being consistent with established BART modeling procedures from the FLM's during the proposed 308 SIP in August 2010. PNM has also alleged that variable ammonia concentrations should be used, which is inconsistent with the WRAP's BART screening protocol and modeling. Furthermore, NMED specifically requested that PNM perform modeling using the default constant 1 ppb background ammonia concentration on multiple occasions in 2008 as they were developing the proposed RH SIP. These numerous deviations from our guidance methods and procedures and use of an alternate model version were not considered by the commenter. These deviations are discussed further in the Technical Support Document that accompanied our proposal.

As discussed in section 4.3.1 and table 4–6 of the TSD, our sensitivity modeling results support the conclusion that the differences between the WRAP BART screening protocol and our current regulatory approach would not likely change the original determination by the WRAP and NMED of which sources screen out of BART and which are subject to a full BART analysis. We disagree, however, that PNM's modeling was acceptable modeling for evaluating the visibility impacts to inform a BART determination. It would have been inappropriate for us to use a CALPUFF model version with known problems/errors to support our proposed BART determination instead of using the CALPUFF version we approved for regulatory review. Therefore, our BART CALPUFF visibility modeling sought to correct the deficiencies in the PNM BART CALPUFF visibility modeling. In addition, given that the emission rates that we proposed as NO_X BART differed from those used in PNM and NMED's BART visibility modeling, it was necessary to perform our CALPUFF visibility modeling, following EPA/FLM guidance and practices, to assess the anticipated visibility improvements from the use of SCR with our proposed BART lower emission rate of 0.05 lb of NO_X/MMBtu (NMED/PNM modeling used an emission rate of 0.07 lb of NO_X/MMBtu for SCR). As discussed in the TSD, we also had updated emission estimates for sulfuric acid emissions based on the latest information that was included in our modeling. We therefore disagree with the commenter and have explained why we needed to do our own BART CALPUFF visibility analysis. We used the approved version of the model in accordance with the appropriate procedures, as discussed further in other response to comments and we are confident in using our results as one of the five factors in making a BART determination. The commenter did not provide any direct comments indicating that our BART visibility modeling differed in any way from EPA and FLM modeling guidance and standard practices that EPA and the FLM representatives have approved in other protocols.

With regard to the commenter's suggestion that more recent versions of

[91] *CALMET/CALPUFF Protocol for BART Exemption Screening Analysis for Class I Areas in the Western United States (August 15, 2006; available at: http://pah.cert.ucr.edu/aqm/308/bart/WRAP_RMC_BART_Protocol_Aug15_2006.pdf * * *).*

[92] ''CALPUFF: Status and Update,'' Dennis Atkinson, Presentation at Regional/State/Local Modelers Workshop, May 16, 2007. (*http://www.cleanairinfo.com/regionalstatelocalmodelingworkshop/archive/2007/presentations/Wednesday%20-%20May%2016%202007/CALPUFF_status_update.pdf*); EPA report, ''Assessment of the ''VISTAS'' Version of the CALPUFF Modeling System,'' EPA–454/R–08–007, August 2008 available at (*http://www.epa.gov/ttn/scram/reports/calpuff_vistas_assessment_report_final.pdf*); ''CALPUFF Regulatory Update,'' Roger W. Brode, Presentation at Regional/State/Local Modelers Workshop, June 10–12, 2008, available at (*http://www.cleanairinfo.com/regionalstatelocalmodelingworkshop/archive/2008/presentations/BRODE_CA.pdf*).

CALPUFF be used, as discussed in more detail in another response, the two suggested model versions have not gone through the appropriate review to assess if they are founded in appropriate science and perform adequately and reliably and are an improvement to the current version that is acceptable for regulatory actions. PNM did not submit the modeling files as part of its comments. Instead, the PNM submitted report only includes a summary of the modeling results. Therefore, sufficient evidence has not been presented to support PNM's claims had we wished to review this modeling done with non-approved models. Because the model results provided by the commenter cannot be evaluated and because we have no basis to conclude that these versions provide reliable results, we did not conduct a full review of the submitted summary of the model output results. In looking over the summary of the modeling results in the submitted report, however, we continue to have significant concerns with the model version and options/inputs used given that the results are indicating drastically lower values than our modeling that was conducted with CALPUFF Version 5.8.

We disagree with the use of a higher grid-resolution (1-km) for modeling of visibility impacts using the CALPUFF modeling system. Current EPA guidance from the May 15, 2009 EPA Model Clearinghouse memorandum defaults to a horizontal grid resolution of 4-km. While this guidance does not automatically preclude the use of higher resolution meteorological fields, the memorandum discusses five issues that should be addressed in considering use of a 1-km meteorological grid. None of these five elements were addressed by the commenter. Among the elements that should have been considered were a discussion of the nature of SJGS's source-receptor relationship to Class I areas in the modeling domain and meteorological characteristics which govern these source-receptor relationships, a statistical performance analysis showing the inadequacy of the 4-km CALMET fields, demonstration of the technical adequacy of CALMET diagnostic algorithms in a complex terrain situation, statistical evaluation demonstrating that 1-km CALMET fields perform better than 4-km fields in this specific situation, and discussion of how the enhanced resolution impacts the air quality model. When CALMET is using much higher grid resolutions, such as 1-km grid, on the original Numerical Weather Prediction files, the CALMET meteorological model performance must be examined through appropriate statistical analysis to understand if the CALMET diagnostic adjustments perform appropriately. The Report presented no evidence to support the claim that a 1-km resolution increases the accuracy of the final wind field in specifically modeling the SJGS. The commenter has not provided any statistical or other analyses to justify such a deviation for modeling of the SJGS. Consistent with EPA–FLM recommendations for CALMET and the WRAP BART screening modeling protocol, we determined that a 4-km grid resolution should be used.

We also disagree with the use of the Ammonia Limit Method which is also called ALM and note that it is inconsistent with the nitrate repartitioning approach that has been previously accepted by the FLMs and EPA. There is a lack of documentation, adequate technical justification, and validation for the development and use of the ALM. We and the FLMs have previously reviewed protocols proposing using ALM and we and/or the FLMs have not approved the use of the proposed ALM procedure. In general terms, one of the key issues is ALM is a method to have emissions from other sources consume ammonia, so there is less ammonia to react with the source of interest being modeled. Since ammonia levels from the local area around the plant were used by EPA, to do calculations in the modeling to consume ammonia from surrounding sources would unnaturally consume ammonia that was actually monitored in the vicinity of the SJGS. The ALM has not been approved by EPA and the FLMs through interagency workgroups (IWAQM or FLAG) as an approved part of CALPUFF based visibility analyses. The commenter has not provided any adequate justification, documentation, or other analyses to justify the proposed use of ALM.

Furthermore, the use of ALM requires the input of background ammonia concentrations as well as background concentrations of sulfate, nitrate, and nitric acid. The commenter used background concentrations derived from modeling simulations of the EPA Community Multiscale Air Quality Modeling System (CMAQ) for 2002. The Report's summary shows that monthly averages of predicted concentrations for ammonia, sulfate, nitrate, and nitric acid at a grid resolution of 36 km were used as model inputs to apply the ALM. As discussed in a separate response to comments, available ammonia monitor data indicates that ammonia concentrations are higher in the vicinity of the SJGS and city of Farmington than at the Mesa Verde Class I area (approximately 42 km from SJGS). The use of 36 km resolution model predictions results in an average ammonia level for the entire 36km by 36 km grid cell and does not reflect the higher ammonia concentrations measured near the SJGS which are of greater concern for determining visibility impacts from the source. In addition, the CMAQ model predictions that the commenter used are not an appropriate estimation of background ammonia available for reaction with the SJGS emissions since this CMAQ simulation of ''background'' concentrations already includes SJGS emissions and reactions they have in the atmosphere. The background ammonia concentration that the commenter input into the non-approved CALPUFF model has already been decreased by reaction with SJGS emissions in the CMAQ model predictions.

The commenter also provided a summary of the modeling results based on variable ammonia levels using CALPUFF version 6.112 and 6.4. We disagree with the use of variable ammonia as we have responded to comments about using variable ammonia levels in another response to comment. We note that variable ammonia levels were not approved in the WRAP's BART screening modeling protocol, nor in protocols by NMED in their 2010 proposal, nor by EPA Region 6 as the commenter seemed to indicate in their comment.

We note that the summary of the report's BART visibility modeling results shows that an SCR emission rate of 0.07 lb/MMBtu was used, rather than the 0.05 lb/MMBtu that we included in our proposal. Using this higher level of 0.07 lb/MMBtu would bias the reduction in impacts from the installation of SCR lower than what we proposed. If their modeling was conducted using our proposed emission rate, it may have shown a value greater than 0.5 dv for each individual unit. This is not relevant though given the numerous issues associated with their modeling analysis as discussed above. Moreover, as noted in the BART Guidelines, the CALPUFF model results are useful for considering the comparative impacts of single sources on visibility impairment in a relative sense and relative to other sources, SJGS's impacts are significant. We note that the SJGS is one of the single largest sources of NO_X in the United States and located close to 16 Class I areas. As such, even without modeling results, one could conclude that the source is likely to contribute to significant visibility impacts at multiple Class I

areas and that the installation of SCR would lead to meaningful visibility benefits. We also note that our modeling looked at the dv improvements at 16 Class I areas and indicates even greater visibility benefits at other Class I areas than Mesa Verde. The summary of the modeling results provided by the commenter do not evaluate improvements at other Class I areas or any cumulative visibility improvement benefits of SCR, yet they asserted that their analysis showed the maximum impacts from SCR at any Class I area. As we note elsewhere, we actually projected the largest visibility improvement due to SCR control level at the Canyonlands Class I area. As a result, there is no evidence to support the commenter's claim that the largest improvement was less than 0.5 dv at any Class I area. Given the relative size of SJGS and its location as compared to other BART sources, such results would be surprising. We conclude that our modeling which was performed using an accepted CALPUFF model version and following applicable guidance and EPA/FLM recommendations is an appropriate approach for assessing the visibility benefits due to the use of SCR. This modeling confirmed that our NO_X BART determination will result in significant visibility benefits.

Comment: A commenter alleged that EPA lacks the requisite statutory authorization in this proceeding to implement its proposed emission limits for H_2SO_4 and NH_3 emissions from the SJGS. The commenter indicated that if EPA has not shown that limits on emissions of H_2SO_4 and NH_3 from the SJGS will result in reduced visibility impairment or make reasonable progress in a class I area's Reasonable Progress Goal, the Agency has no authority under CAA § 169A to require the proposed emission limits on those pollutants from SJGS. The commenter also alleged that if EPA has not shown interference from H_2SO_4 or NH_3 emissions, EPA has no authority to regulate these pollutants under CAA section 110(a)(2)(D)(i)(II). EPA has not shown that its conclusory statement that the proposed limits will ''minimize the contribution of these compounds to visibility impairment'' falls short of demonstrating a visibility-impairment contribution that is necessary to authorize regulation of those compounds under Section 169A.

The commenter indicated that if EPA has no other policy reason other than appropriate considerations of comity, EPA should defer to New Mexico's determination of which pollutants to regulate with BART requirements. The commenter noted that New Mexico's proposed regional haze SIP under section 309 of 40 CFR part 51 and the withdrawn regional haze SIP proposal under section 308 both demonstrates the State's intent to regulate regional haze during the first planning period with controls only on emissions of SO_2, NO_X and PM. The commenter concluded that any proposal by EPA to limit emissions of either H_2SO_4 or NH_3 from New Mexico sources goes beyond the planned scope of the State's regional haze SIP and should be abandoned. The commenter also indicated it is unclear from EPA's proposal if its action is being proposed under CAA section 110(a)(2)(D)(i)(II) as an Interstate Transport provision related to visibility, id., or instead under CAA section 169a as part of a BART determination for the SJGS.

Response: For the reasons discussed elsewhere in our response to comments, we have determined that neither an ammonia limit nor ammonia monitoring requirements are appropriate. The design plans for the SCRs that will be submitted will address design and operation of SCRs based on a maximum ammonia slip level of 2 ppm. Proper design and operation of the SCR should be protective of visibility impairment modeling projections. We disagree with the commenter concerning the need to regulate H_2SO_4. If a power plant is installing SCR at an existing facility in an area where a state has a concern about $PM_{2.5}$ and regional haze impacts, it would be normal for a state to consider the imposition of limits on H_2SO_4 to minimize/limit the amount of degradation in visibility due to any increases in these pollutants.

As we discussed in our proposal, we have concluded that the low sulfur coal burned at the SJGS generates very little sulfur trioxide (SO_3), and hence H_2SO_4, which is formed when SO_3 combines with water in the flue gas to form H_2SO_4. In addition, SCR catalysts are available with a low SO_2 to SO_3 conversion of 0.5%, further limiting the production of H_2SO_4. Nevertheless, we conducted several modeling runs with different H_2SO_4 emission levels and that modeling indicated that increases in H_2SO_4 did result in some visibility degradation at Class I areas in New Mexico and surrounding states. The H_2SO_4 runs can be found in the TSD and its appendices or in the RTC for this action. Some of the H_2SO_4 runs were not used in the final decision modeling analysis, but provided a basis for being concerned about potential H_2SO_4 impacts and thus limiting the amount of growth in H_2SO_4 from our action.

In summary, we conclude that emissions of H_2SO_4 will not be a significant concern at the SJGS. However, modeling conducted by us and some modeling results provided by PNM's contractors indicate that visibility impairment could worsen if emissions of H_2SO_4 are not limited in an enforceable manner. We do not wish to allow a growth in emissions to occur that would undermine the NO_X reductions that we are requiring to ensure that NM emission sources do not interfere with visibility in other states as required by the 110(a)(2)(D)(i)(II). Therefore, we believe we have struck the right balance in limiting emissions of H_2SO_4 to a reasonable level verified by annual stack testing. We are controlling H_2SO_4 under the BART provisions of the RHR and CAA Section 110. Our regulatory authority includes CAA section 169A(b)(2), 40 CFR 51.308(e)(1)(ii) and CAA section 110(a)(2)(D)(i)(II).

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). This action finalizes a source-specific FIP for the San Juan Power Generating Station (SJGS) in New Mexico.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Under the Paperwork Reduction Act, a ''collection of information'' is defined as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *'' 44 U.S.C. 3502(3)(A). Because the FIP applies to a single facility, (SJGS), the Paperwork Reduction Act does not apply. See 5 CFR 1320(c).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any

previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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 our regulations in 40 CFR are listed in 40 CFR part 9.

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 this action on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. The FIP for SJGS being finalized today does not impose any new requirements on small entities. See *Mid-Tex Electric Cooperative, Inc.* v. *FERC,* 773 F.2d 327 (DC Cir. 1985).

D. Unfunded Mandates Reform Act (UMRA)

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. Our cost estimate indicates that the total annual cost of compliance with this rule is below this threshold. 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 rule contains regulatory requirements that apply only to the San Juan Power Generating Station (SJGS) in New Mexico.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action merely prescribes EPA's action to address the State not fully meeting its obligation to prohibit emissions from interfering with other states measures to protect visibility. 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 solicited comment on the proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the rule neither imposes substantial direct compliance costs on tribal governments, nor preempts tribal law. Therefore, the requirements of section 5(b) and 5(c) of the Executive Order do not apply to this rule. However, consistent with EPA policy, EPA consulted with one Tribe on 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 implements specific standards established by Congress in statutes.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 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 rule would require the affected units at SJGS to meet the applicable monitoring requirements of 40 CFR part 75. Part 75 already incorporates a number of voluntary consensus standards. Consistent with the Agency's Performance Based Measurement System (PBMS), Part 75 sets forth performance criteria that allow the use of alternative methods to the ones set forth in part 75. The PBMS approach is intended to be more flexible and cost effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. At this time, EPA is not recommending any revisions to part 75; however, EPA periodically revises the test procedures set forth in part 75. When EPA revises the test procedures set forth in part 75 in the future, EPA will address the use of any new voluntary consensus standards that are equivalent. Currently, even if a test procedure is not set forth in part 75, EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified; however, any alternative methods must be approved through the petition process under 40 CFR 75.66 before they are used.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994), establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high

and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this 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 rule limits emissions of pollutants from a single stationary source, the SJGS.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on September 21, 2011.

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 21, 2011. Pursuant to CAA section 307(d)(1)(B), this action is subject to the requirements of CAA section 307(d) as it promulgates a FIP under CAA section 110(c). Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See CAA section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Best available control technology. Incorporation by reference, Intergovernmental relations, Interstate transport of pollution, Nitrogen dioxide, Ozone, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur dioxide, Visibility.

Dated: August 4, 2011.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart GG—[Amended]

■ 2. Section 52.1628 is added to read as follows:

§ 52.1628 Interstate pollutant transport and regional haze provisions; what are the FIP requirements for San Juan Generating Station emissions affecting visibility?

(a) *Applicability.* The provisions of this section shall apply to each owner or operator of the coal burning equipment designated as Units 1, 2, 3, or 4 at the San Juan Generating Station in San Juan County, New Mexico (the plant).

(b) *Compliance Dates.* (1) Compliance with the requirements of this section is required by:

(i) SO_2: No later than 5 years after September 21, 2011.

(ii) NO_X: No later than 5 years after September 21, 2011.

(iii) H_2SO_4: No later than 5 years after September 21, 2011.

(2) On and after the compliance date of this rule, no owner or operator shall discharge or cause the discharge of NO_X, SO_2, or H_2SO_4 into the atmosphere from Units 1, 2, 3 and 4 in excess of the limits for these pollutants.

(c) *Definitions.* All terms used in this part but not defined herein shall have the meaning given them in the CAA and in parts 51 and 60 of this chapter. For the purposes of this section:

24-hour period means the period of time between 12:01 a.m. and 12 midnight.

Air pollution control equipment includes baghouses, particulate or gaseous scrubbers, and any other apparatus utilized to control emissions of regulated air contaminants which would be emitted to the atmosphere.

Boiler-operating-day means any 24-hour period between 12:00 midnight and the following midnight during which any fuel is combusted at any time at the steam generating unit.

Heat input means heat derived from combustion of fuel in a unit and does not include the heat input from preheated combustion air, recirculated flue gases, or exhaust gases from other sources. Heat input shall be calculated in accordance with part 75 of this chapter, using data from certified O_2 and stack gas flow rate monitors.

Owner or Operator means any person who owns, leases, operates, controls, or supervises the plant or any of the coal burning equipment designated as Units 1, 2, 3, or 4 at the plant.

Oxides of nitrogen (NO_X) means all oxides of nitrogen except nitrous oxide, as measured by test methods set forth in 40 CFR part 60.

Regional Administrator means the Regional Administrator of EPA Region 6 or his/her authorized representative.

(d) *Emissions Limitations and Control Measures.* (1) Within 180 days of September 21, 2011, the owner or operator shall submit a plan to the Regional Administrator that identifies the air pollution control equipment and schedule for complying with paragraph (d) of this section. The NO_X control device included in this plan shall be designed to meet the NO_X emission rate limit identified in paragraph (d) of this section with an ammonia slip of no greater than 2.0 ppm. The owner or operator shall submit amendments to the plan to the Regional Administrator as changes occur.

(2) *NO_X emission rate limit.* The NO_X emission rate limit for each unit in the plant, expressed as nitrogen dioxide (NO_2), shall be 0.05 pounds per million British thermal units (lbs/MMBtu), as averaged over a rolling 30 boiler-operating-day period. The hourly NO_X and O_2 data used to determine the NO_X emission rates shall be in compliance with the requirements in part 75 of this chapter. For each unit on each boiler-operating-day, the hourly NO_X emissions measured in lbs/MMBtu, shall be averaged over the hours the unit was in operation to obtain a daily boiler-operating-day average. Each day, the 30-day-rolling average NO_X emission rate for each unit (in lbs/MMBtu) shall be determined by averaging the daily boiler-operating-day average emission rate from that day and those from the preceding 29 days.

(3) *SO_2 emission rate limit.* The SO_2 emission rate limit for each unit in the plant shall be 0.15 pounds per million British thermal units (lbs/MMBtu), as averaged over a rolling 30 boiler-operating-day period. The hourly NO_X and O_2 data used to determine the NO_X emission rates shall be in compliance with the requirements in part 75 of this chapter. For each unit on each boiler-

operating-day, the hourly SO_2 emissions measured in lbs/MMBtu, shall be averaged over the hours the unit was in operation to obtain a daily boiler-operating-day average. Each day, the 30-day-rolling average SO_2 emission rate for each unit (in lbs/MMBtu) shall be determined by averaging the daily boiler-operating-day average emission rate from that day and those from the preceding 29 days.

(4) *Sulfuric Acid (H_2SO_4) emission rate limit*: Emissions of H_2SO_4 from each unit shall be limited to 2.6×10^{-4} lb/MMBtu on an hourly basis.

(e) *Testing and monitoring.* Notwithstanding any language to the contrary, the paragraphs in this section apply at all times to Units 1, 2, 3, and 4 at the plant.

(1) By the applicable compliance date in paragraph (b) of this section, the owner or operator shall install, calibrate, maintain and operate Continuous Emissions Monitoring Systems (CEMS) for NO_X, SO_2, stack gas flow rate, and O_2 on Units 1, 2, 3, and 4 in accordance with part 75 of this chapter. The owner or operator shall also comply with the applicable quality assurance procedures in part 75 of this chapter for these CEMS. Continuous monitoring systems for NO_X, SO_2, stack gas flow rate, and O_2 that have been certified for use under the Acid Rain Program, and that are continuing to meet the on-going quality-assurance requirements of that program, satisfy the requirements of this paragraph (e)(1). Compliance with the emission limits for NO_X and SO_2 shall be determined by using data from these CEMS.

(2) The CEMS required by this rule shall be in continuous operation during all periods of operation of the coal burning equipment, including periods of startup, shutdown, and malfunction, except for CEMS breakdowns, repairs, calibration checks, and zero and span adjustments. Continuous monitoring systems for measuring SO_2, NO_X, and O_2 shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period. Hourly averages shall be computed using at least one data point in each fifteen minute quadrant of an hour. Notwithstanding this requirement, an hourly average may be computed from at least two data points separated by a minimum of 15 minutes (where the unit operates for more than one quadrant in an hour) if data are unavailable as a result of performance of calibration, quality assurance, preventive maintenance activities, or backups of data from data acquisition and handling system, and recertification events. Each required CEMS must obtain valid data for at least 90.0 percent of the unit operating hours, on an annual basis.

(3) Emissions of H_2SO_4 shall be measured within 180 days of start up of the NO_X control device and annually thereafter using EPA Test Method 8A (CTM–013).

Note to paragraph (e)(3): EPA Test Method 8A is available at: *http://www.epa.gov/ttn/emc/ctm/ctm-013.pdf.*

(f) *Reporting and Recordkeeping Requirements.* Unless otherwise stated all requests, reports, submittals, notifications, and other communications to the Regional Administrator required by this section shall be submitted, unless instructed otherwise, to the Director, Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency, Region 6, to the attention of Mail Code: 6PD, at 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

(1) The owner or operator shall keep records of all CEMS data, stack test data, and CEMS quality-assurance tests required under this section for a period of at least 3 years.

(2) For each unit subject to the emission limitations for SO_2, and NO_X, in this section, the owner or operator shall comply with the excess emission reporting requirements in §§ 60.7(c) and (d) of this chapter, on a semiannual basis, unless more frequent (*e.g.,* quarterly) reporting is requested by the Regional Administrator. For SO_2 and NO_X, any day on which the 30-day rolling average emission limit in paragraph (d) of this section is not met shall be counted as an excess emissions day. The duration of the excess emissions period shall be the number of unit operating hours on that day. Any hour in which a CEMS is out-of-service (excluding hours in which required calibrations and QA tests are performed) shall be counted as an hour of monitor downtime.

(g) *Equipment Operations.* At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate the unit including associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Regional Administrator which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of the unit.

(h) *Enforcement.* (1) Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant as to whether the unit would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not the owner or operator has violated or is in violation of any standard or applicable emission limit in the plan.

(2) Emissions in excess of the level of the applicable emission limit or requirement that occur due to a malfunction shall constitute a violation of the applicable emission limit.

■ 3. Section 52.1629 is added to read as follows:

§ 52.1629 Visibility protection.

The portion of the State Implementation Plan revision received on September 17, 2007, from the State of New Mexico for the purpose of addressing the visibility requirements of Clean Air Act section 110(a)(2)(D)(i)(II) for the 1997 8-hour ozone and the 1997 fine particulate matter National Ambient Air Quality Standards is disapproved.

[FR Doc. 2011–20682 Filed 8–19–11; 8:45 am]

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FEDERAL REGISTER

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Part III

Department of the Treasury
Internal Revenue Service
26 CFR Parts 54 and 602

Department of Labor
Employee Benefits Security Administration
29 CFR Part 2590

Department of Health and Human Services
45 CFR Part 147

Summary of Benefits and Coverage and the Uniform Glossary; Proposed Rules

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 54 and 602

[REG–140038–10]

RIN 1545–BJ94

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

RIN 1210–AB52

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 147

[CMS–9982–P]

RIN 0938–AQ73

Summary of Benefits and Coverage and the Uniform Glossary

AGENCY: Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations regarding disclosure of the summary of benefits and coverage and the uniform glossary for group health plans and health insurance coverage in the group and individual markets under the Patient Protection and Affordable Care Act. This document implements the disclosure requirements to help plans and individuals better understand their health coverage, as well as other coverage options. The templates and instructions to be used in making these disclosures are being issued separately in today's **Federal Register**.

DATES: *Comment date.* Comments are due on or before October 21, 2011.

ADDRESSES: Written comments may be submitted to any of the addresses specified below. Any comment that is submitted to any Department will be shared with the other Departments. Please do not submit duplicates.

All comments will be made available to the public. *Warning:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments are posted on the Internet exactly as received, and can be retrieved by most Internet search engines. No deletions, modifications, or redactions will be made to the comments received, as they are public records. Comments may be submitted anonymously.

Department of Labor. Comments to the Department of Labor, identified by RIN 1210–AB52, by one of the following methods:

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

• *E-mail: E-OHPSCA2715.EBSA@dol.gov.*

• *Mail or Hand Delivery:* Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, Room N–5653, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, *Attention:* RIN 1210–AB52.

Comments received by the Department of Labor will be posted without change to *http://www.regulations.gov* and *http://www.dol.gov/ebsa,* and available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210.

Department of Health and Human Services. In commenting, please refer to file code CMS–9982–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions under the ''More Search Options'' tab.

2. *By regular mail.* You may mail written comments to the following address only: Centers for Medicare & Medicaid Services,Department of Health and Human Services,Attention: CMS–9982–P, P.O. Box 8016, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9982–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by following the instructions at the end of the ''Collection of Information Requirements'' section in this document.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. EST. To schedule an appointment to view public comments, phone 1–800–743–3951.

Internal Revenue Service. Comments to the IRS, identified by REG–140038–10, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* CC:PA:LPD:PR (REG–140038–10), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.
- *Hand or courier delivery:* Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–140038–10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington DC 20224.

All submissions to the IRS will be open to public inspection and copying in room 1621, 1111 Constitution Avenue, NW., Washington, DC from 9 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Amy Turner or Heather Raeburn, Employee Benefits Security Administration, Department of Labor, at (202) 693–8335; Karen Levin, Internal Revenue Service, Department of the Treasury, at (202) 622–6080; Jennifer Libster or Padma Shah, Centers for Medicare & Medicaid Services, Department of Health and Human Services, at (301) 492–4252.

Customer Service Information: Individuals interested in obtaining information from the Department of Labor concerning employment-based health coverage laws may call the EBSA Toll-Free Hotline at 1–866–444–EBSA (3272) or visit the Department of Labor's Web site (*http://www.dol.gov/ebsa*). In addition, information from HHS on private health insurance for consumers can be found on the Centers for Medicare & Medicaid Services (CMS) Web site (*http://www.cms.hhs.gov/HealthInsReformforConsume/01_Overview.asp*) and information on health reform can be found at *http://www.healthcare.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Patient Protection and Affordable Care Act, Public Law 111–148, was enacted on March 23, 2010; the Health Care and Education Reconciliation Act, Public Law 111–152, was enacted on March 30, 2010 (these are collectively known as the ''Affordable Care Act''). The Affordable Care Act reorganizes, amends, and adds to the provisions of part A of title XXVII of the Public Health Service Act (PHS Act) relating to group health plans and health insurance issuers in the group and individual markets. The term ''group health plan'' includes both insured and self-insured group health plans.[1] The Affordable Care Act adds section 715(a)(1) to the Employee Retirement Income Security Act (ERISA) and section 9815(a)(1) to the Internal Revenue Code (the Code) to incorporate the provisions of part A of title XXVII of the PHS Act into ERISA and the Code, and make them applicable to group health plans, and health insurance issuers providing health insurance coverage in connection with group health plans. The PHS Act sections incorporated by this reference are sections 2701 through 2728. PHS Act sections 2701 through 2719A are substantially new, though they incorporate some provisions of prior law. PHS Act sections 2722 through 2728 are sections of prior law renumbered, with some, mostly minor, changes.

Subtitles A and C of title I of the Affordable Care Act amend the requirements of title XXVII of the PHS Act (changes to which are incorporated into ERISA by section 715). The preemption provisions of ERISA section 731 and PHS Act section 2724[2] (implemented in 29 CFR 2590.731(a) and 45 CFR 146.143(a)) apply so that the requirements of part 7 of ERISA and title XXVII of the PHS Act, as amended by the Affordable Care Act, are not to be ''construed to supersede any provision of State law which establishes, implements, or continues in effect any standard or requirement solely relating to health insurance issuers in connection with group or individual health insurance coverage except to the extent that such standard or requirement prevents the application of a requirement'' of provisions added to the PHS Act by the Affordable Care Act. Accordingly, State laws that with stricter health insurance issuer requirements than those imposed by the PHS Act will not be superseded by those provisions. Preemption and State flexibility under PHS Act section 2715 are discussed more fully below under section II.D.

The Departments of Health and Human Services (HHS), Labor, and the Treasury (the Departments) are taking a phased approach to issuing regulations implementing the revised PHS Act sections 2701 through 2719A and related provisions of the Affordable Care Act. These proposed regulations propose standards for implementing PHS Act section 2715. As discussed more fully below, templates and instructions for meeting the disclosure requirements of PHS Act section 2715 are being issued separately in today's **Federal Register**.

II. Overview of the Proposed Regulations

A. Summary of Benefits and Coverage

1. In General

Section 2715 of the PHS Act, added by the Affordable Care Act, directs the Departments to develop standards for use by a group health plan and a health insurance issuer in compiling and providing a summary of benefits and coverage (SBC) that ''accurately describes the benefits and coverage under the applicable plan or coverage.'' The statute directs the Departments, in developing such standards, to ''consult with the National Association of Insurance Commissioners'' (referred to in this preamble as the ''NAIC''), ''a working group composed of representatives of health insurance-related consumer advocacy organizations, health insurance issuers, health care professionals, patient advocates including those representing individuals with limited English proficiency, and other qualified individuals.'' The NAIC convened a working group (NAIC working group) comprised of a diverse group of stakeholders. This working group met frequently each month for over one year while developing its recommendations.[3] Throughout the process, NAIC working group draft documents and meeting notes were displayed on the NAIC's Web site for public review, and several interested parties filed formal comments. In addition to participation from the NAIC working group members, conference calls and in-person meetings were open to other interested parties

[1] The term ''group health plan'' is used in title XXVII of the PHS Act, part 7 of ERISA, and chapter 100 of the Code, and is distinct from the term ''health plan,'' as used in other provisions of title I of the Affordable Care Act. The term ''health plan'' does not include self-insured group health plans.

[2] Code section 9815 incorporates the preemption provisions of PHS Act section 2724. Prior to the Affordable Care Act, there were no express preemption provisions in chapter 100 of the Code.

[3] In developing its recommendations, the NAIC considered the results of various consumer testing sponsored by both insurance industry and consumer associations. Specifically, the draft SBC template, including the coverage examples, and the draft uniform glossary underwent consumer testing to assist in determining adjustments to ensure the final product was consumer friendly. Summaries of this testing are available at: *http://www.naic.org/documents/committees_b_consumer_information_101012_ahip_focus_group_summary.pdf; http://www.naic.org/documents/committees_b_consumer_information_110603_ahip_bcbsa_consumer_testing.pdf; http://www.naic.org/documents/committees_b_consumer_information_101014_consumers_union.pdf* (a more detailed summary of which is accessible at: *http://prescriptionforchange.org/pdf/CU_Consumer_Testing_Report_Dec_2010.pdf*); and *http://www.naic.org/documents/committees_b_consumer_information_110603_consumers_union_testing.pdf.*

and individuals and provided an opportunity for non-member feedback. The Departments have received transmittals from the NAIC that include a recommended template for the SBC (with instructions and samples to be used in completing the template) and a recommended uniform glossary.[4]

These regulations generally propose standards for group health plans (and their plan administrators), and health insurance issuers offering group or individual health insurance coverage, that will govern who provides an SBC, who receives an SBC, when the SBC will be provided, and how it will be provided. The Departments invite comment on the standards of the proposed regulations.

In conjunction with these proposed regulations, the Departments are publishing a document today that provides the proposed template for the SBC (with proposed instructions and sample language for completing the template) and the proposed uniform glossary that are identical to the documents that were developed and agreed to by the entire NAIC working group and then voted on and approved by the full NAIC. Instead of proposing possible changes to the NAIC's proposed SBC template and related materials, the document published today incorporates all of the NAIC working group's recommended materials (with the exception of a sample coverage example[5]) and invites public comment. The Departments recognize that changes to the SBC template may be appropriate to accommodate various types of plan and coverage designs, to provide additional information to individuals, or to improve the efficacy of the disclosures recommended by the NAIC. In addition, the SBC template and related documents were drafted by the NAIC primarily for use by health insurance issuers.[6]

In general, the Departments have heard concerns about the potential redundancies and additional cost associated with elements of the SBC requirement—including the uniform glossary and the coverage facts labels—particularly for those plans and group health insurance issuers that already provide a Summary Plan Description (SPD) under 29 CFR 2520.104b–2. Comments are solicited on whether the SBC should be allowed to be provided within an SPD if the SBC is intact and prominently displayed at the beginning of the SPD (for example, immediately after a cover page and table of contents), and if the timing requirements for providing the SBC (described in paragraph (a) of the proposed regulations) are satisfied. The Departments also welcome further comments on ways the SBC might be coordinated with other group health plan disclosure materials (*e.g.,* application and open season materials) to communicate effectively with participants and beneficiaries about their coverage and make it easy for them to compare coverage options while also avoiding undue cost or burden on plans and group health insurance issuers.

Consistent with the goals of balancing effective communication and ease of comparison for individuals with minimization of cost and duplication, other sections of this preamble outline and invite comment on potential approaches to major elements of the SBC—the statutorily-required uniform glossary and the coverage examples—in the interest of streamlining standards and making implementation of these components as helpful and user-friendly for individuals, and as workable and efficient as possible.

As discussed below, PHS Act section 2715 generally directs group health plans and health insurance issuers to comply with the SBC requirements beginning on or after March 23, 2012. Comments are requested regarding factors that may affect the feasibility of implementation within this time frame. After the public comment period on these documents, the Departments will finalize the SBC template and instructions. Consistent with PHS Act section 2715(c), the Departments will periodically review and update the documents as appropriate, taking into account public comments.

2. Providing the SBC

Paragraph (a) of the proposed regulations implements the general disclosure requirement and sets forth the proposed standards for who provides an SBC, to whom, and when. PHS Act section 2715 generally sets forth that an SBC be provided to applicants, enrollees, and policyholders or certificate holders. PHS Act section 2715(d)(3) places the responsibility to provide an SBC on ''(A) a health insurance issuer (including a group health plan that is not a self-insured plan) offering health insurance coverage within the United States; or (B) in the case of a self-insured group health plan, the plan sponsor or designated administrator of the plan (as such terms are defined in section 3(16) of ERISA).''[7] Accordingly, these proposed regulations would interpret PHS Act section 2715 to apply to both group health plans and health insurance issuers offering group or individual health insurance coverage. In addition, consistent with the statute, these proposed regulations would make a plan administrator of a group health plan responsible for providing an SBC. Under the proposed regulations, the SBC would be provided in writing free of charge.

In general, the proposed rules direct that the SBC be provided when a plan or individual is comparing health coverage options. If the information in the SBC changes between the time of application, when the coverage is offered, and when a policy is issued (often the case only for individual market coverage), the proposal would require that an updated SBC be provided. If the information is unchanged, the SBC does not need to be provided again, except upon request. This general approach is explained more fully below.

a. Provision of the SBC Automatically by an Issuer to a Plan

Paragraph (a)(1)(i) of the proposed regulations provides that a health insurance issuer offering group health insurance coverage provide the SBC to a group health plan (including, for this purpose, its sponsor) upon an application or request for information

[4] Information on the NAIC working group, including drafts of SBC materials and other supporting documents developed for compliance with PHS Act section 2715, working group membership lists, and meeting minutes, is available at: *http://www.naic.org/committees_b_consumer_information.htm.*

[5] The Appendices do not include a sample coverage example calculation for breast cancer in the individual market that was transmitted by the NAIC. Upon review, it appeared that some of the data in the example might be subject to copyright protection. Moreover, the sample coverage example provided by NAIC was limited to breast cancer in the individual market and did not address the other two coverage examples—maternity coverage and diabetes. Finally, particular coding information and pricing information included in the sample would change annually, which would result in the data included in the sample becoming outdated relatively quickly. Accordingly, HHS is publishing on its Web site (at http://cciio.cms.gov), the coding and pricing information necessary to perform coverage example calculations for all three coverage examples. HHS will update this information annually.

[6] National Association of Insurance Commissioners, Consumer Information Working Group, December 17, 2010 Letter to the Secretaries. Available at *http://www.naic.org/documents/committees_b_consumer_information_ppaca_letter_to_sebelius.pdf.*

[7] ERISA section 3(16) defines an administrator as: (i) The person specifically designated by the terms of the instrument under which the plan is operated; (ii) if an administrator is not so designated, the plan sponsor; or (iii) in the case of a plan for which an administrator is not designated and plan sponsor cannot be identified, such other person as the Secretary of Labor may by regulation prescribe.

by the plan about the health coverage (see section II.A.2.c. of this preamble, below, for a discussion of this proposal). Under this proposal, the SBC must be provided as soon as practicable following the request, but in no event later than seven days following the request. If an SBC is provided upon request for information about health coverage and the plan subsequently applies for health coverage, a second SBC will be provided automatically only if the information in the SBC has changed. If there is a change to the information in the SBC before the coverage is offered, or before the first day of coverage, the issuer must update and provide a current SBC to the plan no later than the date of the offer (or no later than the first day of coverage, as applicable). The Departments recognize that often the only change to the SBC is a final premium quote (usually in the individual health insurance market or the small group market). The Departments request comments on whether, in such circumstances, premium information can be provided in another way that is easily understandable and useful to plan sponsors and individuals, other than by sending a new, full SBC.

An issuer also must provide a new SBC if and when the policy, certificate, or contract (for simplicity, referred to collectively as a ''policy'' in the remainder of this preamble) is renewed or reissued. In the case of renewal or reissuance, if the issuer requires written application materials for renewal (in either paper or electronic form), it must provide the SBC no later than the date the materials are distributed. If renewal or reissuance is automatic, the SBC must be provided no later than 30 days prior to the first day of the new policy year.

b. Provision of the SBC Automatically by a Plan or Issuer to Participants and Beneficiaries

Under paragraph (a)(1)(ii) of the proposed regulations, a group health plan (including the plan administrator), and a health insurance issuer offering group health insurance coverage, must provide an SBC to a participant or beneficiary [8] with respect to each benefit package offered for which the participant or beneficiary is eligible.[9] The SBC must be provided as part of any written application materials that are distributed by the plan or issuer for enrollment. If the plan does not distribute written application materials for enrollment, the SBC must be distributed no later than the first date the participant is eligible to enroll in coverage for the participant and any beneficiaries. If there is any change to the information required to be in the SBC before the first day of coverage, the plan or issuer must update and provide a current SBC to a participant or beneficiary no later than the first day of coverage.

The plan or issuer must also provide the SBC to special enrollees within seven days of a request for enrollment pursuant to a special enrollment period.[10] Additionally, the plan or issuer must provide a new SBC if and when the coverage is renewed. Specifically, if written application materials are required for renewal (in either paper or electronic form), the SBC must be provided no later than the date the materials are distributed. If renewal is automatic, the proposed rules provide that the SBC must be provided no later than 30 days prior to the first day of coverage in the new plan year.

c. Provision of the SBC Upon Request

The regulations propose that a health insurance issuer offering group health insurance coverage provide the SBC to a group health plan (and a plan or issuer must provide the SBC to a participant or beneficiary) upon request, as soon as practicable, but in no event later than seven days following the request. Although PHS Act section 2715 does not specifically reference furnishing SBCs on request, PHS Act section 2715(a) authorizes the Departments to develop standards for providing the SBC to applicants, enrollees, policyholders, and certificate holders. The Departments believe that this provision recognizes that plans and individuals may need or desire the information provided in the SBC at times other than those set forth in the statute to ensure that the plans and individuals have continuous access to coverage and cost information to make informed choices about health coverage.[11] In addition, while the ''upon request'' provision may result in some additional administrative work for plans and issuers, the Departments have used discretion elsewhere in these proposed regulations to create special rules for avoiding duplication and also propose to reduce burden by facilitating electronic transmittal of the SBC, where appropriate. Accordingly, the Departments have sought to balance providing consumer access to SBCs with minimizing burdens on employers and insurers.

d. Special Rules To Prevent Unnecessary Duplication With Respect to Group Health Coverage

The Departments propose, in paragraph (a)(1)(iii), three rules to streamline provision of the SBC and prevent unnecessary duplication with respect to group health plan coverage. First, the requirement to provide an SBC will be considered satisfied for all entities if the SBC is provided by any entity, so long as all timing and content requirements are also satisfied. For example, if a health insurance issuer offering group health insurance coverage provides a complete, timely SBC to the plan's participants and beneficiaries, the plan's requirement to provide the SBC will be satisfied.

Second, if a participant and any beneficiaries are known to reside at the same address, providing a single SBC to that address will satisfy the obligation to provide the SBC for all individuals residing at that address. However, if a beneficiary's last known address is different than the participant's last known address, a separate SBC must be provided to the beneficiary at the beneficiary's last known address.

Finally, to further reduce unnecessary duplication with respect to a group health plan that offers multiple benefit packages, in connection with renewal, the plan and issuer only need to automatically provide a new SBC with respect to the benefit package in which a participant or beneficiary is enrolled. SBCs are not required to be provided automatically with respect to benefit packages in which the participant or

[8] ERISA section 3(7) defines a participant as: Any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees or members of such organization, or whose beneficiaries may be eligible to receive any such benefit. ERISA section 3(8) defines a beneficiary as: A person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder.

[9] With respect to insured group health plan coverage, PHS Act section 2715 generally places the obligation to provide an SBC on both a plan and issuer. As discussed below, under section II.A.2.d., ''Special Rules to Prevent Unnecessary Duplication With Respect to Group Health Coverage'', if either the issuer or the plan provides the SBC, both will have satisfied their obligations. As they do with other notices required of both plans and issuers under Part 7 of ERISA, Title XXVII of the PHS Act, and Chapter 100 of the Code, the Departments expect plans and issuers to make contractual arrangements for sending SBCs. Accordingly, the remainder of this preamble generally refers to requirements for plans or issuers.

[10] Regulations regarding special enrollment can be found at 26 CFR 54.9801–6, 29 CFR 2590.701–6, and 45 CFR 146.117.

[11] Moreover, this provision is consistent with requirements under ERISA section 104(b)(4), which requires ERISA-covered group health plans to provide to participants and beneficiaries, upon request, copies of the instruments under which the plan is established or operated.

beneficiary is not enrolled. However, if a participant or beneficiary requests an SBC with respect to another benefit package for which the participant or beneficiary is eligible, the SBC must be provided as soon as practicable, but in no event later than seven days following the request.

e. Provision of the SBC by an Issuer Offering Individual Market Coverage

Under these regulations, the Secretary of HHS sets forth proposed standards applicable to individual health insurance coverage for who provides an SBC, to whom, and when. The intent is to parallel the proposed group market requirements described above, with only those changes necessary to reflect the differences between the two markets. For example, individual policyholders and dependents in the individual market are comparable to group health plan participants and beneficiaries. Accordingly, an issuer offering individual health insurance coverage must provide an SBC as soon as practicable after receiving a request for application or a request for information, but in no event later than seven days after receipt of the request. If an individual later applies for the same policy, a second SBC is required to be provided only if the information in the SBC has changed.

An issuer that makes an offer of coverage must provide an updated SBC only if it has modified the terms of coverage for the individual (including as a result of medical underwriting) that are required to be reflected in the SBC. Similarly, when an individual accepts the offer of coverage, if any terms are modified before the first day of coverage, an updated SBC must again be provided no later than the first day of coverage. A health insurance issuer will provide an SBC annually at renewal, no later than 30 days before the start of the new policy year, reflecting any changes effective for the new policy year.

Finally, similar to the group health coverage rules, for individual health insurance coverage that covers more than one individual (or an application for coverage that is being made for more than one individual), if all those individuals are known to reside at the same address, a single SBC may be provided to that address. This single SBC will satisfy the requirement to provide the SBC for all individuals residing at that address. However, if an individual's last known address is different than the last known address of the individual requesting coverage, the policyholder, or a dependent of either, a separate SBC must be provided to that individual at the individual's last known address.

3. Content

PHS Act section 2715(b)(3) generally provides that the SBC must include:

a. Uniform definitions of standard insurance terms and medical terms so that consumers may compare health coverage and understand the terms of (or exceptions to) their coverage;

b. A description of the coverage, including cost sharing, for each category of benefits identified by the Departments;

c. The exceptions, reductions, and limitations on coverage;

d. The cost-sharing provisions of the coverage, including deductible, coinsurance, and copayment obligations;

e. The renewability and continuation of coverage provisions;

f. A coverage facts label that includes examples to illustrate common benefits scenarios (including pregnancy and serious or chronic medical conditions) and related cost sharing based on recognized clinical practice guidelines;

g. A statement about whether the plan provides minimum essential coverage as defined under section 5000A(f) of the Code, and whether the plan's or coverage's share of the total allowed costs of benefits provided under the plan or coverage meets applicable requirements;

h. A statement that the SBC is only a summary and that the plan document, policy, or certificate of insurance should be consulted to determine the governing contractual provisions of the coverage; and

i. A contact number to call with questions and an Internet Web address where a copy of the actual individual coverage policy or group certificate of coverage can be reviewed and obtained.

The proposed regulations generally parallel the content elements set forth in the statute. As discussed above, the Departments are issuing a document that proposes to use the NAIC's recommended SBC template and instructions to satisfy the SBC content and appearance requirements of PHS Act section 2715.

A few of the content elements included in the NAIC's recommendations warrant further explanation and discussion. The template developed by the NAIC working group and transmitted to the Departments includes four elements not specified in the statute. Consistent with the Departments' approach of including all of the NAIC's recommended materials, the proposed regulations include these additional recommended elements. The four additional elements are: (1) For plans and issuers that maintain one or more networks of providers, an Internet address (or similar contact information) for obtaining a list of the network providers; (2) for plans and issuers that maintain a prescription drug formulary, an Internet address where an individual may find more information about the prescription drug coverage under the plan or coverage; (3) an Internet address where an individual may review and obtain the uniform glossary; and (4) premiums (or cost of coverage for self-insured group health plans).

The Departments have included these elements in the proposed regulation consistent with the NAIC's recommendations. PHS Act section 2715(a) requires the Departments to develop regulations for provision of an SBC that accurately describes benefits and coverage, which includes the statutory content elements listed above, but the Departments believe they are not limited to them. The statute also requires the Departments to consult with the NAIC on the development of the standards for the SBC, which includes content. The Departments' proposal includes all of the NAIC's recommendations, including the additional content, and the Departments invite comments on this approach and the four additional SBC content elements. For example, with respect to the requirement to include an Internet address that may be used to obtain a copy of the uniform glossary, the Departments invite comments on whether the SBC also should disclose the option to receive a paper copy of the uniform glossary upon request.

The NAIC instructions provide that the premium generally is the premium as charged by the issuer (which may be evidenced in a rate table attached to the SBC),[12] or the cost of coverage in the case of self-insured plans. The NAIC instructions further provide that, in the case of a group health plan, a participant or beneficiary should consult the employer for information regarding the actual cost of coverage net of any employer subsidy. This raises issues regarding the ability to compare premium or cost information between coverage options. The Departments request comments regarding whether the SBC should include premium or cost information and if so, the extent to which such information should reflect

[12] See page 4 of the NAIC Draft Instruction Guide for Group Policies (available at *http://www.naic.org/documents/committees_b_consumer_information_hhs_dol_submission_1107_inst_grp.pdf*).

the actual cost to an individual net of any employer contribution, as well as the extent to which the cost information should include costs for different tiers of coverage (for example, self-only, family). The Departments also request comments on how this information can be provided in a way that allows individuals and plan sponsors to make meaningful comparisons about the cost of their coverage options.

With respect to the definitions, the Departments propose to follow an approach consistent with the recommendations received from the NAIC.[13] Specifically, PHS Act section 2715(b)(3)(A) requires plans and issuers to include in the SBC ''uniform definitions'' of common health insurance terms that are consistent with the standards developed under section 2715(g). PHS Act section 2715(g) directs the Departments to ''provide for the development of standards for the definitions of terms used in health insurance coverage,'' including specified insurance-related terms and medical terms, as well as other terms the Departments determine are important to define.

The NAIC working group adopted a two-part approach to the definitions. First, it drafted a consumer-friendly uniform glossary, which includes definitions of health coverage terminology, to be provided in connection with the SBC. The NAIC's uniform glossary provides simple, general, descriptive definitions designed to help consumers understand terms and concepts commonly used in health coverage. For example, ''out-of-pocket limit'' is defined in the NAIC's uniform glossary as:

> The most you pay during a policy period (usually a year) before your health insurance or plan begins to pay 100% of the allowed amount. This limit never includes your premium, balance-billed charges or health care your health insurance or plan doesn't cover. Some health insurance or plans don't count all of your co-payments, deductibles, co-insurance payments, out-of-network payments or other expenses toward this limit.

In these proposed regulations, and as described more fully below under section II.C. of this preamble under the heading ''Uniform Glossary'', the Departments propose that the NAIC uniform glossary be used to satisfy the requirements of PHS Act 2715(g).

At the same time, these generic glossary definitions, alone, would not necessarily help consumers understand what terms mean under a given plan or policy, nor would they support meaningful comparison of coverage options under PHS Act section 2715(b)(3)(A) because the generic terms used in the glossary are not plan- or policy-specific and would not enable consumers to understand what the terms actually mean in the context of a specific contract. Therefore, in addition to the uniform glossary, the NAIC working group also developed a ''Why this Matters'' column for the draft SBC template (with instructions for plans and issuers to use in completing the SBC template).[14] The instructions specify how plans and issuers must describe each coverage component in the SBC. For example, the instructions indicate what information must be provided about a plan's out-of-pocket limit on cost sharing, including whether copayments, out-of-network coinsurance, and deductibles are subject to this limit.

In the Departments' proposal, the ''Why this Matters'' column in the SBC template, together with the instructions for completing this column, constitute the definitions required to be provided under PHS Act section 2715(b)(3)(A). This approach allows plans and issuers flexibility in how they design benefits and coverage features, but proposes that benefits and features be described in a consistent way so that individuals and employers will understand them and appreciate differences from one plan or policy to the next.

With respect to the element of the SBC regarding a statement about whether a plan or coverage provides minimum essential coverage (as defined under section 5000A(f) of the Code) and whether the plan's or coverage's share of the total allowed costs of benefits provided under the plan or coverage meets applicable minimum value requirements (minimum essential coverage statement),[15] because this content is not relevant until other elements of the Affordable Care Act are implemented, this statement is not in the NAIC recommendations. For the same reason, these proposed regulations provide that the minimum essential coverage statement is not required to be in the SBC until the plan or coverage is required to provide an SBC with respect to coverage beginning on or after January 1, 2014.[16]

Starting in 2014, certain individuals who purchase health insurance coverage through the new Affordable Insurance Exchanges (''Exchanges'') may be eligible for a premium tax credit to help pay for the cost of that coverage. In general, individuals offered affordable minimum essential coverage under an employer-sponsored plan will not be eligible to receive a premium tax credit. Correctly establishing whether an employer is offering affordable minimum essential coverage is important to individuals, employers, and Exchanges and necessitates the verification of certain information about employer coverage, including the information in the minimum essential coverage statement. The Departments are exploring several reporting options under the Affordable Care Act and other applicable statutory authorities[17] to determine how information about employer-provided coverage can be provided and verified in a manner that limits the burden on individuals, employers, and Exchanges. Because the statutory SBC elements include the information in the minimum essential coverage statement, the Departments invite comments on how employers might provide this information to employees and the Exchanges in a manner that minimizes duplication and burden. The Departments also recognize that some of the plan level information that is required to be provided in the SBC is also required to be provided under section 6056 of the Code (requiring employers to report to the IRS specific information related to employer-sponsored health coverage

[13] National Association of Insurance Commissioners, Consumer Information Working Group, December 17, 2010 Letter to the Secretaries. Available at *http://www.naic.org/documents/committees_b_consumer_information_ppaca_letter_to_sebelius.pdf.*

[14] National Association of Insurance Commissioners, Consumer Information Working Group, December 17, 2010, Final Package of Attachments. Available at *http://www.naic.org/documents/committees_b_consumer_information_ppaca_final_materials.pdf.*

[15] PHS Act section 2715(b)(3)(G) provides that this statement must indicate whether the plan or coverage (1) provides minimum essential coverage (as defined under section 5000A(f) of the Code) and (2) ensures that the plan's or coverage's share of the total allowed costs of benefits provided under the plan or coverage is not less than 60 percent of such costs.

[16] The minimum essential coverage and minimum value requirements are part of a larger set of health coverage reforms that take effect on January 1, 2014. The Departments' proposal recognizes this effective date and the need for additional guidance with respect to these requirements and is consistent with the recommendation in the transmittal letter from the NAIC. The NAIC will continue to work to develop a recommendation for this SBC requirement and will submit it to the Departments at a later date.

[17] In addition to section 2715 of the PHS Act, these authorities include, but are not limited to, section 6056 of the Code, as added by section 1514 of the Affordable Care Act (requiring employers to report to the Internal Revenue Service specific information related to employer-sponsored health coverage provided to employees); and section 18B of the Fair Labor Standards Act, as added by section 1512 of the Affordable Care Act (requiring employers to disclose to employees information regarding Exchange coverage options).

provided to employees) and are coordinating their efforts to determine how and whether the same data can be used for multiple purposes. To help develop a simple, efficient system for employers, the Treasury Department and the IRS intend to request comments on employer information reporting required under section 6056 of the Code.

The last SBC content item that merits further discussion is the coverage facts label. The statute requires that an SBC contain a ''coverage facts label.'' For ease of reference, the regulations propose to use ''coverage examples,'' the term recommended by the NAIC, in place of the statutory term. As specified in the statute, the proposed regulations provide that the coverage examples illustrate benefits provided under the plan or coverage for common benefits scenarios, including pregnancy and serious or chronic medical conditions. The coverage example would estimate what proportion of expenses under an illustrative benefits scenario might be covered by a given plan or policy. Consumers then could use this information to compare their share of the costs of care under different plan or coverage options to make an informed purchasing decision.

Under the proposed regulations, consistent with the recommendations of the NAIC working group, a benefits scenario is a hypothetical situation, consisting of a sample treatment plan for a specified medical condition during a specific period of time, based on recognized clinical practice guidelines available through the National Guideline Clearinghouse.[18] A benefits scenario would include the information needed to simulate how claims would be processed under the scenario to generate an estimate of cost sharing a consumer could expect to pay under the benefit package. The document published contemporaneously with these proposed regulations includes specific instructions and an HHS Web site with specific information necessary to simulate benefits covered under the plan or policy for specified benefits scenarios.[19]

These proposed regulations provide that the Departments may identify up to six coverage examples that may be required in an SBC. A maximum of six coverage examples was discussed by the NAIC working group, so that consumers may easily read, understand, and compare how benefits are provided for different common medical conditions. In future years, the SBC may include coverage examples in addition to the three proposed now. The Departments propose to limit the number of coverage examples to no more than six to limit the burden on plans and issuers and to ensure that there is adequate space in the SBC to present coverage examples in a manner that is easy to read and useful for individuals. A document published contemporaneously with these proposed regulations adopts a phase-in approach to the coverage examples, and uses the three coverage examples recommended by NAIC for inclusion first—having a baby (normal delivery), treating breast cancer, and managing diabetes.[20]

The Departments invite comments on the proposed coverage examples, whether additional benefits scenarios would be helpful and, if so, what those examples should be. The Departments also invite comments on the benefits and costs associated with developing multiple coverage examples, as well as how multiple coverage examples might promote or hinder the ability to understand and compare terms of coverage. It is anticipated that any additional coverage examples will only be required to be provided prospectively, and that plans and issuers will be provided with adequate time for compliance. Additionally, the Departments invite comments on whether and how to phase in the implementation of the requirement to provide coverage examples. For example, one option would provide that in 2012, coverage examples would only need to be provided for the SBCs with respect to a subset of all benefits packages offered by group health plans or health insurance issuers, with coverage examples required to be provided for all benefits packages in later years. Comments are invited on these issues.

Comments are also requested on whether it would be feasible or desirable to permit plans and issuers to input plan- or policy-specific information into a central Internet portal, such as the Federal health care reform Web site (*http://www.healthcare.gov*), that would use the information to generate the coverage examples for each plan or policy. The examples would then be available on the Internet portal for access by individuals. Alternatively, some have suggested that plans and issuers might provide individuals, in a convenient format in the SBC, the several items of plan- or policy-specific information necessary to generate the coverage examples and a reference to the Internet portal, so that individuals could input the information into the Internet portal to generate the coverage examples for the plan or policy. The Departments note that the NAIC considered and rejected the idea of a ''cost calculator'' or similar tool. The Departments solicit comments on the cost and benefits of these alternatives, including whether such approaches would provide an efficient and effective method for individuals, plans, and issuers to generate or access the coverage examples and how any such approaches could adequately serve individuals who do not have regular access to the Internet (for example, by disclosing in the SBC the option to obtain paper copies of coverage examples generated by the plan or issuer).

4. Appearance

Section 2715 of the PHS Act sets forth the appearance for the SBC. Specifically, the statute provides that the SBC is to be presented in a uniform format, utilizing terminology understandable by the average plan enrollee, that does not exceed four pages in length, and does not include print smaller than 12-point font. The proposed regulations, consistent with the NAIC recommendation, interpret the four-page limitation as four double-sided pages.[21] The Departments' view is that this approach will enable group health plans, participants and beneficiaries, and individuals in the individual insurance market to receive enough information to shop for, compare, and make informed decisions

[18] The National Guideline Clearinghouse, within the Agency for Healthcare Research and Quality (AHRQ), publishes systematically developed statements to assist practitioner and patient decisions about appropriate health care for specific clinical circumstances, available at *http://www.guideline.gov/*.

[19] A general instruction guide for completing the coverage examples portion of the SBC, which is identical to that transmitted by the NAIC, is included in the document published today by the Departments. These instructions, together with specific assumptions for coding data and reimbursement rates published today on HHS's Web site comprise the Departments' instructions for completing the coverage examples portion of the SBC. *See http://cciio.cms.gov. http://www.naic.org/documents/committees_b_consumer_information_hhs_dol_submission_1107_template_blank.xls.* The coding and reimbursement rate assumptions were developed by HHS and are also open for public comment.

[20] *See http://www.naic.org/documents/committees_b_consumer_information_final_coverage_ex.pdf.*

[21] PHS Act section 2715(b)(1) does not prescribe whether the four pages are four single-sided pages or four double-sided pages. The SBC template transmitted by NAIC exceeded four single-sided pages. After considering the extent of statutorily-required content in PHS Act section 2715(b)(3), as well as the appearance and language requirements of PHS Act sections 2715(b)(1) and (2), the Departments are interpreting four pages to be four double-sided pages, in order to ensure that this information is presented in an understandable and meaningful way.

regarding various coverage options that may be available to them.[22] The Departments seek comments on this approach.

Consistent with the NAIC recommendations provided to the Departments,[23] under these proposed regulations, a group health plan or a health insurance issuer will provide the SBC as a stand-alone document in the form authorized by the Departments and completed in accordance with the instructions and guidance for completing the SBC that are authorized by the Departments. As noted earlier in this preamble, comments are invited on whether and how the SBC might best be coordinated with the SPD and other group health plan disclosure materials.

5. Form and Manner

a. Group Health Plan Coverage

To facilitate faster and less burdensome disclosure of the SBC, and consistent with PHS Act section 2715(d)(2), the proposed regulations set forth rules to facilitate electronic transmittal of the SBC, where appropriate. Specifically, an SBC provided by a plan or issuer to a participant or beneficiary may be provided in paper form. Alternatively, for plans and issuers subject to ERISA or the Code, the SBC may be provided electronically if the requirements of the Department of Labor's electronic disclosure safe harbor at 29 CFR 2520.104b–1(c) are met.[24] For non-Federal governmental plans, the regulations propose that the SBC may be provided electronically if either the substance of the provisions of the Department of Labor's electronic disclosure rule are met, or if the provisions governing electronic disclosure in the individual health insurance market (described below) are met.

With respect to an SBC provided by an issuer to a plan, the SBC may be provided in paper form or electronically (such as e-mail transmittal or an Internet posting on the issuer's Web site or on *http://www.healthcare.gov*). For electronic forms, the format must be readily accessible by the plan; the SBC must be provided in paper form free of charge upon request; and for Internet postings, the plan must be notified by paper or e-mail that the documents are available on the Internet, and given the Web address. The Departments invite comments on whether any clarifications are needed with respect to the ''readily accessible'' standard (for example, whether the requirements for passwords or special software create a sufficient burden that the documents are not ''readily accessible''). The Departments also invite comment on whether modifications or adaptations of the SBC are necessary to facilitate or improve electronic disclosure.

b. Individual Health Insurance Coverage

With respect to the individual market, the proposed regulations set forth the circumstances in which an issuer offering individual health insurance coverage may provide an SBC in either paper or electronic form. Specifically, under these proposed regulations, unless specified otherwise by an individual, an issuer would be required to provide an SBC (and any subsequent SBC) in paper form if, upon the individual's request for information or request for an application, the individual makes the request in person, by phone or by fax, or by U.S. mail or courier service; or if, when submitting an application, the individual completes the application for coverage by hand, by phone or by fax, or by U.S. mail or courier service. As an alternative, the Departments seek comments on whether it might be appropriate to allow issuers to fulfill an individual's request in electronic form, unless the individual requests a paper form.

Under this proposed rule, an issuer may provide an SBC (and any subsequent SBC) in electronic form (such as through an Internet posting or via electronic mail) if an individual requests information or requests an application for coverage electronically; or, if an individual submits an application for coverage electronically.

To ensure actual receipt of an SBC provided in electronic form, these proposed regulations would set forth certain safeguards for electronic disclosure in the individual market. Under the proposed regulations, an issuer that provides the SBC electronically must:

- Request that an individual acknowledge receipt of the SBC;
- Make the SBC available in an electronic format that is readily usable by the general public;
- If the SBC is posted on the Internet, display the SBC in a location that is prominent and readily accessible to the individual and provide timely notice, in electronic or non-electronic form, to each individual who requests information about, or an application for, coverage, that apprises the individual the SBC is available on the Internet and includes the applicable Internet address;
- Promptly provide a paper copy of the SBC upon request without charge, penalty, or the imposition of any other condition or consequence, and provide the individual with the ability to request a paper copy of the SBC both by using the issuer's Web site (such as by clicking on a clearly identified box to make the request) and by calling a readily available telephone line, the number for which is prominently displayed on the issuer's Web site, policy documents, and other marketing materials related to the policy and clearly identified as to purpose; and
- Ensure an SBC provided in electronic form is provided in accordance with the appearance, content, and language requirements of this section.

The Departments welcome comments as to whether these or other safeguards are appropriate.

Finally, consistent with the standards for electronic disclosure, these proposed regulations seek to reduce the burden of providing an SBC to individuals shopping for coverage. Specifically, these proposed regulations provide that a health insurance issuer that complies with the requirements set forth at 45 CFR 159.120 (75 FR 24470) for reporting to the Federal health care reform insurance Web portal would be deemed to comply with the requirement to provide the SBC to an individual requesting information about coverage prior to submitting an application. Any SBC furnished at the time of application or subsequently, however, would be required to be provided in a form and manner consistent with the rules described above.

6. Language

PHS Act section 2715(b)(2) provides that standards shall ensure that the SBC ''is presented in a culturally and linguistically appropriate manner.'' These proposed regulations provide that, to satisfy the requirement to provide the SBC in a culturally and linguistically appropriate manner, a

[22] PHS Act sections 2715(b)(3)(A) and (g)(2) clearly reference consumers comparing coverage and PHS Act section 2715(b)(1) requires a uniform format, to enable shopping and comparing health coverage options.

[23] National Association of Insurance Commissioners, Consumer Information Working Group, December 17, 2010 Letter to the Secretaries. Available at *http://www.naic.org/documents/committees_b_consumer_information_ppaca_letter_to_sebelius.pdf.*

[24] On April 7, 2011, the Department of Labor published a Request for Information regarding electronic disclosure at 76 FR 19285. In it, the Department of Labor stated that it is reviewing the use of electronic media by employee benefit plans to furnish information to participants and beneficiaries covered by employee benefit plans subject to ERISA. Because these regulations adopt the ERISA electronic disclosure rules by cross-reference, any changes that may be made to 29 CFR 2520.104b–1 in the future would also apply to the SBC.

plan or issuer follows the rules for providing appeals notices in a culturally and linguistically appropriate manner under PHS Act section 2719, and paragraph (e) of its implementing regulations.[25] In general, those rules provide that, in specified counties of the United States, plans and issuers must provide interpretive services, and must provide written translations of the SBC upon request in certain non-English languages. In addition, in such counties, English versions of the SBC must disclose the availability of language services in the relevant language.[26] The counties in which this must be done are those in which at least ten percent of the population residing in the county is literate only in the same non-English language, as determined in guidance. The Departments welcome comments on whether and how to provide written translations of the SBC in these non-English languages. (Note, nothing in these proposed regulations should be construed as limiting an individual's rights under Federal or State civil rights statutes, such as Title VI of the Civil Rights Act of 1964 (Title VI) which prohibits recipients of Federal financial assistance, including issuers participating in Medicare Advantage, from discriminating on the basis of race, color, or national origin. To ensure non-discrimination on the basis of national origin, recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by limited English proficient persons. For more information, see, ''Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,'' available at *http://www.hhs.gov/ocr/civilrights/resources/specialtopics/lep/policyguidancedocument.html.*)

B. Notice of Modifications

Section 2715(d)(4) of the PHS Act directs that a group health plan or health insurance issuer offering group or individual health insurance coverage to provide notice of a material modification if it makes a material modification (as defined under ERISA section 102, 29 U.S.C. 1022) in any of the terms of the plan or coverage involved that is not reflected in the most recently provided SBC. The proposed regulations interpret the statutory reference to the SBC to mean that only a material modification that would affect the content of the SBC would require plans and issuers to provide this notice. In these circumstances, the notice must be provided to enrollees (or, in the individual market, policyholders) no later than 60 days prior to the date on which such change will become effective, if it is not reflected in the most recent SBC provided and occurs other than in connection with a renewal or reissuance of coverage. A material modification, within the meaning of section 102 of ERISA, includes any modification to the coverage offered under a plan or policy that, independently, or in conjunction with other contemporaneous modifications or changes, would be considered by an average plan participant (or in the case of individual market coverage, an average individual covered under a policy) to be an important change in covered benefits or other terms of coverage under the plan or policy.[27] A material modification could be an enhancement of covered benefits or services or other more generous plan or policy terms. It includes, for example, coverage of previously excluded benefits or reduced cost-sharing. A material modification could also be a material reduction in covered services or benefits, as defined in 29 CFR 2520.104b–3(d)(3), or more stringent requirements for receipt of benefits. As a result, it also includes changes or modifications that reduce or eliminate benefits, increase premiums and cost-sharing, or impose a new referral requirement.

PHS Act section 2715 and these proposed regulations describe the timing for when a notice of material modification must be provided in situations other than upon renewal at the end of a plan or policy year when a new SBC is provided under the rules of paragraph (a) of the proposed rules. To the extent a plan or policy implements a mid-year change that is a material modification, that affects the content of the SBC, and that occurs other than in connection with a renewal or reissuance of coverage, paragraph (b) of the proposed regulations would require a notice of modifications to be provided 60 days in advance of the effective date of the change. This notice could be satisfied either by a separate notice describing the material modification or by providing an updated SBC reflecting the modification. For ERISA-covered group health plans subject to PHS Act section 2715, this notice is in advance of the timing under the Department of Labor's regulations set forth at 29 CFR 2520.104b-3 that require the provision of a summary of material modification (SMM) (generally not later than 210 days after the close of the plan year in which the modification or change was adopted, or, in the case of a material reduction in covered services or benefits, not later than 60 days after the date of adoption of the modification or change). In situations where a complete notice is provided in a timely manner under PHS Act section 2715(d)(4), of course, an ERISA-covered plan will also satisfy the requirement to provide an SMM under Part 1 of ERISA. The Departments invite comments on this expedited notice requirement, including whether there are any circumstances where 60-day advance notice might be difficult. The Departments also solicit comments on the format of the notice of modification, particularly for plans and issuers not subject to ERISA.

C. Uniform Glossary

Section 2715(g)(2) of the PHS Act directs the Departments to develop standards for definitions for at least the following insurance-related terms: co-insurance, co-payment, deductible, excluded services, grievance and appeals, non-preferred provider, out-of-network co-payments, out-of-pocket limit, preferred provider, premium, and UCR (usual, customary and reasonable) fees. Section 2715(g)(3) of the PHS Act directs the Departments to develop standards for definitions for at least the following medical terms: durable medical equipment, emergency medical transportation, emergency room care, home health care, hospice services, hospital outpatient care, hospitalization, physician services, prescription drug coverage, rehabilitation services, and skilled nursing care. Additionally, the statute directs the Departments to develop standards for such other terms that will help consumers understand and compare the terms of coverage and the extent of medical benefits (including any exceptions and limitations).

The NAIC working group recommended,[28] and the Departments are proposing to adopt for this purpose, inclusion of the following additional terms in the uniform glossary: allowed amount, balance billing, complications of pregnancy, emergency medical

[25] *See* 75 FR 43330 (July 23, 2010), as amended by 76 FR 37208 (June 24, 2011).

[26] The SBC template, as recommended by the NAIC, does not include this statement; however, these proposed regulations would require that plans and issuers include it.

[27] *See* DOL Information Letter, Washington Star/Washington-Baltimore Newspaper Guild to Munford Page Hall, II, Baker & McKenzie (February 8, 1985).

[28] National Association of Insurance Commissioners, Consumer Information Working Group, December 17, 2010 Letter to the Secretaries. Available at *http://www.naic.org/documents/committees_b_consumer_information_ppaca_letter_to_sebelius.pdf.*

condition, emergency services, habilitation services, health insurance, in-network co-insurance, in-network co-payment, medically necessary, network, out-of-network co-insurance, plan, preauthorization, prescription drugs, primary care physician, primary care provider, provider, reconstructive surgery, specialist, and urgent care. The uniform glossary proposed by the Departments is being issued in a document published elsewhere in today's **Federal Register**.

The Departments invite comments on the uniform glossary, including the content of the definitions and whether there are additional terms that are important to include in the uniform glossary so that individuals and employers may understand and compare the terms of coverage and the extent of medical benefits (or exceptions to those benefits). For example, the Departments are considering whether glossary definitions of any of the following terms would be helpful: claim, external review, maternity care, preexisting condition, preexisting condition exclusion period, or specialty drug. It is anticipated that any additional terms would be included in the uniform glossary prospectively, and that plans and issuers would be provided adequate time for compliance.

The proposed regulations direct a plan or issuer to make the uniform glossary available upon request within seven days. The timing of disclosure is intended to be generally consistent with the proposed requirement, described in section II.A.2.c of this preamble. A plan or issuer may satisfy this disclosure requirement by providing an Internet address where an individual may review and obtain the uniform glossary, as described in section II.A.3 of this preamble. This Internet address may be a place the document can be found on the plan's or issuer's Web site. It may also be a place the document can be found on the Web site of either the Department of Labor or HHS. However, a plan or issuer must make a paper copy of the glossary available upon request. Group health plans and health insurance issuers will provide the uniform glossary in the appearance authorized by the Departments, so that the glossary is presented in a uniform format and uses terminology understandable by the average plan enrollee or individual covered under an individual policy.

D. Preemption

Section 2715 of the PHS Act is incorporated into ERISA section 715, and Code section 9815, and is subject to the preemption provisions of ERISA section 731 and PHS Act section 2724 (implemented in 29 CFR 2590.731(a) and 45 CFR 146.143(a)). These provisions apply so that the requirements of part 7 of ERISA and part A of title XXVII of the PHS Act, as amended by the Affordable Care Act, are not to be ''construed to supersede any provision of State law which establishes, implements, or continues in effect any standard or requirement solely relating to health insurance issuers in connection with group or individual health insurance coverage except to the extent that such standard or requirement prevents the application of a requirement'' of part A of title XXVII of the PHS Act. Accordingly, State laws that impose on health insurance issuers requirements that are stricter than those imposed by the Affordable Care Act will not be superseded by the Affordable Care Act. Moreover, PHS Act section 2715(e) provides that the standards developed under PHS Act section 2715(a), ''shall preempt any related State standards that require [an SBC] that provides less information to consumers than that required to be provided under this section, as determined by the [Departments].''

Reading these two preemption provisions together, these proposed regulations would not prevent States from imposing separate, additional disclosure requirements on health insurance issuers. The Departments recognize the need to balance States' interest in information disclosure regarding insurance coverage with the primary objective of PHS Act section 2715 (as stated in the section title) of providing for the development and use of a short, uniform explanation of coverage document so that consumers may make apples-to-apples comparisons of plan and coverage options.

E. Failure To Provide

PHS Act section 2715(f), incorporated into ERISA section 715 and Code section 9815, provides that a group health plan (including its administrator), and a health insurance issuer offering group or individual health insurance coverage, that ''willfully fails to provide the information required under this section shall be subject to a fine of not more than $1,000 for each such failure.'' In addition, under PHS Act section 2715(f), a separate fine may be imposed for each individual or entity for whom there is a failure to provide an SBC. Due to the different enforcement jurisdictions of the Departments, as well as their different underlying enforcement structures, the mechanisms for imposing the new penalty may vary slightly, as discussed below.

1. Department of HHS

Enforcement of Part A of Title XXVII of the PHS Act, including section 2715, is generally governed by PHS Act section 2723 and corresponding regulations at 45 CFR 150.101 *et seq*. Under those provisions, a State has the discretion to enforce the provisions against health insurance issuers in the first instance, and the Secretary of HHS only enforces a provision after the Secretary determines that a State has failed to substantially enforce the provision. If a State enforces a provision such as PHS Act section 2715, it uses its own enforcement mechanisms. If the Secretary enforces, the statute provides for penalties of up to $100 per day for each affected individual.

PHS Act section 2715(f) provides that an entity that willfully fails to provide the information required under PHS Act section 2715 shall be subject to a fine of not more than $1,000 for each such failure. Such failure with respect to each enrollee constitutes a separate offense. This penalty can only be imposed by the Secretary.

Paragraph (e) of the regulations proposed by HHS clarifies that States have primary enforcement authority over health insurance issuers for any violations, whether willful or not, using their own remedies. These proposed regulations also clarify that PHS Act section 2715 does not limit the Secretary's authority to impose penalties for willful violations regardless of State enforcement. However, the Secretary intends to use enforcement discretion if the Secretary determines that the State is adequately addressing willful violations.

The Secretary of HHS has direct enforcement authority for violations by non-Federal governmental plans, and will use the appropriate penalty for violations of section 2715, depending on whether the violation is willful. Proposed paragraph (e) of the HHS regulations cross references the enforcement regulations at 45 CFR 150.101 *et seq.,* and states that they relate to any failure, regardless of intent, by a health insurance issuer or non-Federal governmental plan, to comply with any requirement of section 2715 of the PHS Act.

2. Departments of Labor and the Treasury

The Department of Labor enforces the requirements of part 7 of ERISA and the Department of the Treasury enforces the requirements of chapter 100 of the Code with respect to group health plans

maintained by an entity that is not a governmental entity. Generally the enforcement authority under these provisions applies to all nongovernmental group health plans, but the Department of Labor does not enforce the requirements of part 7 of ERISA with respect to church plans.

On April 21, 1999, pursuant to section 104 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191, the Secretaries entered into a memorandum of understanding [29] that, among other things, established a mechanism for coordinating enforcement and avoiding duplication of effort for shared jurisdiction. The memorandum of understanding applies, as appropriate, to health legislation enacted after April 21, 1999 over which at least two of the Departments share jurisdiction, including section 2715 of the PHS Act as incorporated into ERISA and the Code. Therefore, in enforcing PHS Act section 2715, the Departments of Labor and the Treasury will coordinate to avoid duplication in the case of group health plans that are not church plans and that are not maintained by a governmental entity.

a. Department of Labor

The Department of Labor will issue separate regulations in the future describing the procedures for assessment of the civil fine provided under PHS Act section 2715(f) as incorporated by section 715 of ERISA. In accordance with ERISA 502(b)(3), 29 U.S.C. 1132(b)(3), the Secretary of Labor is not authorized to assess this fine against a health insurance issuer.

b. Department of the Treasury

If a group health plan (other than a plan maintained by a governmental entity) fails to comply with the requirements of chapter 100 of the Code, an excise tax is imposed under section 4980D of the Code. The excise tax is generally $100 per day per individual for each day that the plan fails to comply with chapter 100 with respect to that individual. Numerous rules under section 4980D reduce the amount of the excise tax for failures due to reasonable cause and not to willful neglect. Special rules apply for church plans. Taxpayers subject to the excise tax under section 4980D are required to report the failures under chapter 100 and the amount of the excise tax on IRS Form 8928. See 26 CFR 54.4980D–1, 54.6011–2, and 54.6151–1.

Section 2715(f) of the PHS Act subjects a plan sponsor or designated administrator to a fine of not more than $1,000 for each failure to provide an SBC. Unless and until future guidance provides otherwise, group health plans subject to chapter 100 of the Code should continue to report the excise tax of section 4980D on IRS Form 8928 with respect to failures to comply with PHS Act section 2715. The Secretaries of Labor and the Treasury will coordinate to determine appropriate cases in which the fine of section 2715(f) should be imposed on group health plans that are not maintained by a governmental entity.

F. Applicability

PHS Act section 2715 directs that the requirement for group health plans and health insurance issuers to provide an SBC ''prior to any enrollment restriction'' applies not later than 24 months after the date of enactment (*i.e.,* beginning on or after March 23, 2012).[30] As noted earlier, the statute also directs the Departments to consult with the NAIC in developing the SBC standards. The Departments are appreciative of the detailed and valuable work the NAIC and its working group has performed in developing recommended standards and materials, including the NAIC's extensive efforts to involve numerous stakeholder groups in that process for over a year and to provide drafts of its evolving materials to the Departments periodically. Accordingly, as noted, the Departments are appending to the document accompanying these proposed regulations the NAIC's SBC work product for public comment.

The NAIC transmitted its final materials to the Departments on July 29, 2011. In recognition of existing disclosure requirements under 29 CFR 2520.104b–2 for those group health plans that already provide SPDs to participants and concerns raised about providing SBCs by the statutory deadline, comments are solicited on whether and, if so, how practical considerations might affect the timing of implementation. In coordination with the request for comment elsewhere in this preamble on a potential phase-in of the implementation of the requirement to provide coverage examples, comments are invited also on how any potential phase-in of those requirements could or should be coordinated with the timing of the effectiveness of the general SBC standards.

The Departments also request comments on whether any special rules are necessary to accommodate expatriate plans. The Departments note that, in the context of group health plan coverage, section 4(b)(4) of ERISA provides that a plan maintained outside the United States primarily for the benefit of persons substantially all of whom are nonresident aliens is exempt from ERISA title I, including ERISA section 715. At the same time, in the Department of HHS's interim final regulations relating to medical loss ratio (MLR) provisions published at 75 FR 74864, a special rule was included for expatriate insurance policies. The Departments invite comments on whether any adjustments are needed under PHS Act section 2715 for expatriate plans and, if so, for what types of coverage.

III. Economic Impact and Paperwork Burden

A. Executive Orders 12866 and 13563—Department of Labor and Department of Health and Human Services

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). As discussed below, the Departments have concluded that these proposed regulations would not have economic impacts of $100 million or more in any one year or otherwise meet the definition of an ''economically significant rule'' under Executive Order 12866. Nonetheless, consistent with Executive Orders 12866 and 13563, the Departments have provided an assessment of the potential benefits and the costs associated with this proposed regulation. The Departments invite comment on this assessment.

1. Current Regulatory Framework

Health plan sponsors and issuers do not currently uniformly disclose information to consumers about benefits

[29] *See* 64 FR 70164 (December 15, 1999).

[30] Section 2715 is applicable to both grandfathered and non-grandfathered health plans. *See* 26 CFR 54.9815–1251(d), 29 CFR 2590.715–1251(d), and 45 CFR 147.120(d).

and coverage in a simple and consistent way. ERISA-covered group health plan sponsors are required to describe important plan information concerning eligibility, benefits, and participant rights and responsibilities in a summary plan description (SPD). But as these documents have increased in size and complexity—for example, due to the insertion of more legalistic language that is designed to mitigate the employer's risk of litigation—they have become more difficult for participants and beneficiaries to understand.[31] Indeed, a recent analysis of SPDs from 40 employer health plans from across the United States (varying based on geography, firm size, and industry sector) found that, on average, SPDs are generally written at a first year college reading level (with readability ranging from 9th grade reading level to nearly a college graduate reading level).[32] Moreover, the formats of existing SPDs are not standardized; for example, while these documents could be dozens of pages long, there is no requirement that they include an executive summary. Additionally, group health plans not covered by ERISA, such as plans sponsored by State and local governments, are not required to comply with such disclosure requirements.

In the individual market, health insurance issuers are subject to various, diverse State disclosure laws. For example, States like Massachusetts,[33] New York,[34] Rhode Island,[35] Utah [36] and Vermont [37] have established minimum standards for disclosure of health insurance information but even within such States, consumer disclosures vary widely with respect to their required content. Additionally, some State disclosure laws are limited to current enrollees, so that individuals shopping for coverage do not receive information about health insurance coverage options. Other State disclosure requirements only extend to managed care organizations, and not to other segments of the market.[38]

2. Need for Regulatory Action

Congress added new PHS Act section 2715 through the Affordable Care Act to ensure that plans and issuers provide benefits and coverage information in a more uniform format that helps consumers to better understand their coverage and better compare coverage options. These proposed regulations are necessary to provide standards for a summary of benefits and coverage and a uniform glossary of terms used in health coverage. This approach is consistent with Executive Order 13563, which directs agencies to ''identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. These approaches include [* * *] disclosure requirements as well as provision of information to the public in a form that is clear and intelligible.''

The patchwork of consumer disclosure requirements makes the process of shopping for coverage an inefficient, difficult, and time-consuming task. Consumers incur significant search costs while trying to locate reliable cost, coverage and benefit data.[39] Such search costs arise, in part, due to a lack of uniform information across the various coverage options, particularly in the individual market but also in some large employer plans. Although not directly comparable, in Medigap, a market with standardized benefits, the average per beneficiary search cost was estimated at $72—far higher than in other insurance markets, such as auto insurance.[40]

Given this difficulty in obtaining relevant information, consumers may not always make informed purchase decisions that best meet the health and financial needs of themselves, their families, or their employees. Similarly, workers may overestimate or underestimate the value of employer-sponsored health benefits, and thus their total compensation; and health insurance issuers and employers may face less pressure to compete on price, benefits, and quality, leading to inefficiency in the health insurance and labor markets.

Furthermore, research suggests that many consumers do not understand how health insurance works. Oftentimes, health insurance contracts and benefit descriptions are written in technical language that requires a sophisticated level of health insurance literacy many people do not have.[41] One study found that consumers have particular difficulty understanding cost sharing and tend to underestimate their coverage for mental health, substance abuse and prescription drug benefits, while overestimating their coverage for long-term care.[42]

3. Summary of Impacts

Table 1 below depicts an accounting statement summarizing the Departments' assessment of potential benefits, costs, and transfers associated with this regulatory action. The Departments have limited the period covered by the RIA to 2011–2013. Estimates are not provided for subsequent years, because there will be significant changes in the marketplace in 2014 related to the offering of new individual and small group plans through the Affordable Insurance Exchanges, and the wide-ranging scope of these changes makes it difficult to project results for 2014 and beyond.

The direct benefits of these proposed regulations come from improved information, which will enable consumers to better understand the coverage they have and allow consumers choosing coverage to more easily compare coverage options. As a result, consumers may make better coverage decisions, which more closely match their preferences with respect to benefit design, level of financial protection, and cost. The Departments

[31] ERISA Advisory Council. Report of the Working Group on Health and Welfare Benefit Plans' Communication. November 2005. Available at: *http://www.dol.gov/ebsa/publications/AC_1105c_report.html.*

[32] ''How Readable Are Summary Plan Descriptions For Health Care Plans?'' Employee Benefit Research Institute (EBRI) Notes. October 2006, Vol. 27, No. 10. Available at: *http://www.ebri.org/pdf/notespdf/EBRI_Notes_10-20061.pdf.*

[33] M.G.L.A. 176Q § 5 (2010).

[34] NY Ins. Law § 3217–a (2010).

[35] Office of the Health Insurance Commissioner Regulation 5: Standards for Readability of Health Insurance Forms, State of Rhode Island and Providence Plantations, August 21, 2010.

[36] Utah Code § 31A–22–613.5 (2010).

[37] Division of Health Care Administration, Rule 10.000: Quality Assurance Standards and Consumer Protections for Managed Care Plans, State of Vermont, September 20, 1997.

[38] For example, New York requires Health Maintenance Organizations to provide to prospective members, as well as policyholders, information on cost-sharing, including out-of-network costs, limitations and exclusions on benefits, prior authorization requirements, and other disclosures such as appeal rights. NY Ins. Law § 3217–a (2010). Utah requires each insurer issuing a health benefit plan to provide all enrollees, prior to enrollment in the health benefit plan, written disclosure of restrictions or limitations on prescription drugs and biologics, coverage limits under the plan, and any limitation or exclusion of coverage. Utah Code § 31A–22–613.5 (2010). Rhode Island requires all health insurance forms to meet minimum readability standards. Office of the Health Insurance Commissioner Regulation 5: Standards for Readability of Health Insurance Forms, State of Rhode Island and Providence Plantations, August 21, 2010.

[39] M. Susan Marquis *et al.,* ''Consumer Decision Making in the Individual Health Insurance Market,'' 25 Health Affairs w.226, w.231-w.232 (May 2006). Available at: *http://content.healthaffairs.org/content/25/3/w226.full.pdf+html.*

[40] Nicole Maestas *et al.,* ''Price Variation in Markets with Homogenous Goods: The Case of Medigap,'' National Bureau of Economic Research (January 2009).

[41] For example, as discussed earlier, the average Summary Plan Description is written at a first-year college reading level. See Employee Benefit Research Institute, October 2006.

[42] D.W. Garnick, A.M. Hendricks, K.E. Thorpe, J.P. Newhouse, K. Donelan and R.J. Blendon. ''How well do Americans understand their health coverage?'' Health Affairs, 12(3). 1993:204–12. Available at: *http://content.healthaffairs.org/content/12/3/204.full.pdf.*

believe that such improvements will result in a more efficient, competitive market. These proposed regulations would also benefit consumers by reducing the time they spend searching for and compiling health plan and coverage information.

Under the proposed regulations, group health plans and health insurance issuers would incur costs to compile and provide the summary of benefits and coverage disclosures (that includes coverage examples (CEs)) and a uniform glossary of health coverage and medical terms. The Departments estimate that the annualized cost may be around $50 million, although there is uncertainty arising from general data limitations and the degree to which economies of scale exist for disclosing this information. The costs estimates employ assumptions that we believe fully capture expected issuer and third-party administrator (TPA) costs, and perhaps overestimate them if, for example, economies of scale are achievable.

The Departments anticipate that the provisions of these proposed regulations will help consumers make better health coverage choices and more easily understand their coverage. In accordance with Executive Orders 12866 and 13563, the Departments believe that the benefits of this regulatory action justify the costs.

TABLE 1—ACCOUNTING TABLE

Benefits				
Qualitative: Improved information will enable consumers to more easily and efficiently understand and compare coverage, and as a result, make better choices.				
Costs	Estimate	Year dollar	Discount rate percent	Period covered
Annualized	$51	2011	7	2011–2013
Monetized ($ millions/year)	$47	2011	3	2011–2013

4. Benefits

In developing these proposed regulations, the Departments carefully considered their potential effects, including costs, benefits, and transfers. Because of data limitations, the Departments did not attempt to quantify expected benefits of these proposed regulations. Nonetheless, the Departments were able to identify several benefits, which are discussed below.

These proposed regulations could generate significant economic and social welfare benefits to consumers. Under these proposed regulations, health insurance issuers and group health plans would provide clear and consistent information to consumers. Uniform disclosure is anticipated to benefit individuals shopping for, or enrolled in, group and individual health insurance coverage and group health plans. The direct benefits of these proposed regulations come from improved information, which will enable consumers to better understand the coverage they have and allow consumers choosing coverage to more easily compare options. As a result, consumers will make better coverage decisions, which more closely match their preferences with respect to benefit design, level of financial protection, and cost. The Departments believe that such improvements will result in a more efficient, competitive market.

These proposed regulations would also benefit consumers by reducing the time they spend searching for and compiling health plan and coverage information. As stated above, consumers in the individual market, as well as consumers in some large employer-sponsored plans, have a number of coverage options and must make a choice using disclosures and tools that vary widely in content and format. A growing body of decision-making research suggests that the abundance and complexity of information can overwhelm consumers and create a significant non-price barrier to coverage.[43] For example, a RAND study of California's individual market found that reducing barriers to information about health insurance products would lead to increases in purchase rates comparable to modest price subsidies.[44] By ensuring consumers have access to readily available, concise, and understandable information about their coverage options, these proposed regulations could reduce consumers' cost of obtaining information and may increase health insurance purchase rates.

Furthermore, greater transparency in pricing and benefits information will allow consumers to make more informed purchasing decisions, resulting in cost-savings for some value-conscious consumers who today pay higher premiums because of imperfect information about benefits.[45] In particular, the use of coverage examples[46] called for by these proposed regulations would better enable consumers to understand how key coverage provisions operate in the context of recognizable health care situations and more meaningfully compare the level of financial protection offered by a plan or coverage, resulting in potential cost-savings.[47] [48] The Departments therefore expect that uniform disclosures under these proposed regulations would enable consumers to derive more value from their health coverage and enhance the ability of plan sponsors, particularly small businesses, to purchase products that are appropriate to both their needs and the health and financial needs of their employees.

Finally, these proposed regulations are expected to facilitate consumers' ability to understand their coverage. As

[43] Judith H. Hibbard and Ellen Peters, ''Supporting Informed Consumer Health Care Decisions: Data Presentation Approaches that Facilitate the Use of Information in Choice,'' 24 *Annu. Rev. Public Health* 413, 416 (2003).

[44] M. Susan Marquis *et al.,* ''Consumer Decision Making in the Individual Health Insurance Market,'' 25 Health Affairs w.226, w.231-w.232 (May 2006). Available at: *http://content.healthaffairs.org/content/25/3/w226.full.pdf+html.*

[45] A study of California's individual market found that 25 percent of consumers chose products with premiums that were more than 30 percent higher than the median price for an actuarially equivalent product for a similar person. Melinda Beeuwkes Buntin *et al.,''*Trends and Variability In Individual Insurance Products,'' Health Affairs w3.449, w3.457 (2003), available at *http://content.healthaffairs.org/content/early/2003/09/24/hlthaff.w3.449.citation.*

[46] The NAIC recommends that the term ''coverage examples'' be used as reference to the statutory term ''coverage facts labels,'' and the Departments concur with this recommendation.

[47] Shoshanna Sofaer *et al.,* ''Helping Medicare Beneficiaries Choose Health Insurance: The Illness Episode Approach, 30 The Gerontologist 308–315 (1990).

[48] Michael Schoenbaum *et al.,* ''Health Plan Choice and Information about Out-of-Pocket Costs: An Experimental Analysis,'' 38 *Inquiry* 35–48 (Spring 2001).

stated above, research suggests that consumers do not understand how coverage works or the terminology used in health insurance policies. Consequently, consumers may face unexpected medical expenses if they become seriously ill. They may also become confused by a coverage or payment decision made by their plan or issuer, leading to inefficiency in the operation of employee benefit plans and health insurance coverage. By making it easier for consumers to understand the key features of their coverage, these proposed regulations would enhance consumers' ability to use their coverage. Additionally, the uniform format will make it easier for consumers who change jobs or insurance coverage to see how their new plan or coverage benefits are similar to and different from their previous coverage.

5. Costs

Section 2715 of the PHS Act and these proposed regulations direct group health plans and health insurance issuers to compile and provide a summary of benefits and coverage (SBC) (that includes coverage examples (CEs)) and a uniform glossary of health coverage and medical terms. The Departments have attempted to quantify one-time start-up costs as well as maintenance costs. However, there is uncertainty arising from general data limitations and the degree to which economies of scale can be realized to reduce costs for issuers and TPAs. The costs estimates employ assumptions that we believe more than fully capture expected issuer and third-party administrator costs, and perhaps overestimate them if, for example, economies of scale are achievable. On the basis of such assumptions, the Departments estimate that issuers and TPAs will incur approximately $25 million in costs in 2011, $73 million in costs in 2012, and $58 million in costs in 2013. These costs and the methodology used to estimate them are discussed below, and presented in Tables 2–5 below.

General Assumptions

In order to assess the potential administrative costs relating to these proposed regulations, the Departments consulted with industry experts to gain insight into the tasks and level of resources required. Based on these discussions, the Departments estimate that there will be two categories of principal costs associated with the standards in these proposed regulations: one-time start-up costs and maintenance costs. The one-time start-up costs include costs to develop teams to review the new standards and costs to implement workflow and process changes, particularly the development of information technology (IT) systems interfaces that would generate SBC disclosures through data housed in a number of different systems. The maintenance costs include costs to maintain and update IT systems in compliance with the proposed standards; to produce, review, distribute, and update the SBC disclosures;[49] to produce and distribute notices of modifications, and to provide the glossary in paper form upon request.

With respect to the individual market, issuers are responsible for generating, reviewing, updating, and distributing SBCs. With respect to employer-sponsored coverage, the Departments assume fully-insured plans will rely on health insurance issuers, and self-insured plans will rely on TPAs, to perform these functions. While plans may prepare the SBC disclosures internally, the Departments make this simplifying assumption because most plans appear to rely on issuers and TPAs for the purpose of administrative duties such as enrollment and claims processing.[50] Thus, the Departments use health insurance issuers and TPAs as the unit of analysis for the purposes of estimating administrative costs.

As discussed in the Medical Loss Ratio (MLR) interim final rule (75 FR 74918), the Departments estimate there are about 440 firms offering comprehensive coverage in the individual, small, or large group markets, and 75 million covered lives therein.[51] The number of covered lives includes individuals in the individual market as well as those in insured group health plans.

With respect to the self-insured market, the Departments estimate there are 77 million individuals in self-insured ERISA-covered plans and approximately 14 million individuals in self-insured non-Federal governmental plans.[52] The Departments note that, according to 2007 Economic Census data, there are 2,243 TPAs providing administrative services for health and/or welfare funds. However, there is some uncertainty as to whether all of those TPAs serve self-insured plans; many issuers, for example, have subsidiary lines of business through administrative services only (ASO) contracts through which they perform third-party administrative functions for self-insured plans.[53] Based on conversations with one national TPA association, the Departments assume that about one-third of the total number of TPAs, or about 748 TPAs, are relevant for purposes of this analysis. However, given the considerable overlap between issuers and TPAs, the Departments recognize there may be fewer affected TPAs, so these estimates should be considered an upper bound of burden estimates. These estimates may be adjusted proportionally in the final regulations based upon additional information about the number of TPAs serving self-insured plans.

Because the SBC disclosures are closely related to disclosures that issuers and TPAs provide today as a part of their normal operations (*e.g.,* information on premiums, covered benefits, and cost sharing), the incremental costs of compiling and providing such readily available information in the proposed, standardized format is estimated to be modest.[54] The per-issuer or -TPA cost will largely be determined by its size (based on annual premium revenues) and current practices—most importantly, whether the issuer or TPA maintains a robust information technology infrastructure, including a plan benefits design database. Moreover, with regard to issuers, administrative costs may be related to the number of markets in which it operates (that is,

[49] Plans and issuers subject to ERISA or the Code may provide SBCs electronically only if the requirements of the Department of Labor's electronic disclosure safe harbor at 29 CFR 2520.104b–1 are met. Otherwise, by default, plans and issuers must use paper versions of SBCs.

[50] See, for example, the Department of Labor's March 2011 report to Congress on self-insured health plans, available at *http://www.dol.gov/ebsa/pdf/ACAReportToCongress032811.pdf.*

[51] The NAIC data actually indicate 442 issuers and 74,830,101 covered lives. But the Departments have limited these values to only two significant figures given general data uncertainty. For example, the NAIC data do not include issuers regulated by California's Department of Managed Health Care (DMHC) as well as small, single-State issuers that are not required by State regulators to submit NAIC annual financial statements.

[52] U.S. Department of Labor, EBSA calculations using the March 2009 Current Population Survey Annual Social and Economic Supplement and the 2009 Medical Expenditure Panel Survey; see also interim final rule for internal claims and appeals and external review processes (75 FR 43330, 43345).

[53] See, for example, the Department of Labor's March 2011 report to Congress on self-insured health plans, available at *http://www.dol.gov/ebsa/pdf/ACAReportToCongress032811.pdf.*

[54] For example, issuers in the individual and small group markets already report some of the SBC information to HHS for display in the plan finder on the HealthCare.gov Web site. Issuers have been reporting data to HHS since May 2010 and have refreshed that data on a quarterly basis. These reporting entities have demonstrated that they have the capacity to report information on plan benefit design. See *http://finder.healthcare.gov/.* Further, ERISA-covered plans already report some of the SBC information in summary plan descriptions (SPDs).

individual, small group, or large group market); the number of policies it offers; and the number of States and licensed entities through which it offers coverage.

To account for variations among issuers, the Departments classify them by size as small, medium, and large issuers based on 2009 premium revenue for individual, small group, and large group comprehensive coverage.[55] Consistent with the assumptions that were used in the MLR interim final rule, small issuers are defined as those earning up to $50 million in annual premium revenue; medium issuers as those earning between $50 million and $1 billion in annual premium revenue; and large issuers as those earning more than $1 billion in annual premium revenue. Based on these assumptions, the Departments estimate there are 140 small, 230 medium, and 70 large issuers.

To account for variations among TPAs, the Departments applied the proportions of small, medium, and large issuers to the estimated 750 TPAs. The Departments acknowledge that issuers and TPAs are different and may not have the same size variation. Nonetheless, given general data limitations, the Departments have adopted this methodology, and, on its basis, estimate that there are 240 small, 390 medium, and 120 large TPAs. Table 2 below provides a synopsis of the number of issuers and TPAs.

TABLE 2—ISSUER AND TPA SIZE CLASSIFICATION

	Small	Medium	Large
Issuers ..	140	230	70
TPAs	240	390	120

Staffing Assumptions

Table 6 below summarizes the Departments' staffing assumptions, including the estimated number of hours for each task for a small, medium, or large issuer/TPA as well as the percentage of time that different professionals devote to each task. The following assumptions are based on the best information available to the Departments at this time. Particularly, the following series of assumptions are based on conversations with industry experts, the Departments' understanding of the regulated community, and previous analysis in the MLR interim final rule. We welcome comments that provide better information or data about any of the following assumptions.

IT Systems and Workflow Process Changes

The Departments estimate that it would take a large issuer/TPA about 960 hours to implement IT systems and workflow process changes, based on discussions with a large issuer. The Departments assume that these IT systems and workflow process changes would be implemented only by IT professionals. Furthermore, the Departments assume that a medium issuer/TPA would need about 75% of a large issuer's/TPA's time, and a small issuer would need about 50% of a large issuer's/TPA's time, to implement IT systems and workflow process changes.

The Departments estimate that it would take a large issuer/TPA about 160 hours to develop teams to analyze the new standards in relation to their current workflow processes. The Departments assume such teams would be comprised of IT professionals (45%), benefits/sales professionals (50%), and attorneys (5%). We scale down the burden for medium and small issuers/TPAs by assuming the same relative proportion as above (that is, 75 percent and 50 percent, respectively).

The Departments assume that each issuer/TPA would incur a maintenance cost to maintain IT systems and address changes in regulatory requirements. The Departments assume the maintenance cost would equal 15% of the total one-time burden noted above (for example, the Departments assume it will take a large issuer 15% of 1120 hours, or 168 hours). The Departments further assume that the teams to implement the maintenance tasks would be comprised of IT professionals (55%), benefits/sales professionals (40%), and attorneys (5%).

The Departments assume that the one-time and maintenance costs to implement IT systems changes and to address these regulations would be split between the costs to produce SBCs (50%) and the costs to produce the CEs (50%).

Production and Review of SBCs and CEs

The Departments estimate that each issuer/TPA would need 3 hours to produce, and 1 hour to review, SBCs (not including CEs) for all products. The Departments assume that the 3 hours needed to produce the SBCs would be equally divided between IT professionals and benefits/sales professionals. The Departments assume that the 1 hour needed to review the SBCs would be equally divided between financial managers for benefits/sales professionals and attorneys.

In 2012 and 2013, issuers and TPAs would produce CEs for three benefits scenarios. The Departments estimate it will take each issuer/TPA 90 hours to produce, and 30 hours to review, CEs for all applicable products. The Departments assume that the 90 hours to produce the CEs would be equally divided between IT professionals and benefits/sales professionals. The Departments also assume that the 30 hours to review the CEs would be equally divided between financial managers for benefits/sales professionals and attorneys.

The Departments assume that in 2012 and 2013, respectively, issuers and TPAs would provide, upon request, a paper copy of the uniform glossary to 2.5% and 5% of covered individuals who receive a glossary. The Departments assume that individuals who do not request a paper copy of the glossary will access it electronically using the Internet address provided in the SBC.

For each individual who receives the SBC or uniform glossary in paper form, the Departments estimate that printing and distributing the paper disclosures would take clerical staff about 1 minute (0.02 hours) in the group markets and about 2 minutes (0.03 hours) in the individual market. The Departments assume that the individual market has lower economies of scale and, thus, increased distribution costs.

Labor Cost Assumptions

Table 7 below presents the Departments' hourly labor cost assumptions (stated in 2011 dollars) for each staff category based on BLS data. The Departments use mean hourly wage estimates from the Bureau of Labor Statistics' (BLS) May 2009 National Occupational Employment and Wage Estimates (accessed at *http://www.bls.gov/oes/current/oes_nat.htm#00–0000*) for computer systems analysts (Occupation Code 15–1051), insurance underwriters (Occupation Code 13–2053), financial managers (Occupation Code 23–1011), executive secretaries and administrative assistants (Occupation Code 43–6011), and attorneys (Occupation Code 23–1011) as the basis for estimating labor costs for 2011 through 2013 and adjust the hourly wage rate to include a 33% fringe benefit estimate for private sector employees.[56]

Distribution Assumptions

The Departments make the following assumptions regarding the distribution

[55] The premium revenue data come from the 2009 NAIC financial statements, also known as ''Blanks,'' where insurers report information about their various lines of business.

[56] See the Technical Appendix to the MLR interim final rule, available at *http://cciio.cms.gov.*

of the SBC disclosures (including CEs).[57] These assumptions are based on the best information available to the Departments at this time. Particularly, the following series of assumptions are based on conversations with industry experts, the Departments' understanding of the regulated community, and previous analysis in the MLR interim final rule. The distribution assumptions are as follows:

• The SBCs would be limited to one per household for family members located at the same residence. According to one large issuer, there are 2.2 covered lives per family.

• The number of individuals who would receive an SBC before enrolling in the plan or coverage equals 20% of the number of enrollees at any point during the course of a year.[58]

• In 2013, about 2% of covered individuals would receive a notice of modifications.[59] Further, the burden and cost of providing such notices would be proportional to the combined burden and cost of providing the SBCs, including CEs. In 2012, the first year of implementation, the number of notices of modifications would be negligible.

• Electronic distribution will account for 38 percent of all disclosures in the group market and 70 percent of all disclosures in the individual market. The estimate for the group market is based on the methodology used to analyze the cost burden for the DOL claims procedure regulation (OMB Control Number 1210–0053).[60] The estimate for the individual market is based on statistics set forth by the National Telecommunications and Information Administration, which indicate that 30% of Americans do not use the Internet.[61]

• SBC disclosures would be distributed with usual marketing and enrollment materials, thus, costs to mail the documents will be negligible. However, notices of modifications would require mailing and supply costs as follows: $0.44 postage cost per mailing and $0.05 supply cost per mailing.

• Printing costs $0.03 cents per side of a page. Thus, it would cost $0.18 to print a complete SBC (which is six sides of a page based on the length of the NAIC sample completed SBC) and $0.12 cents to print the uniform glossary (which is four sides of a page, based on the length of the NAIC recommended uniform glossary). This cost burden is in addition to the 1 minute or 2 minutes it would take clerical staff to print and distribute the SBC or glossary.

Cost Estimate

The Tables below present costs and burden hours for issuers and TPAs associated the proposed disclosure requirements of PHS Act section 2715. Tables 3–5 contain cost estimates for 2011, 2012, and 2013, derived from the labor hours presented in Table 3 and the hourly rate estimates presented in Table 7, as well as estimates of non-labor costs. Labor hour estimates were developed for each one-time and maintenance task associated with analyzing requirements, developing IT systems, and producing SBCs (that include CEs).

TABLE 3—2011 HOUR BURDEN, EQUIVALENT COST, AND COST BURDEN—2011 DOLLARS

	Number of affected entities	Hour burden	Equivalent cost
SBC Requirements—Issuers—One Time	440	88,000	$4,600,000
SBC Requirements—TPAs—One-Time	750	150,000	7,800,000
Coverage Example Requirements—Issuers—One Time	440	88,000	4,600,000
Coverage Example Requirements—TPAs—One-Time	750	150,000	7,800,000
Total		240,000	25,000,000

TABLE 4—2012 HOUR BURDEN, EQUIVALENT COST, AND COST BURDEN—2011 DOLLARS

	Number of affected entities	Hour burden	Equivalent cost	Cost burden (non-labor)	Number of disclosures
SBC Requirements—Issuers	440	540,000	$18,000,000	$2,900,000	41,000,000
SBC Requirements—TPAs	750	660,000	23,000,000	3,700,000	49,000,000
Coverage Example Requirements—Issuers	440	140,000	7,600,000	1,500,000	41,000,000
Coverage Example Requirements—TPAs	750	240,000	13,000,000	1,800,000	49,000,000
Glossary Requests—Issuers	440	11,000	330,000	370,000	610,000
Glossary Requests—TPAs	750	13,000	370,000	470,000	770,000
Subtotal		1,600,000	62,000,000	11,000,000	91,000,000
Total 2012 Costs			73,000,000		

[57] Although CEs are an integral component of SBCs, the costs associated with CEs are different from the rest of the SBC, and, thus, are separately calculated within this analysis.

[58] Based on this assumption, the Departments estimated that small issuers or TPAs have about 180,000 shoppers in a given year, medium issuers or TPAs have 3,700,000 shoppers in a given year, and large issuers or TPAs have 11,000,000 shoppers in a given year.

[59] ERISA section 104(b) requires ERISA-covered plans to furnish participants and beneficiaries with a Summary of Material Modifications (SMM) no later than 210 days after the end of the plan year in which the material change was adopted. As part of its analysis for the Department of Labor's SPD/SMM regulations (29 CFR 2520.104b-(3)), the Department estimated that about 20 percent of health plans would need to distribute SMM in a given year due to plan amendments. However, almost all of these modification occur between plan years—not during a plan year; therefore, the modifications would be required to be disclosed in a SBC that is distributed upon renewal of coverage. The Departments, thus, expects that only two percent of plans will need to issue an updated SBC mid-year, because mid-year changes that would result in an update to the SBC are very rare. For purposes of simplification, the Departments extend this assumption to the individual market as well.

[60] See the ERISA e-disclosure rule at 29 CFR 2520.104b–1.

[61] U.S. Department of Commerce, National Telecommunications and Information Administration, *Digital Nation* (February 2010), available at *http://www.ntia.doc.gov/reports/2010/NTIA_internet_use_report_Feb2010.pdf.*

TABLE 5—2013 HOUR BURDEN, EQUIVALENT COST, AND COST BURDEN—2011 DOLLARS

	Number of affected entities	Hour burden	Equivalent cost	Cost burden (non-labor)	Number of disclosures
SBC Requirements—Issuers	440	480,000	$15,000,000	$2,900,000	41,000,000
SBC Requirements—TPAs	750	560,000	17,000,000	3,700,000	49,000,000
Coverage Example Requirements—Issuers	440	79,000	4,300,000	1,500,000	41,000,000
Coverage Example Requirements—TPAs	750	130,000	7,200,000	1,800,000	49,000,000
Notice of Material Modifications—Issuers	440	10,000	320,000	330,000	820,000
Notice of Material Modifications—TPAs	750	12,000	400,000	400,000	1,000,000
Glossary Requests—Issuers	440	23,000	660,000	700,000	1,200,000
Glossary Requests—TPAs	750	26,000	750,000	900,000	1,500,000
Subtotal		1,300,000	46,000,000	12,000,000	95,000,000
Total 2013 Costs			58,000,000		

TABLE 6—ESTIMATED STAFFING HOURS FOR SMALL, MEDIUM, AND LARGE ISSUERS AND TPAS

Staffing hour assumptions	Percent of hours by task	Hours		
		Small issuer/TPA	Medium issuer/TPA	Large issuer/TPA
IT Development and Workflow Process Change				
One-Time Develop Teams/Analyze Requirements (IT, underwriting/sales)		80	120	160
IT Professionals Benefits/Sales	45	36	54	72
Professionals	50	40	60	80
Attorneys	5	4	6	8
Implementing Systems Changes (IT and workflow)		480	720	960
IT Professionals	100	480	720	960
Maintenance Updating to Address Changes in Requirements		84	126	168
IT Professionals Benefits/Sales	55	46.20	69.30	92.40
Professionals	40	33.60	50.40	67.20
Attorneys	5	4.20	6.30	8.40
SBC Requirement (maintenance)				
Producing SBCs		3	3	3
IT Professionals Benefits/Sales	50	1.5	1.5	1.5
Professionals	50	1.5	1.5	1.5
Internal Review of SBCs		1	1	1
Financial Managers—Benefits/Sales Professionals	50	0.5	0.5	0.5
Attorneys	50	0.5	0.5	0.5
Producing and Distributing Paper Version of SBCs (Group Markets).				
Clerical Staff	100	0.02	0.02	0.02
Producing and Distributing Paper Version of SBCs (Individual Market).				
Clerical Staff	100	0.03	0.03	0.02
CE Requirement (maintenance)				
Producing 3 CEs		90	90	90
IT Professionals Benefits/Sales	50	45	45	45
Professionals	50	45	45	45
Internal Review of 3 CEs		30	30	30
Financial Managers—Benefits/Sales	50	15	15	15
Professionals.				
Attorneys	50	15	15	15

TABLE 7—ESTIMATED LOADED HOURLY WAGES FOR STAFF CATEGORIES

Staff category	BLS code	Loaded hourly wage (2011 Dollars)
IT Professionals	Computer Systems Analysts (Occupation Code 15–1051)	$53.26
Financial Professionals—Benefits/Sales	Insurance Underwriters (Occupation Code 13–2053)	41.94
Financial Manager	Financial Managers (Occupation Code 11–3031)	75.32
Attorneys	Lawyers (Occupation Code 23–1011)	85.44
Clerical Staff	Executive Secretaries and Administrative Assistants (Occupation Code 43–6011).	29.15

6. Regulatory Alternatives

Several provisions in these proposed regulations involved policy choices. A first policy choice involved determining how to minimize the burden of providing the SBC to individuals and employers shopping for health insurance coverage. The Departments recognize it may be difficult for issuers to provide accurate information about the terms of coverage prior to underwriting. Accordingly, the proposed regulations provide that issuers offering health insurance coverage in connection with the individual market that make information for their standard policies available on the Secretary of HHS's Web portal (HealthCare.gov), in compliance with 45 CFR 159.120, will have satisfied the requirement to provide an SBC to individuals who request information about coverage. The Departments believe this approach promotes regulatory efficiency, minimizing the administrative burden on health insurance issuers without lessening the protections under PHS Act section 2715.

A second choice related to whether, in the case of covered individuals residing at the same address, one SBC would satisfy the disclosure requirement with respect to all such individuals, or whether multiple SBCs would be required to be provided. Under the proposed regulations, the Departments allow a plan or issuer to provide a single SBC in circumstances in which a participant and any beneficiaries (or, in the individual market, the primary subscriber and any covered dependents) are known to reside at the same address.

In the group market, the proposed regulations would further limit burden by requiring a plan or issuer to provide, at renewal, a new SBC for only the benefit package in which a participant or beneficiary is enrolled. That is, if the plan offers multiple benefits packages, an SBC is not required for each benefit package offered under the group health plan, which the Departments believe would otherwise create an undue burden during open season. Participants and beneficiaries would be able to receive upon request an SBC for any benefits package for which they are eligible. The Departments believe this balanced approach addresses the needs of plans, issuers, and consumers, at renewal.

A third policy choice related to the interpretation of the PHS Act section 2715(d)(4), which requires notice of any material modification (as defined for purposes of section 102 of ERISA) in any of the terms of the plan or coverage that is not reflected in the most recently provided SBC. The Departments note that a material modification, within the meaning of section 102 of ERISA and its implementing regulations at 29 CFR 2520.104b-3, is broadly defined to include any modification to the coverage offered under the plan or policy, that independently, or in conjunction with other contemporaneous modifications or changes, would be considered by the average plan participant to be an important change in covered benefits or other terms of coverage under the plan or policy. The proposed regulations would interpret this provision as requiring notice only for a material modification that (1) affects the information in the SBC; and (2) occurs other than in connection with renewal or reissuance of coverage (that is, a mid-plan or -policy year change). This approach is consistent with the language of section 2715(d)(4) and is more narrowly focused on what we interpret to be the purpose of that provision.

B. Regulatory Flexibility Act—Department of Labor and Department of Health and Human Services

The Regulatory Flexibility Act (RFA) requires agencies that issue a regulation to analyze options for regulatory relief of small businesses if a proposed rule has a significant impact on a substantial number of small entities. The RFA generally defines a ''small entity'' as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA), (2) a nonprofit organization that is not dominant in its field, or (3) a small government jurisdiction with a population of less than 50,000. (States and individuals are not included in the definition of ''small entity.'') The Departments use as their measure of significant economic impact on a substantial number of small entities a change in revenues of more than 3 to 5 percent.

As discussed in the Web Portal interim final rule (75 FR 24481), HHS examined the health insurance industry in depth in the Regulatory Impact Analysis we prepared for the proposed rule on establishment of the Medicare Advantage program (69 FR 46866, August 3, 2004). In that analysis, HHS determined that there were few if any insurance firms underwriting comprehensive health insurance policies (in contrast, for example, to travel insurance policies or dental discount policies) that fell below the size thresholds for ''small'' business established by the SBA. Currently, the SBA size threshold is $7 million in annual receipts for both health insurers (North American Industry Classification System, or NAICS, Code 524114) and TPAs (NAICS Code 524292).

Additionally, as discussed in the Medical Loss Ratio interim final rule (75 FR 74918), HHS used a data set created from 2009 National Association of Insurance Commissioners (NAIC) Health and Life Blank annual financial statement data to develop an updated estimate of the number of small entities that offer comprehensive major medical coverage in the individual and group markets. For purposes of that analysis, HHS used total Accident and Health (A&H) earned premiums as a proxy for annual receipts. HHS estimated that there were 28 small entities with less than $7 million in A&H earned premiums offering individual or group comprehensive major medical coverage; however, this estimate may overstate the actual number of small health insurance issuers offering such coverage, since it does not include receipts from these companies' other lines of business. These 28 small entities represent about 6.4 percent of the approximately 440 health insurers that are accounted for in this RIA. Based on this calculation, the Departments assume that there are an equal percentage of TPAs that are small entities. That is, 48 small entities represent about 6.4 percent of the approximately 750 TPAs that are accounted for in this RIA.

The Departments estimate that issuers and TPAs earning less than $50 million in annual premium revenue, including the 76 small entities mentioned above, would incur costs of approximately $15,000, $26,000, and $15,000 per issuer/TPA in 2011, 2012 and 2013, respectively. Numbers of this magnitude do not approach the amounts necessary to be considered a ''significant economic impact'' on firms with revenues in the order of millions of dollars. Additionally, as discussed earlier, the Departments believe that these estimates overstate the number of small entities that will be affected by the requirements in this proposed regulation, as well as the relative impact of these requirements on these entities, because the Departments have based their analysis on the affected entities' total A&H earned premiums (rather than their total annual receipts). Accordingly, the Departments have determined and certify that these proposed rules will not have a significant economic impact on a substantial number of small entities, and that a regulatory flexibility analysis is not required.

C. Special Analyses—Department of the Treasury

For purposes of the Department of the Treasury it has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these proposed regulations. It is hereby certified that the collections of information contained in this notice of proposed rulemaking will not have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Section 54.9815–2715 of the proposed regulations would require both group health insurance issuers and group health plans to distribute an SBC and notice of any material modifications to the plan that affect the information required in the SBC. Under these proposed regulations, if a health insurance issuer satisfies the obligations to distribute an SBC and a notice of modifications, those obligations are satisfied not just for the issuer but also for the group health plan. For group health plans maintained by small entities, it is anticipated that the health insurance issuer will satisfy these obligations for both the plan and the issuer in almost all cases. For this reason, these information collection requirements will not impose a significant impact on a substantial number of small entities. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

D. Unfunded Mandates Reform Act—Department of Labor and Department of Health and Human Services

Section 202 of the Unfunded Mandates Reform Act (UMRA) of 1995 that agencies assess anticipated costs and benefits before issuing any proposed rule that includes a Federal mandate that could result in expenditure in any one year by State, local or Tribal governments, in the aggregate, or by the private sector, of $100 million in 1995 dollars updated annually for inflation. In 2011, that threshold level is approximately $136 million. These proposed regulations include no mandates on State, local, or Tribal governments. These proposed regulations include directions to produce standardized consumer disclosures that will affect private sector firms (for example, health insurance issuers offering coverage in the individual and group markets, and third-party administrators providing administrative services to group health plans), but we tentatively conclude that these costs will not exceed the $136 million threshold. Thus, we tentatively conclude that these proposed regulations do not impose an unfunded mandate on State, local or Tribal governments or the private sector. Regardless, consistent with policy embodied in UMRA, this notice of proposed rulemaking has been designed to be the least burdensome alternative for State, local and Tribal governments, and the private sector while achieving the objectives of the Affordable Care Act.

E. Paperwork Reduction Act

1. Department of Labor and Department of the Treasury

Section 2715 of the PHS Act directs the Departments, in consultation with the National Association of Insurance Commissioners (NAIC) and a working group comprised of stakeholders, to ''develop standards for use by a group health plan and a health insurance issuer in compiling and providing to applicants, enrollees, and policyholders and certificate holders a summary of benefits and coverage explanation that accurately describes the benefits and coverage under the applicable plan or coverage.'' Plans and issuers are required to begin providing the disclosure (herein referred to as a ''summary of benefits and coverage'' or SBC) no later than March 23, 2012.

To implement this provision, collection of information requirements relate to the provision of the following:

- Summary of benefits and coverage.
- Coverage examples (as components of each SBC).
- A uniform glossary of health coverage and medical terms (uniform glossary).
- Notice of modifications.

In developing these collections of information, the Departments have incorporated the documents recommended by the NAIC, including the SBC template (with instructions, samples and a guide for coverage examples calculations to be used in completing the template) and the uniform glossary. These collection instruments were developed over a period of several months and agreed to by the entire NAIC working group and recommended to the Departments by the NAIC.

Currently, the Departments are soliciting public comments for 60 days concerning these disclosures. The Departments have submitted a copy of these interim final regulations to OMB in accordance with 44 U.S.C. 3507(d) for review of the information collections. The Departments and OMB are particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, by permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer for the Employee Benefits Security Administration either by fax to (202) 395–5806 or by e-mail to *oira_submission@omb.eop.gov.* A copy of the ICR may be obtained by contacting the PRA addressee: G. Christopher Cosby, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5718, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers. E-mail: *ebsa.opr@dol.gov.* ICRs submitted to OMB also are available at reginfo.gov (*http://www.reginfo.gov/public/do/PRAMain*).

The Departments estimate 858 respondents each year from 2011–2013. This estimate reflects approximately 220 issuers offering comprehensive major medical coverage in the small and large group markets, and approximately 638 third-party administrators (TPAs).[62]

[62] The Departments estimate that there are 440 issuers and 750 TPAs. Because the Department of Labor and the Department of the Treasury share the hour and cost burden for issuers and TPAs with the Department of Health and Human Services, the burden to produce the SBCs including Coverage Examples for group health plans is calculated using half the number of issuers (220) and 85% of the TPAs (638). While the group health plans could prepare their own SBCs including coverage examples, the Departments assume that SBCs

To account for variation in firm size, the Departments estimate a weighted burden on the basis of issuer's 2009 total earned premiums for comprehensive major medical coverage.[63] The Departments define small issuers as those with total earned premiums less than $50 million; medium issuers as those with total earned premiums between $50 million and $999 million; and large issuers as those with total earned premiums of $1 billion or more. Accordingly, the Departments estimate approximately 70 small, 115 medium, and 35 large issuers. Similarly, the Departments estimate approximately 204 small, 332 medium, and 102 large TPAs.

2011 Burden Estimate

While the disclosures in these proposed regulations are not required until March 2012, the Departments estimate a one-time administrative cost of about $36,000,000 across the industry and a total of about 680,000 burden hours to prepare for the provisions of these proposed regulations. This calculation is made assuming issuers and TPAs will need to implement two principal tasks: (1) Develop teams to analyze current workflow processes against the new rules and (2) make appropriate changes to IT systems and processes.

With respect to task (1), the Departments estimate about 97,000 burden hours and an equivalent cost of about $4,800,000. The Departments calculate these estimates as follows:[64]

TASK 1—ANALYZE CURRENT WORKFLOW AND NEW RULES

	Hourly wage rate	Small issuer/TPA		Medium issuer/TPA		Large issuer/TPA	
		Hours	Equivalent cost	Hours	Equivalent cost	Hours	Equivalent cost
IT Professionals	$53.26	36	$1,900	54	$2,900	72	$3,800
Benefits/Sales Professionals	41.94	40	1,700	60	2,500	80	3,400
Attorneys	85.44	4	340	6	510	8	680
Total per issuer/TPA		80	3,900	120	5,900	160	7,900
Total for all issuers/TPAs		22,000	1,100,000	53,000	2,600,000	22,000	1,100,000

With respect to task (2), the Departments estimate about 580,000 burden hours and an equivalent cost of about $31,000,000. The Departments calculate these estimates as follows:

TASK 2—IT CHANGES

	Hourly wage rate	Small issuer/TPA		Medium issuer/TPA		Large issuer/TPA	
		Hours	Equivalent cost	Hours	Equivalent cost	Hours	Equivalent Cost
IT Professionals	$53.26	480	$26,000	720	$38,000	960	$51,000
Total per issuer/TPA		480	26,000	720	38,000	960	51,000
Total for all issuers/TPAs		130,000	7,100,000	320,000	17,000,000	130,000	7,000,000

The Departments assume the total one-time administrative burden will be divided equally between 2011 and 2012. Thus, in 2011, the Departments estimate a one-time administrative cost of about $18,000,000 across the industry and about 340,000 hours. The Departments assume issuers and TPAs will incur no other costs in 2011 related to the proposed collection of information.

2012 Burden Estimate

The estimate hour and cost burden for the collections of information in 2012 are as follows:

- The Departments estimate that there will be about 77,000,000 SBC responses.
- The Departments assume that of the total number of SBC responses, 38% would be sent electronically in the small and large group markets. Accordingly, the Departments estimate that about 29,000,000 SBCs would be electronically distributed, and about 48,000,000 SBCs would be distributed in paper form. The Departments assume there are no costs associated with electronic disclosures; there are costs only with regard to paper disclosures.

Summary of Benefits and Coverage (not including coverage examples)—The estimated hour burden is about 820,000 hours, and the estimated total cost is about $30,000,000. The Departments calculate these estimates as follows:

including coverage examples would be prepared by service providers, *i.e.,* issuers and TPAs.

[63] The premium revenue data come from the 2009 NAIC financial statements, also known as ''Blanks,'' where insurers report information about their various lines of business.

[64] For the purposes of these and other estimates in this section III.E, the Departments again use the assumptions outlined above in section III.A.5.

TASK 1—EQUIVALENT COSTS FOR PRODUCING SBCS

	Hourly wage rate	Small issuer/TPA		Medium issuer/TPA		Large issuer/TPA	
		Hours	Equivalent cost	Hours	Equivalent cost	Hours	Equivalent cost
IT Professionals	$53.26	1.5	$80	1.5	$80	1.5	$80
Benefits/Sales Professionals	41.94	1.5	63	1.5	63	1.5	63
Financial Managers	75.32	0.5	38	0.5	38	0.5	38
Attorneys	85.44	0.5	43	0.5	43	0.5	43
Total per issuer/TPA		4	220	4	220	4	220
Total for all issuers/TPAs		1100	61,000	1800	100,000	550	31,000

TASK 2—EQUIVALENT COSTS FOR DISTRIBUTING SBCS

	Hourly wage rate	Hours per SBC	Total number of SBCs	Total hours	Total equivalent cost
Clerical Staff	$29.15	0.017	48,000,000	820,000	$24,000,000

TASK 1—COST BURDEN FOR PRINTING SBCS

	Cost per SBC	Total SBCs	Total cost burden
Printing Costs	$0.12	48,000,000	$5,800,0000

Task 2: Coverage Examples—The estimated hour burden is about 100,000 hours, and the estimated total cost is about $8,700,000. The Departments calculate these estimates as follows:

TASK 2—EQUIVALENT COSTS FOR PRODUCING COVERAGE EXAMPLES

	Hourly wage rate	Small issuer/TPA		Medium issuer/TPA		Large issuer/TPA	
		Hours	Equivalent cost	Hours	Equivalent cost	Hours	Equivalent cost
IT Professionals	$53.26	45	$2,400	45	$2,400	45	$2,400
Benefits/Sales Professionals	41.94	45	1,900	45	1,900	45	1,900
Financial Managers	75.32	15	1,100	15	1,100	15	1,100
Attorneys	85.44	15	1,300	15	1,300	15	1,300
Total per issuer/TPA		120	6,700	120	6,700	120	6,700
Total for all issuers/TPAs		33,000	1,900,000	53,000	3,000,000	16,000	900,000

TASK 2—COST BURDEN FOR PRINTING COVERAGE EXAMPLES

	Printing cost per CE	Total CEs printed	Total cost burden
Printing Costs	$0.06	48,000,000	$2,900,000

Task 3: Glossary Requests—The Departments assume that in 2012, issuers and TPAs will begin responding to glossary requests to covered individuals, and that 2.5% of covered individuals, who receive paper SBCs, will request glossaries. The Departments further estimate that the burden and cost of providing the notices to be 2.5% of the burden and cost of distributing paper SBCs, plus an additional cost burden of $0.49 for each glossary (including $0.44 for first-class postage and $0.05 for supply costs). Accordingly, in 2012, the Departments estimate a total cost of about $1,300,000 and 21,000 burden hours associated with about 1,200,000 glossary requests.

Task 4: One-Time Administrative Costs—As mentioned above, the Departments estimate a one-time administrative cost of about $36,000,000 across the industry and a total of about 680,000 burden hours, and assume this burden will be equally divided between 2011 and 2012. Thus, in 2012, the Departments estimate a one-time administrative cost of about $18,000,000 across the industry and about 340,000 burden hours.

The total 2012 burden estimate is about $58,000,000. The total number of burden hours is about 1,300,000.

2013 Burden Estimate

Task 1: Summary of Benefits and Coverage (not including coverage examples)—The number of SBC responses is assumed to remain constant. Thus, in 2013, the Departments again estimate a total cost of about $30,000,000 and about 820,000 burden hours for SBCs (not including coverage examples).

Task 2: Coverage Examples—The Departments again estimate a total cost of about $8,700,000 and 100,000 burden hours for coverage examples.

Task 3: Notices of Modifications—The Departments assume that in 2013, issuers and TPAs would send notices of modifications to covered individuals, and that 2% of covered individuals would receive such notice. The Departments further estimate that the burden and cost of providing the notices to be 2% of the combined burden and cost of the SBCs including the coverage examples, plus an additional cost burden for $0.49 for each paper notice (including $0.44 for first-class postage and $0.05 for supply costs). Accordingly, in 2013, the Departments estimate a total cost of about $1,400,000 and 18,000 burden hours associated with about 1,500,000 notices of modification.

Task 4: Glossary Requests—The Departments assume that in 2013, issuers and TPAs will again respond to glossary requests to covered individuals, and that 5% of covered individuals, who receive paper SBCs, will request glossaries. The Departments further estimate that the burden and cost of providing the glossaries to be 5% of the burden and cost of distributing paper SBCs, plus an additional cost burden for $0.49 for each glossary (including $0.44 for first-class postage and $0.05 for supply costs). Accordingly, in 2013, the Departments estimate a total cost of about $2,700,000 and 41,000 burden hours associated with 2,400,000 glossary requests.

Task 5: Maintenance Administrative Costs—In 2013, the Departments assume that issuers and TPAs will need to make updates to address changes in standards, and, thus, incur 15% of the one-time administrative burden. Accordingly, the estimated hour burden is about 100,000 hours, and the estimated total cost is about $5,400,000. The Departments calculate these estimates as follows:

	Hourly wage rate	Small issuer/TPA		Medium issuer/TPA		Large issuer/TPA	
		Hours	Equivalent cost	Hours	Equivalent cost	Hours	Equivalent cost
IT Professionals	$53.26	46.2	$2,500	69.3	$3,700	92.4	$4,900
Benefits/Sales Professionals	41.94	33.6	1,800	50.4	2,700	67.2	3,600
Attorneys	85.44	4.2	220	6.3	340	8.4	450
Total per issuer/TPA		84	4,500	126	6,700	168	8,900
Total for all issuers/TPAs		23,000	1,200,000	56,000	3,000,000	23,000	1,200,000

The total 2013 cost estimate is about $48,000,000.The total number of burden hours is about 1,100,000 hours.

The Departments note that persons are not required to respond to, and generally are not subject to any penalty for failing to comply with, an ICR unless the ICR has a valid OMB control number.

The 2012–2013 paperwork burden estimates are summarized as follows:

Type of Review: New collection.

Agencies: Employee Benefits Security Administration, Department of Labor; Internal Revenue Service, U.S. Department of the Treasury.

Title: Affordable Care Act Uniform Explanation of Coverage Documents.

OMB Number: XXXX–XXX; XXXX–XXXX.

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

Total Respondents: 858.

Total Responses: 80,000,000.

Frequency of Response: On-going.

Estimated Total Annual Burden Hours: 600,000 hours (Employee Benefits Security Administration); 600,000 hours (Internal Revenue Service).

Estimated Total Annual Burden Cost: $5,100,000 (Employee Benefits Security Administration); $5,100,000 (Internal Revenue Service).

2. Department of Health and Human Services

The Department estimates 333 respondents each year from 2011–2013. This estimate reflects the approximately 220 issuers offering comprehensive major medical coverage in the individual market and to fully-insured non-Federal governmental plans, and 113 TPAs acting as service providers for self-insured non-Federal governmental plans.[65]

To account for variation in firm size, the Department estimates a weighted burden on the basis of issuer's 2009 total earned premiums for comprehensive major medical coverage.[66] The Department defines small issuers as those with total earned premiums less than $50 million; medium issuers as those with total earned premiums between $50 million and $999 million; and large issuers as those with total earned premiums of $1 billion or more. Accordingly, the

[65] The Department estimates that there are 440 issuers and 750 TPAs. Because the Department shares the hour and cost burden for issuers with the Department of Labor and the Department of the Treasury, the burden to produce the SBCs including coverage examples for non-Federal governmental plans and issuers in the individual market is calculated using half the number of issuers (221) and 15% of TPAs (113). While non-Federal governmental plans could prepare their own SBCs including Coverage Examples, the Department assumes that SBCs including coverage examples would be prepared by service providers, *i.e.,* issuers and TPAs.

[66] The premium revenue data come from the 2009 NAIC financial statements, also known as ''Blanks,'' where insurers report information about their various lines of business.

Department estimates approximately 70 small, 115 medium, and 35 large issuers. Similarly, the Department estimates approximately 36 small, 59 medium, and 18 large TPAs.

2011 Burden Estimate

While the disclosures in these proposed regulations are not required until March 2012, the Department estimates a one-time administrative cost of about $14,000,000 across the industry and 270,000 burden hours to prepare for the provisions of these proposed regulations. This calculation is made assuming issuers and TPAs will need to implement two principal tasks: (1) Develop teams to analyze current workflow processes against the new standards and (2) make appropriate changes to IT systems and processes.

With respect to task (1), the Department estimates about 38,000 burden hours, and an equivalent cost of about $1,900,000. The Department calculates these estimates as follows: [67]

TASK 1—ANALYZE CURRENT WORKFLOW AND NEW RULES

	Hourly wage rate	Small issuer/TPA		Medium issuer/TPA		Large issuer/TPA	
		Hours	Equivalent cost	Hours	Equivalent cost	Hours	Equivalent cost
IT Professionals	$53.26	36	$1,900	54	$2,900	72	$3,800
Benefits/Sales Professionals	41.94	40	1,700	60	2,500	80	3,400
Attorneys	85.44	4	340	6	510	8	680
Total per issuer/TPA		80	3,900	120	5,900	160	7,900
Total for all issuers/TPAs		8,500	420,000	21,000	1,000,000	8,500	450,000

With respect to task (2), the Department estimates 230,000 burden hours, and an equivalent cost of out $12,000,000. The Department calculates these estimates as follows:

TASK 2—IT CHANGES

	Hourly wage rate	Small issuer/TPA		Medium issuer/TPA		Large issuer/TPA	
		Hours	Equivalent cost	Hours	Equivalent cost	Hours	Equivalent cost
IT Professionals	$53.26	480	$26,000	720	$38,000	960	$51,000
Total per issuer/TPA		480	26,000	720	38,000	960	51,000
Total for all issuers/TPAs		51,000	2,700,000	125,000	6,700,000	51,000	2,700,000

The Department assumes the total one-time administrative burden will be divided equally between 2011 and 2012. Thus, in 2011, the Department estimates a one-time administrative cost of about $7,000,000 across the industry and 135,000 burden hours. The Department assumes issuers and TPAs will incur no other costs in 2011 related to the proposed collection of information.

2012 Burden Estimate

The hour and cost burden for the collections of information are as follows:

- The Department estimates that there will be about 13,000,000 SBC responses in 2012.
- The Department assumes that 38 percent of the SBCs would be sent electronically in the group market, and 70 percent of the SBCs would be sent electronically in the individual market. Accordingly, the Department estimates that about 5,900,000 SBCs would be electronically distributed, and about 7,400,000 SBCs would be distributed in paper form. The Department assumes there are no costs associated with electronic disclosures, and there are costs only with regard to paper disclosures.

Task 1: Summary of benefits and coverage (not including coverage examples)—The estimated hour burden is about 170,000 hours, and the estimated total cost is about $5,900,000. The Department calculates these estimates as follows:

TASK 1—EQUIVALENT COSTS FOR PRODUCING SBCS

	Hourly wage rate	Small issuer/TPA		Medium issuer/TPA		Large issuer/TPA	
		Hours	Equivalent cost	Hours	Equivalent cost	Hours	Equivalent cost
IT Professionals	$53.26	1.5	$80	1.5	$80	1.5	$80
Benefits/Sales Professionals	41.94	1.5	63	1.5	63	1.5	63
Financial Managers	75.32	0.5	38	0.5	38	0.5	38

[67] For the purposes of these and other estimates in this section III.E, the Departments again use the assumptions outlined above in section III.A.5.

TASK 1—EQUIVALENT COSTS FOR PRODUCING SBCS—Continued

	Hourly wage rate	Small issuer/TPA		Medium issuer/TPA		Large issuer/TPA	
		Hours	Equivalent cost	Hours	Equivalent cost	Hours	Equivalent cost
Attorneys	85.44	0.5	43	0.5	43	0.5	43
Total per issuer/TPA		4	220	4	220	4	220
Total for all issuers/TPAs		420	24,000	700	39,000	200	12,000

TASK 1—EQUIVALENT COSTS FOR DISTRIBUTING SBCS

	Hourly wage rate	Hours per SBC	Total number of SBCs	Total hours	Total equivalent cost
Clerical Staff, Individual Market	$29.15	0.033	2,700,000	89,000	$2,600,000
Clerical, Group Market	29.15	0.017	4,700,000	80,000	2,300,000
Total			7,400,000	170,000	$4,900,000

TASK 1—COST BURDEN FOR PRINTING SBCS

	Cost per SBC	Total SBCs	Cost burden
Printing Costs	$0.12	7,400,000	$890,000

Task 2: Coverage Examples—The estimated hour burden is about 40,000 hours, and the estimated total cost is about $2,700,000. The Department calculates these estimates as follows:

TASK 2—EQUIVALENT COSTS FOR PRODUCING COVERAGE EXAMPLES

	Hourly wage rate	Small issuer/TPA		Medium issuer/TPA		Large issuer/TPA	
		Hours	Equivalent cost	Hours	Equivalent cost	Hours	Equivalent cost
IT Professionals	$53.26	45	$2,400	45	$2,400	45	$2,400
Benefits/Sales Professionals	41.94	45	1,900	45	1,900	45	1,900
Financial Managers	75.32	15	1,100	15	1,100	15	1,100
Attorneys	85.44	15	1,300	15	1,300	15	1,300
Total per issuer/TPA		120	6,700	120	6,700	120	6,700
Total for all issuers/TPAs		13,000	710,000	21,000	1,200,000	6,400	350,000

TASK 2—COST BURDEN FOR PRINTING COVERAGE EXAMPLES

	Printing cost per CE	Total CEs printed	Total cost burden
Printing Costs	$0.06	7,400,000	$440,000

Task 3: Glossary Requests—The Department assumes that in 2012, issuers and TPAs will begin responding to glossary requests to covered individuals, and that 2.5% of covered individuals, who receive paper SBCs, will request glossaries. The Departments further estimate that the burden and cost of providing the glossaries to be 2.5% of the burden and cost of distributing paper SBCs, plus an additional cost burden of $0.49 for each glossary (including $0.44 for first-class postage and $0.05 for supply costs). Accordingly, in 2012, the Department estimates a total cost of about $240,000 and 4,300 burden hours associated with about 190,000 glossary requests.

Task 4: One-Time Administrative Costs: As mentioned above, the Department estimates a one-time administrative cost of about $14,000,000 across the industry and a total of 270,000 burden hours, and assumes this burden will be equally divided between 2011 and 2012. Thus, in 2012, the Department estimates a one-time administrative cost of about $7,000,000 across the industry and 135,000 burden hours.

The total 2012 burden estimate is about $16,000,000. The total number of burden hours is 350,000.

2013 Burden Estimate

Task 1: Summary of benefits and coverage (not including coverage examples)—The number of SBC responses is assumed to remain constant. Thus, in 2013, the Department again estimates a total cost of about $5,900,000 and 170,000 burden hours for SBCs (not including coverage examples).

Task 2: Coverage Examples—In 2013, the Department again estimates a total cost of about $2,700,000 and 40,320 burden hours for coverage examples.

Task 3: Notices of Modifications—The Department assumes that in 2013, issuers will begin sending notices of modifications to covered individuals, and that 2% of covered individuals will receive such notice. The Department further estimates that the burden and cost of providing the notices to be 2% of the combined burden and cost of the SBCs including the coverage examples, plus an additional cost burden for $0.49 for each paper notice (including $0.44 for first-class postage and $0.05 for supply costs). Accordingly, in 2013, the Department estimates a total cost of about $300,000 and 4,200 burden hours associated with about 260,000 notices of modification.

Task 4: Glossary Requests—The Department assumes that in 2013, issuers and TPAs will again respond to glossary requests to covered individuals, and that 5% of covered individuals, who receive paper SBCs, will request glossaries. The Department further estimates that the burden and cost of providing the glossaries to be 5% of the burden and cost of distributing paper SBCs, plus an additional cost burden of $0.49 for each glossary (including $0.44 for first-class postage and $0.05 for supply costs). Accordingly, in 2013, the Department estimates a total cost of $470,000 and 8,500 burden hours associated with 370,000 glossary requests.

Task 5: Maintenance Administrative Costs—In 2013, the Departments assume that issuers and TPAs will need to make updates to address changes in standards, and, thus, incur 15% of the one-time administrative burden. Accordingly, the estimated hour burden is about 40,000 hours, and the estimated total cost is about $2,000,000. The Departments calculate these estimates as follows:

	Hourly wage rate	Small issuer/TPA		Medium issuer/TPA		Large issuer/TPA	
		Hours	Equivalent cost	Hours	Equivalent cost	Hours	Equivalent cost
IT Professionals	$53.26	46.2	$2,500	69.3	$3,700	92.4	$4,900
Benefits/Sales Professionals	41.94	33.6	1,800	50.4	2,700	67.2	3,600
Attorneys	85.44	4.2	220	6.3	340	8.4	450
Total per issuer/TPA		84	4,500	126	6,700	168	8,900
Total for all issuers/TPAs		8,900	470,000	22,000	1,100,000	8,900	470,000

The total 2013 cost estimate is about $11,000,000. The total number of burden hours is about 260,000 hours.

The Department notes that persons are not required to respond to, and generally are not subject to any penalty for failing to comply with, an ICR unless the ICR has a valid OMB control number.

The 2012–2013 paperwork burden estimates are summarized as follows:

Type of Review: New collection.

Agency: Department of Health and Human Services.

Title: Affordable Care Act Uniform Explanation of Coverage Documents.

OMB Number: 0938–New.

Affected Public: Business; State, Local, or Tribal Governments.

Total Respondents: 333.

Total Responses: 13,000,000.

Frequency of Response: On-going.

Estimated Total Annual Burden Hours: 310,000 hours.

Estimated Total Annual Burden Cost: $1,600,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site at *http://www.cms.gov/Paperwork ReductionActof1995/PRAL/list.asp#TopOfPage* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office at 410–786–1326.

If you comment on this information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, *Attention:* CMS Desk Officer, CMS–9982–P. *Fax:* 202–395–5806; or *E-mail: OIRA_submission@omb.eop.gov.*

E. Federalism Statement—Department of Labor and Department of Health and Human Services

Executive Order 13132 outlines fundamental principles of federalism, and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have ''substantial direct effects'' on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies promulgating regulations that have federalism implications must consult with State and local officials and describe the extent of their consultation and the nature of the concerns of State and local officials in the preamble to the regulation.

In the Departments' view, these proposed rules have federalism implications, because it would have direct effects on the States, the relationship between national governments and States, or on the distribution of power and responsibilities among various levels of government relating to the disclosure of health insurance coverage information to consumers. Under these proposed rules, all group health plans and health insurance issuers offering group or individual health insurance coverage, including self-funded non-Federal

governmental plans as defined in section 2791 of the PHS Act, would be required to follow uniform standards for compiling and providing a summary of benefits and coverage to consumers. Such Federal standards developed under PHS Act section 2715(a) would preempt any related State standards that require a summary of benefits and coverage that provides less information to consumers than that required to be provided under PHS Act section 2715(a).

In general, through section 514, ERISA supersedes State laws to the extent that they relate to any covered employee benefit plan, and preserves State laws that regulate insurance, banking, or securities. While ERISA prohibits States from regulating a plan as an insurance or investment company or bank, the preemption provisions of section 731 of ERISA and section 2724 of the PHS Act (implemented in 29 CFR 2590.731(a) and 45 CFR 146.143(a)) apply so that the HIPAA requirements (including those of the Affordable Care Act) are not to be ''construed to supersede any provision of State law which establishes, implements, or continues in effect any standard or requirement solely relating to health insurance issuers in connection with group health insurance coverage except to the extent that such standard or requirement prevents the application of a requirement'' of a Federal standard. The conference report accompanying HIPAA indicates that this is intended to be the ''narrowest'' preemption of State laws (See House Conf. Rep. No. 104–736, at 205, reprinted in 1996 U.S. Code Cong. & Admin. News 2018). States may continue to apply State law requirements except to the extent that such requirements prevent the application of the Affordable Care Act requirements that are the subject of this rulemaking. Accordingly, States have significant latitude to impose requirements on health insurance issuers that are more restrictive than the Federal law. However, under these proposed rules, a State would not be allowed to impose a requirement that modifies the summary of benefits and coverage required to be provided under PHS Act section 2715(a), because it would prevent the application of this proposed rule's uniform disclosure requirement.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have federalism implications or limit the policy making discretion of the States, the Departments have engaged in efforts to consult with and work cooperatively with affected States, including consulting with, and attending conferences of, the National Association of Insurance Commissioners and consulting with State insurance officials on an individual basis. It is expected that the Departments will act in a similar fashion in enforcing the Affordable Care Act, including the provisions of section 2715 of the PHS Act. Throughout the process of developing these proposed regulations, to the extent feasible within the specific preemption provisions of HIPAA as it applies to the Affordable Care Act, the Departments have attempted to balance the States' interests in regulating health insurance issuers, and Congress' intent to provide uniform minimum protections to consumers in every State. By doing so, it is the Departments' view that they have complied with the requirements of Executive Order 13132.

Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, and by the signatures affixed to this proposed rule, the Departments certify that the Employee Benefits Security Administration and the Centers for Medicare & Medicaid Services have complied with the requirements of Executive Order 13132 for the attached proposed rule in a meaningful and timely manner.

IV. Statutory Authority

The Department of the Treasury proposed regulations are proposed to be adopted pursuant to the authority contained in sections 7805 and 9833 of the Code.

The Department of Labor proposed regulations are proposed to be adopted pursuant to the authority contained in 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1185d, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Public Law 104–191, 110 Stat. 1936; sec. 401(b), Public Law 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Public Law 110–343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Public Law 111–148, 124 Stat. 119, as amended by Public Law 111–152, 124 Stat. 1029; Secretary of Labor's Order 3–2010, 75 FR 55354 (September 10, 2010).

The Department of Health and Human Services proposed regulations are proposed to be adopted pursuant to the authority contained in sections 2701 through 2763, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

List of Subjects

26 CFR Part 54

Excise taxes, Health care, Health insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2590

Continuation coverage, Disclosure, Employee benefit plans, Group health plans, Health care, Health insurance, Medical child support, Reporting and recordkeeping requirements.

45 CFR Part 147

Health care, Health insurance, Reporting and recordkeeping requirements, and State regulation of health insurance.

Sarah Hall Ingram,

Acting Deputy Commissioner for Services and Enforcement, Internal Revenue Service.

Signed this 15th day of August, 2011.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

Dated: July 28, 2011.

Donald Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Dated: August 9, 2011.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Chapter I

Accordingly, 26 CFR parts 54 and 602 are proposed to be amended as follows:

PART 54—PENSION EXCISE TAXES

Paragraph 1. The authority citation for Part 54 is amended by adding an entry for § 54.9815–2715 in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Section 54.9815–2715 also issued under 26 U.S.C. 9833.

Par. 2. Section 54.9815–2715 is added to read as follows:

§ 54.9815–2715 Summary of benefits and coverage and uniform glossary.

(a) *Summary of benefits and coverage*—(1) *In general.* A group health plan (and its administrator as defined in section 3(16)(A) of ERISA), and a health insurance issuer offering group health insurance coverage, is required to provide a written summary of benefits and coverage (SBC) for each benefit package without charge to entities and individuals described in this paragraph

(a)(1) in accordance with the rules of this section.

(i) *By a group health insurance issuer to a group health plan*—(A) A health insurance issuer offering group health insurance coverage must provide the SBC to a group health plan (or its sponsor) upon application or request for information about the health coverage as soon as practicable following the request, but in no event later than seven days following the request. If an SBC is provided upon request for information about health coverage and the plan (or its sponsor) subsequently applies for health coverage, a second SBC must be provided under this paragraph (a)(1)(i)(A) only if the information required to be in the SBC has changed.

(B) If there is any change in the information required to be in the SBC before the coverage is offered, or before the first day of coverage, the issuer must update and provide a current SBC to the plan (or its sponsor) no later than the date of the offer (or no later than the first day of coverage, as applicable).

(C) If the issuer renews or reissues the policy, certificate, or contract of insurance (for example, for a succeeding policy year), the issuer must provide a new SBC when the policy, certificate, or contract is renewed or reissued.

(*1*) In the case of renewal or reissuance, if written application is required for renewal (in either paper or electronic form), the SBC must be provided no later than the date the materials are distributed.

(*2*) If renewal or reissuance is automatic, the SBC must be provided no later than 30 days prior to the first day of the new policy year.

(D) If a group health plan (or its sponsor) requests an SBC from a health insurance issuer offering group health insurance coverage, it must be provided as soon as practicable, but in no event later than seven days following the request for an SBC.

(ii) *By a group health insurance issuer and a group health plan to participants and beneficiaries*—(A) A group health plan (including its administrator, as defined under section 3(16) of ERISA), and a health insurance issuer offering group health insurance coverage, must provide an SBC to a participant or beneficiary (as defined under sections 3(7) and 3(8) of ERISA), and consistent with the rules of paragraph (a)(1)(iii) of this section) with respect to each benefit package offered by the plan or issuer for which the participant or beneficiary is eligible.

(B) The SBC must be provided as part of any written application materials that are distributed by the plan or issuer for enrollment. If the plan does not distribute written application materials for enrollment, the SBC must be distributed no later than the first date the participant is eligible to enroll in coverage for the participant or any beneficiaries.

(C) If there is any change to the information required to be in the SBC before the first day of coverage, the plan or issuer must update and provide a current SBC to a participant or beneficiary no later than the first day of coverage.

(D) The plan or issuer must provide the SBC to special enrollees (as described in § 54.9801–6) within seven days of a request for enrollment pursuant to a special enrollment right.

(E) If the plan or issuer requires participants or beneficiaries to renew in order to maintain coverage (for example, for a succeeding plan year), the plan or issuer must provide a new SBC when the coverage is renewed.

(*1*) If written application is required for renewal (in either paper or electronic form), the SBC must be provided no later than the date the materials are distributed.

(*2*) If renewal is automatic, the SBC must be provided no later than 30 days prior to the first day of coverage under the new plan year.

(F) A plan or issuer must provide the SBC to participants or beneficiaries upon request, as soon as practicable, but in no event later than seven days following the request.

(iii) *Special rules to prevent unnecessary duplication with respect to group health coverage*—(A) An entity required to provide an SBC under paragraph (a)(1) of this section with respect to an individual satisfies that requirement if another party provides the SBC, but only to the extent that the SBC is timely and complete in accordance with the other rules of this section. Therefore, for example, in the case of a group health plan funded through an insurance policy, the plan satisfies the requirement to provide an SBC with respect to an individual if the issuer provides a timely and complete SBC to the individual.

(B) If a participant and any beneficiaries are known to reside at the same address, and a single SBC is provided to that address, the requirement to provide the SBC is satisfied with respect to all individuals residing at that address. If a beneficiary's last known address is different than the participant's last known address, a separate SBC is required to be provided to the beneficiary at the beneficiary's last known address.

(C) With respect to a group health plan that offers multiple benefit packages, the plan or issuer is required to provide a new SBC automatically upon renewal only with respect to the benefit package in which a participant or beneficiary is enrolled; SBCs are not required to be provided automatically with respect to benefit packages in which the participant or beneficiary are not enrolled. However, if a participant or beneficiary requests an SBC with respect to another benefit package (or more than one other benefit package) for which the participant or beneficiary is eligible, the SBC (or SBCs, in the case of a request for SBCs relating to more than one benefit package) must be provided upon request in accordance with the rules of paragraph (a)(1)(ii) of this section, which requires the SBC to be provided as soon as practicable, but in no event later than seven days following the request.

(2) *Content*—(i) *In general.* The SBC must include the following:

(A) Uniform definitions of standard insurance terms and medical terms so that consumers may compare health coverage and understand the terms of (or exceptions to) their coverage;

(B) A description of the coverage, including cost sharing, for each category of benefits identified by the Secretary in guidance;

(C) The exceptions, reductions, and limitations of the coverage;

(D) The cost-sharing provisions of the coverage, including deductible, coinsurance, and copayment obligations;

(E) The renewability and continuation of coverage provisions;

(F) Coverage examples, in accordance with the rules of paragraph (a)(2)(ii) of this section;

(G) With respect to coverage beginning on or after January 1, 2014, a statement about whether the plan or coverage provides minimum essential coverage as defined under section 5000A(f) and whether the plan's or coverage's share of the total allowed costs of benefits provided under the plan or coverage meets applicable requirements;

(H) A statement that the SBC is only a summary and that the plan document, policy, or certificate of insurance should be consulted to determine the governing contractual provisions of the coverage;

(I) Contact information for questions and obtaining a copy of the plan document or the insurance policy, certificate, or contract of insurance (such as a telephone number for customer service and an Internet address for obtaining a copy of the plan

document or the insurance policy, certificate, or contract of insurance);

(J) For plans and issuers that maintain one or more networks of providers, an Internet address (or similar contact information) for obtaining a list of network providers;

(K) For plans and issuers that use a formulary in providing prescription drug coverage, an Internet address (or similar contact information) for obtaining information on prescription drug coverage;

(L) An Internet address for obtaining the uniform glossary, as described in paragraph (c) of this section; and

(M) Premiums (or in the case of a self-insured group health plan, cost of coverage).

(ii) *Coverage examples.* The SBC must include coverage examples that illustrate benefits provided under the plan or coverage for common benefits scenarios (including pregnancy and serious or chronic medical conditions) that are identified by the Secretary in accordance with the following:

(A) *Number of examples.* The Secretary may identify up to six coverage examples that may be required in an SBC.

(B) *Benefits scenarios.* For purposes of this section, a benefits scenario is a hypothetical situation, consisting of a sample treatment plan for a specified medical condition during a specific period of time, based on recognized clinical practice guidelines available through the National Guideline Clearinghouse, Agency for Healthcare Research and Quality. The Secretary will specify, in guidance, the types of services, dates of service, applicable billing codes, and allowed charges for each claim in the benefits scenario.

(C) *Demonstration of benefit provided.* To demonstrate benefits provided under the plan or coverage, a plan or issuer simulates how claims would be processed under the scenarios provided by the Secretary to generate an estimate of cost sharing a consumer could expect to pay under the benefit package. The demonstration of benefits will take into account any cost sharing, excluded benefits, and other limitations on coverage, as described by the Secretary in guidance.

(3) *Appearance.* A group health plan and a health insurance issuer must provide an SBC as a stand-alone document in the form authorized by the Secretary and completed in accordance with the instructions for completing the SBC that are authorized by the Secretary in guidance. The SBC must be presented in a uniform format, use terminology understandable by the average plan enrollee, not exceed four double-sided pages in length, and not include print smaller than 12-point font.

(4) *Form*—(i) An SBC provided by an issuer offering group health insurance coverage to a plan (or its sponsor), may be provided in paper form. Alternatively, the SBC may be provided electronically (such as e-mail or an Internet posting) if the following three conditions are satisfied—

(A) The format is readily accessible by the plan (or its sponsor);

(B) The SBC is provided in paper form free of charge upon request, and

(C) If the electronic form is an Internet posting, the issuer timely advises the plan (or its sponsor) in paper form or e-mail that the documents are available on the Internet and provides the Internet address.

(ii) An SBC provided by a plan or issuer to a participant or beneficiary may be provided in paper form. Alternatively, the SBC may be provided electronically if the requirements of 29 CFR 2520.104b–1 are met.

(5) *Language.* A group health plan or health insurance issuer must provide the SBC in a culturally and linguistically appropriate manner. For purposes of this paragraph (a)(5), a plan or issuer is considered to provide the SBC in a culturally and linguistically appropriate manner if the thresholds and standards of § 54.9815–2719T(e) are met as applied to the SBC.

(b) *Notice of modifications.* If a group health plan, or health insurance issuer offering group health insurance coverage, makes any material modification (as defined under section 102 of ERISA) in any of the terms of the plan or coverage that would affect the content of the SBC, that is not reflected in the most recently provided SBC, and that occurs other than in connection with a renewal or reissuance of coverage, the plan or issuer must provide notice of the modification to enrollees not later than 60 days prior to the date on which such modification will become effective. The notice of modification must be provided in a form that is consistent with the rules of paragraph (a)(4) of this section.

(c) *Uniform glossary*—(1) *In general.* A group health plan, and a health insurance issuer offering group health insurance coverage, must make available to participants and beneficiaries the uniform glossary described in paragraph (c)(2) of this section in accordance with the appearance and format requirements of paragraphs (c)(3) and (c)(4) of this section.

(2) *Health-coverage-related terms and medical terms.* The uniform glossary must provide uniform definitions, specified by the Secretary in guidance, for the following health-coverage-related terms and medical terms:

(i) Allowed amount, appeal, balance billing, co-insurance, complications of pregnancy, co-payment, deductible, durable medical equipment, emergency medical condition, emergency medical transportation, emergency room care, emergency services, excluded services, grievance, habilitation services, health insurance, home health care, hospice services, hospitalization, hospital outpatient care, in-network co-insurance, in-network co-payment, medically necessary, network, non-preferred provider, out-of-network co-insurance, out-of-network co-payment, out-of-pocket limit, physician services, plan, preauthorization, preferred provider, premium, prescription drug coverage, prescription drugs, primary care physician, primary care provider, provider, reconstructive surgery, rehabilitation services, skilled nursing care, specialist, usual customary and reasonable (UCR), and urgent care; and

(ii) Such other terms as the Secretary determines are important to define so that individuals and employers may compare and understand the terms of coverage and medical benefits (including any exceptions to those benefits), as specified in guidance.

(3) *Appearance.* A group health plan, and a health insurance issuer, must provide the uniform glossary with the appearance authorized in guidance, ensuring that the uniform glossary is presented in a uniform format and utilizes terminology understandable by the average plan enrollee.

(4) *Form and manner.* A plan or issuer must make the uniform glossary described in this paragraph (c) available upon request, in either paper or electronic form (as requested), within seven days of the request. (Under the rules of paragraph (a) of this section, the form authorized in guidance for the SBC will disclose to participants and beneficiaries their rights to request a copy of the uniform glossary.)

(d) *Preemption.* With respect to the standards for providing an SBC required under paragraph (a) of this section, State laws that require a health insurance issuer to provide an SBC that supplies less information than required under paragraph (a) of this section are preempted.

(e) *Failure to provide.* A group health plan or health insurance issuer that willfully fails to provide information required under this section to a participant or beneficiary is subject to a fine of not more than $1,000 for each such failure. A failure with respect to each participant or beneficiary

constitutes a separate offense for purposes of this paragraph (e).

(f) *Applicability date.* This section is applicable beginning March 23, 2012. *See* § 54.9815–1251T(d), providing that this section applies to grandfathered health plans.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 4. Section 602.101(b) is amended by adding the following entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
54.9815–2715	1545–
* * * * *	

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Chapter XXV

29 CFR part 2590 is proposed to be amended as follows:

PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLANS

1. The authority citation for part 2590 continues to read as follows:

Authority: 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1185d, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Pub. L.104–191, 110 Stat. 1936; sec. 401(b), Pub. L. 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Pub. L. 110–343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Pub. L. 111–148, 124 Stat. 119, as amended by Pub. L. 111–152, 124 Stat. 1029; Secretary of Labor's Order 3–2010, 75 FR 55354 (September 10, 2010).

Subpart C—Other Requirements

2. Section 2590.715–2715 is added to Subpart C to read as follows:

§ 2590.715–2715 Summary of benefits and coverage and uniform glossary.

(a) *Summary of benefits and coverage*—(1) *In general.* A group health plan (and its administrator as defined in section 3(16)(A) of ERISA), and a health insurance issuer offering group health insurance coverage, is required to provide a written summary of benefits and coverage (SBC) for each benefit package without charge to entities and individuals described in this paragraph (a)(1) in accordance with the rules of this section.

(i) *By a group health insurance issuer to a group health plan*—(A) A health insurance issuer offering group health insurance coverage must provide the SBC to a group health plan (or its sponsor) upon application or request for information about the health coverage as soon as practicable following the request, but in no event later than seven days following the request. If an SBC is provided upon request for information about health coverage and the plan (or its sponsor) subsequently applies for health coverage, a second SBC must be provided under this paragraph (a)(1)(i)(A) only if the information required to be in the SBC has changed.

(B) If there is any change in the information required to be in the SBC before the coverage is offered, or before the first day of coverage, the issuer must update and provide a current SBC to the plan (or its sponsor) no later than the date of the offer (or no later than the first day of coverage, as applicable).

(C) If the issuer renews or reissues the policy, certificate, or contract of insurance (for example, for a succeeding policy year), the issuer must provide a new SBC when the policy, certificate, or contract is renewed or reissued.

(*1*) In the case of renewal or reissuance, if written application is required for renewal (in either paper or electronic form), the SBC must be provided no later than the date the materials are distributed.

(*2*) If renewal or reissuance is automatic, the SBC must be provided no later than 30 days prior to the first day of the new policy year.

(D) If a group health plan (or its sponsor) requests an SBC from a health insurance issuer offering group health insurance coverage, it must be provided as soon as practicable, but in no event later than seven days following the request for an SBC.

(ii) *By a group health insurance issuer and a group health plan to participants and beneficiaries*—(A) A group health plan (including its administrator, as defined under section 3(16) of ERISA), and a health insurance issuer offering group health insurance coverage, must provide an SBC to a participant or beneficiary (as defined under sections 3(7) and 3(8) of ERISA), and consistent with the rules of paragraph (a)(1)(iii) of this section) with respect to each benefit package offered by the plan or issuer for which the participant or beneficiary is eligible.

(B) The SBC must be provided as part of any written application materials that are distributed by the plan or issuer for enrollment. If the plan does not distribute written application materials for enrollment, the SBC must be distributed no later than the first date the participant is eligible to enroll in coverage for the participant or any beneficiaries.

(C) If there is any change to the information required to be in the SBC before the first day of coverage, the plan or issuer must update and provide a current SBC to a participant or beneficiary no later than the first day of coverage.

(D) The plan or issuer must provide the SBC to special enrollees (as described in § 2590.701–6 of this Part) within seven days of a request for enrollment pursuant to a special enrollment right.

(E) If the plan or issuer requires participants or beneficiaries to renew in order to maintain coverage (for example, for a succeeding plan year), the plan or issuer must provide a new SBC when the coverage is renewed.

(*1*) If written application is required for renewal (in either paper or electronic form), the SBC must be provided no later than the date the materials are distributed.

(*2*) If renewal is automatic, the SBC must be provided no later than 30 days prior to the first day of coverage under the new plan year.

(F) A plan or issuer must provide the SBC to participants or beneficiaries upon request, as soon as practicable, but in no event later than seven days following the request.

(iii) *Special rules to prevent unnecessary duplication with respect to group health coverage*—(A) An entity required to provide an SBC under paragraph (a)(1) of this section with respect to an individual satisfies that requirement if another party provides the SBC, but only to the extent that the SBC is timely and complete in accordance with the other rules of this section. Therefore, for example, in the case of a group health plan funded through an insurance policy, the plan satisfies the requirement to provide an SBC with respect to an individual if the issuer provides a timely and complete SBC to the individual.

(B) If a participant and any beneficiaries are known to reside at the same address, and a single SBC is provided to that address, the requirement to provide the SBC is satisfied with respect to all individuals residing at that address. If a

beneficiary's last known address is different than the participant's last known address, a separate SBC is required to be provided to the beneficiary at the beneficiary's last known address.

(C) With respect to a group health plan that offers multiple benefit packages, the plan or issuer is required to provide a new SBC automatically upon renewal only with respect to the benefit package in which a participant or beneficiary is enrolled; SBCs are not required to be provided automatically with respect to benefit packages in which the participant or beneficiary are not enrolled. However, if a participant or beneficiary requests an SBC with respect to another benefit package (or more than one other benefit package) for which the participant or beneficiary is eligible, the SBC (or SBCs, in the case of a request for SBCs relating to more than one benefit package) must be provided upon request in accordance with the rules of paragraph (a)(1)(ii) of this section, which requires the SBC to be provided as soon as practicable, but in no event later than seven days following the request.

(2) *Content*—(i) *In general.* The SBC must include the following:

(A) Uniform definitions of standard insurance terms and medical terms so that consumers may compare health coverage and understand the terms of (or exceptions to) their coverage;

(B) A description of the coverage, including cost sharing, for each category of benefits identified by the Secretary in guidance;

(C) The exceptions, reductions, and limitations of the coverage;

(D) The cost-sharing provisions of the coverage, including deductible, coinsurance, and copayment obligations;

(E) The renewability and continuation of coverage provisions;

(F) Coverage examples, in accordance with the rules of paragraph (a)(2)(ii) of this section;

(G) With respect to coverage beginning on or after January 1, 2014, a statement about whether the plan or coverage provides minimum essential coverage as defined under section 5000A(f) of the Internal Revenue Code and whether the plan's or coverage's share of the total allowed costs of benefits provided under the plan or coverage meets applicable requirements;

(H) A statement that the SBC is only a summary and that the plan document, policy, or certificate of insurance should be consulted to determine the governing contractual provisions of the coverage;

(I) Contact information for questions and obtaining a copy of the plan document or the insurance policy, certificate, or contract of insurance (such as a telephone number for customer service and an Internet address for obtaining a copy of the plan document or the insurance policy, certificate, or contract of insurance);

(J) For plans and issuers that maintain one or more networks of providers, an Internet address (or similar contact information) for obtaining a list of network providers;

(K) For plans and issuers that use a formulary in providing prescription drug coverage, an Internet address (or similar contact information) for obtaining information on prescription drug coverage;

(L) An Internet address for obtaining the uniform glossary, as described in paragraph (c) of this section; and

(M) Premiums (or in the case of a self-insured group health plan, cost of coverage).

(ii) *Coverage examples.* The SBC must include coverage examples that illustrate benefits provided under the plan or coverage for common benefits scenarios (including pregnancy and serious or chronic medical conditions) that are identified by the Secretary in accordance with the following:

(A) *Number of examples.* The Secretary may identify up to six coverage examples that may be required in an SBC.

(B) *Benefits scenarios.* For purposes of this section, a benefits scenario is a hypothetical situation, consisting of a sample treatment plan for a specified medical condition during a specific period of time, based on recognized clinical practice guidelines available through the National Guideline Clearinghouse, Agency for Healthcare Research and Quality. The Secretary will specify, in guidance, the types of services, dates of service, applicable billing codes, and allowed charges for each claim in the benefits scenario.

(C) *Demonstration of benefit provided.* To demonstrate benefits provided under the plan or coverage, a plan or issuer simulates how claims would be processed under the scenarios provided by the Secretary to generate an estimate of cost sharing a consumer could expect to pay under the benefit package. The demonstration of benefits will take into account any cost sharing, excluded benefits, and other limitations on coverage, as described by the Secretary in guidance.

(3) *Appearance.* A group health plan and a health insurance issuer must provide an SBC as a stand-alone document in the form authorized by the Secretary and completed in accordance with the instructions for completing the SBC that are authorized by the Secretary in guidance. The SBC must be presented in a uniform format, use terminology understandable by the average plan enrollee, not exceed four double-sided pages in length, and not include print smaller than 12-point font.

(4) *Form*—(i) An SBC provided by an issuer offering group health insurance coverage to a plan (or its sponsor), may be provided in paper form. Alternatively, the SBC may be provided electronically (such as e-mail or an Internet posting) if the following three conditions are satisfied—

(A) The format is readily accessible by the plan (or its sponsor);

(B) The SBC is provided in paper form free of charge upon request, and

(C) If the electronic form is an Internet posting, the issuer timely advises the plan (or its sponsor) in paper form or e-mail that the documents are available on the Internet and provides the Internet address.

(ii) An SBC provided by a plan or issuer to a participant or beneficiary may be provided in paper form. Alternatively, the SBC may be provided electronically if the requirements of 29 CFR 2520.104b–1 are met.

(5) *Language.* A group health plan or health insurance issuer must provide the SBC in a culturally and linguistically appropriate manner. For purposes of this paragraph (a)(5), a plan or issuer is considered to provide the SBC in a culturally and linguistically appropriate manner if the thresholds and standards of § 2590.715–2719(e) of this Part are met as applied to the SBC.

(b) *Notice of modifications.* If a group health plan, or health insurance issuer offering group health insurance coverage, makes any material modification (as defined under section 102 of ERISA) in any of the terms of the plan or coverage that would affect the content of the SBC, that is not reflected in the most recently provided SBC, and that occurs other than in connection with a renewal or reissuance of coverage, the plan or issuer must provide notice of the modification to enrollees not later than 60 days prior to the date on which such modification will become effective. The notice of modification must be provided in a form that is consistent with the rules of paragraph (a)(4) of this section.

(c) *Uniform glossary*—(1) *In general.* A group health plan, and a health insurance issuer offering group health insurance coverage, must make available to participants and beneficiaries the uniform glossary described in paragraph (c)(2) of this section in accordance with the appearance and format requirements of

paragraphs (c)(3) and (c)(4) of this section.

(2) *Health-coverage-related terms and medical terms.* The uniform glossary must provide uniform definitions, specified by the Secretary in guidance, for the following health-coverage-related terms and medical terms:

(i) Allowed amount, appeal, balance billing, co-insurance, complications of pregnancy, co-payment, deductible, durable medical equipment, emergency medical condition, emergency medical transportation, emergency room care, emergency services, excluded services, grievance, habilitation services, health insurance, home health care, hospice services, hospitalization, hospital outpatient care, in-network co-insurance, in-network co-payment, medically necessary, network, non-preferred provider, out-of-network co-insurance, out-of-network co-payment, out-of-pocket limit, physician services, plan, preauthorization, preferred provider, premium, prescription drug coverage, prescription drugs, primary care physician, primary care provider, provider, reconstructive surgery, rehabilitation services, skilled nursing care, specialist, usual customary and reasonable (UCR), and urgent care; and

(ii) Such other terms as the Secretary determines are important to define so that individuals and employers may compare and understand the terms of coverage and medical benefits (including any exceptions to those benefits), as specified in guidance.

(3) *Appearance.* A group health plan, and a health insurance issuer, must provide the uniform glossary with the appearance authorized in guidance, ensuring that the uniform glossary is presented in a uniform format and utilizes terminology understandable by the average plan enrollee.

(4) *Form and manner.* A plan or issuer must make the uniform glossary described in this paragraph (c) available upon request, in either paper or electronic form (as requested), within seven days of the request. (Under the rules of paragraph (a) of this section, the form authorized in guidance for the SBC will disclose to participants and beneficiaries their rights to request a copy of the uniform glossary.)

(d) *Preemption.* See § 2590.731 of this Part. In addition, with respect to the standards for providing an SBC required under paragraph (a) of this section, State laws that require a health insurance issuer to provide an SBC that supplies less information than required under paragraph (a) of this section are preempted.

(e) *Failure to provide.* A group health plan that willfully fails to provide information required under this section to a participant or beneficiary is subject to a fine of not more than $1,000 for each such failure. A failure with respect to each participant or beneficiary constitutes a separate offense for purposes of this paragraph (e).

(f) *Applicability date.* This section is applicable beginning March 23, 2012. *See* § 2590.715–1251(d) of this Part, providing that this section applies to grandfathered health plans.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Subtitle A

The Department of Health and Human Services proposes to amend 45 CFR part 147 as follows:

PART 147—HEALTH INSURANCE REFORM REQUIREMENTS FOR THE GROUP AND INDIVIDUAL HEALTH INSURANCE MARKETS

1. The authority citation for part 147 continues to read as follows:

Authority: Sections 2710 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

2. Add § 147.200 to read as follows:

§ 147.200 Summary of benefits and coverage and uniform glossary.

(a) *Summary of benefits and coverage*—(1) *In general.* A group health plan (and its administrator as defined in section 3(16)(A) of ERISA), and a health insurance issuer offering group or individual health insurance coverage, is required to provide a written summary of benefits and coverage (SBC) for each benefit package without charge to entities and individuals described in this paragraph (a)(1) in accordance with the rules of this section.

(i) *By a group health insurance issuer to a group health plan*—(A) A health insurance issuer offering group health insurance coverage must provide the SBC to a group health plan (or its sponsor) upon application or request for information about the health coverage as soon as practicable following the request, but in no event later than seven days following the request. If an SBC is provided upon request for information about health coverage and the plan (or its sponsor) subsequently applies for health coverage, a second SBC must be provided under this paragraph (a)(1)(i)(A) only if the information required to be in the SBC has changed.

(B) If there is any change in the information required to be in the SBC before the coverage is offered, or before the first day of coverage, the issuer must update and provide a current SBC to the plan (or its sponsor) no later than the date of the offer (or no later than the first day of coverage, as applicable).

(C) If the issuer renews or reissues the policy, certificate, or contract of insurance (for example, for a succeeding policy year), the issuer must provide a new SBC when the policy, certificate, or contract is renewed or reissued.

(*1*) In the case of renewal or reissuance, if written application is required for renewal (in either paper or electronic form), the SBC must be provided no later than the date the materials are distributed.

(*2*) If renewal or reissuance is automatic, the SBC must be provided no later than 30 days prior to the first day of the new policy year.

(D) If a group health plan (or its sponsor) requests an SBC from a health insurance issuer offering group health insurance coverage, it must be provided as soon as practicable, but in no event later than seven days following the request for an SBC.

(ii) *By a group health insurance issuer and a group health plan to participants and beneficiaries*—(A) A group health plan (including its administrator, as defined under section 3(16) of ERISA), and a health insurance issuer offering group health insurance coverage, must provide an SBC to a participant or beneficiary (as defined under sections 3(7) and 3(8) of ERISA), and consistent with the rules of paragraph (a)(1)(iii) of this section) with respect to each benefit package offered by the plan or issuer for which the participant or beneficiary is eligible.

(B) The SBC must be provided as part of any written application materials that are distributed by the plan or issuer for enrollment. If the plan does not distribute written application materials for enrollment, the SBC must be distributed no later than the first date the participant is eligible to enroll in coverage for the participant or any beneficiaries.

(C) If there is any change to the information required to be in the SBC before the first day of coverage, the plan or issuer must update and provide a current SBC to a participant or beneficiary no later than the first day of coverage.

(D) The plan or issuer must provide the SBC to special enrollees (as described in 45 CFR 146.117) within seven days of a request for enrollment pursuant to a special enrollment right.

(E) If the plan or issuer requires participants or beneficiaries to renew in order to maintain coverage (for example, for a succeeding plan year), the plan or issuer must provide a new SBC when the coverage is renewed.

(*1*) If written application is required for renewal (in either paper or electronic form), the SBC must be provided no later than the date the materials are distributed.

(*2*) If renewal is automatic, the SBC must be provided no later than 30 days prior to the first day of coverage under the new plan year.

(F) A plan or issuer must provide the SBC to participants or beneficiaries upon request, as soon as practicable, but in no event later than seven days following the request.

(iii) *Special rules to prevent unnecessary duplication with respect to group health coverage*—(A) An entity required to provide an SBC under paragraph (a)(1) of this section with respect to an individual satisfies that requirement if another party provides the SBC, but only to the extent that the SBC is timely and complete in accordance with the other rules of this section. Therefore, for example, in the case of a group health plan funded through an insurance policy, the plan satisfies the requirement to provide an SBC with respect to an individual if the issuer provides a timely and complete SBC to the individual.

(B) If a participant and any beneficiaries are known to reside at the same address, and a single SBC is provided to that address, the requirement to provide the SBC is satisfied with respect to all individuals residing at that address. If a beneficiary's last known address is different than the participant's last known address, a separate SBC is required to be provided to the beneficiary at the beneficiary's last known address.

(C) With respect to a group health plan that offers multiple benefit packages, the plan or issuer is required to provide a new SBC automatically upon renewal only with respect to the benefit package in which a participant or beneficiary is enrolled; SBCs are not required to be provided automatically with respect to benefit packages in which the participant or beneficiary are not enrolled. However, if a participant or beneficiary requests an SBC with respect to another benefit package (or more than one other benefit package) for which the participant or beneficiary is eligible, the SBC (or SBCs, in the case of a request for SBCs relating to more than one benefit package) must be provided upon request in accordance with the rules of paragraph (a)(1)(ii) of this section, which requires the SBC to be provided as soon as practicable, but in no event later than seven days following the request.

(iv) *By a health insurance issuer offering individual health insurance coverage*—(A) *Individuals prior to coverage.* A health insurance issuer offering individual health insurance coverage must provide an SBC to an individual upon receiving an application for, or a request for information about, any health insurance policy, as soon as practicable following the application or request, but in no event later than seven days following the application or request.

(*1*) If an SBC is provided upon request for information about a particular health insurance policy and the individual subsequently submits an application for the same policy, a second SBC must be provided under this paragraph (a)(1)(iv)(A) only if the information required to be in the SBC has changed.

(*2*) If the issuer modifies the terms of coverage after receiving an application for any health insurance policy (including modifications as a result of medical underwriting) so that the information required to be in the SBC has changed, the issuer must provide an updated SBC that reflects these changes to the terms of coverage to the applicant, for each policy for which an application was received, as soon as practicable, but in no event later than the date on which the offer of coverage is made.

(B) *Individuals covered under individual health insurance coverage*—(*1*) A health insurance issuer offering individual health insurance coverage must generally provide an SBC to an individual who accepts an offer of coverage no later than the first day of coverage. However, if the SBC is provided upon request for information about health insurance coverage or at the time that an offer of coverage is made under paragraph (a)(1)(iv)(A) of this section, the SBC must be provided under this paragraph (a)(1)(iv)(B) only if the information required to be in the SBC has changed.

(*2*) The issuer must provide the SBC to policyholders annually at renewal, no later than 30 days prior to the first day of coverage under the new policy year. The SBC must reflect any modified policy terms that would be effective on the first day of the new policy year.

(C) *Upon request.* A health insurance issuer offering individual health insurance coverage must provide an SBC to any policyholder or covered dependent, upon request, as soon as practicable, but in no event later than seven days following the request.

(v) *Special rule to prevent unnecessary duplication with respect to individual health insurance coverage.* If the policy covers more than one individual (or if an application for coverage is being made for more than one individual); all those individuals are known to reside at the same address; and a single SBC is provided to that address, then the requirement to provide the SBC is satisfied with respect to all individuals residing at that address. If an individual's last known address is different than the last known address of the policyholder, the issuer is required to provide an SBC to the individual at the individual's last known address.

(2) *Content*—(i) *In general.* The SBC must include the following:

(A) Uniform definitions of standard insurance terms and medical terms so that consumers may compare health coverage and understand the terms of (or exceptions to) their coverage;

(B) A description of the coverage, including cost sharing, for each category of benefits identified by the Secretary in guidance;

(C) The exceptions, reductions, and limitations of the coverage;

(D) The cost-sharing provisions of the coverage, including deductible, coinsurance, and copayment obligations;

(E) The renewability and continuation of coverage provisions;

(F) Coverage examples, in accordance with the rules of paragraph (a)(2)(ii) of this section;

(G) With respect to coverage beginning on or after January 1, 2014, a statement about whether the plan or coverage provides minimum essential coverage as defined under section 5000A(f) of the Internal Revenue Code and whether the plan's or coverage's share of the total allowed costs of benefits provided under the plan or coverage meets applicable requirements;

(H) A statement that the SBC is only a summary and that the plan document, policy, or certificate of insurance should be consulted to determine the governing contractual provisions of the coverage;

(I) Contact information for questions and obtaining a copy of the plan document or the insurance policy, certificate, or contract of insurance (such as a telephone number for customer service and an Internet address for obtaining a copy of the plan document or the insurance policy, certificate, or contract of insurance);

(J) For plans and issuers that maintain one or more networks of providers, an Internet address (or similar contact information) for obtaining a list of network providers;

(K) For plans and issuers that use a formulary in providing prescription drug coverage, an Internet address (or similar contact information) for

obtaining information on prescription drug coverage;

(L) An Internet address for obtaining the uniform glossary, as described in paragraph (c) of this section; and

(M) Premiums (or in the case of a self-insured group health plan, cost of coverage).

(ii) *Coverage examples.* The SBC must include coverage examples that illustrate benefits provided under the plan or coverage for common benefits scenarios (including pregnancy and serious or chronic medical conditions) that are identified by the Secretary in accordance with the following:

(A) *Number of examples.* The Secretary may identify up to six coverage examples that may be required in an SBC.

(B) *Benefits scenarios.* For purposes of this section, a benefits scenario is a hypothetical situation, consisting of a sample treatment plan for a specified medical condition during a specific period of time, based on recognized clinical practice guidelines available through the National Guideline Clearinghouse, Agency for Healthcare Research and Quality. The Secretary will specify, in guidance, the types of services, dates of service, applicable billing codes, and allowed charges for each claim in the benefits scenario.

(C) *Demonstration of benefit provided.* To demonstrate benefits provided under the plan or coverage, a plan or issuer simulates how claims would be processed under the scenarios provided by the Secretary to generate an estimate of cost sharing a consumer could expect to pay under the benefit package. The demonstration of benefits will take into account any cost sharing, excluded benefits, and other limitations on coverage, as described by the Secretary in guidance.

(3) *Appearance.* A group health plan and a health insurance issuer must provide an SBC as a stand-alone document in the form authorized by the Secretary and completed in accordance with the instructions for completing the SBC that are authorized by the Secretary in guidance. The SBC must be presented in a uniform format, use terminology understandable by the average plan enrollee (or, in the case of individual market coverage, the average individual covered a health insurance policy), not exceed four double-sided pages in length, and not include print smaller than 12-point font.

(4) *Form*—(i) An SBC provided by an issuer offering group health insurance coverage to a plan (or its sponsor), may be provided in paper form. Alternatively, the SBC may be provided electronically (such as e-mail or an Internet posting) if the following three conditions are satisfied—

(A) The format is readily accessible by the plan (or its sponsor);

(B) The SBC is provided in paper form free of charge upon request, and

(C) If the electronic form is an Internet posting, the issuer timely advises the plan (or its sponsor) in paper form or e-mail that the documents are available on the Internet and provides the Internet address.

(ii) An SBC provided by a plan or issuer to a participant or beneficiary may be provided in paper form. Alternatively, for non-Federal governmental plans, the SBC may be provided electronically if the plan conforms to either the substance of the ERISA provisions at 29 CFR 2520.104b–1, or the provisions governing electronic disclosure for individual health insurance issuers set forth in paragraph (a)(4)(iii)(B) of this section.

(iii) With respect to an SBC provided by an issuer offering individual health insurance coverage, the SBC may be provided in either electronic or paper form.

(A) *Paper disclosure.* Unless specified otherwise by an individual, an issuer must provide an SBC (and any subsequent SBC) in paper form if:

(*1*) Upon the individual's request for information or request for an application for coverage, the individual makes the request in person, by phone, or by mail; or

(*2*) When submitting an application for coverage, the individual completes the application by phone or mail.

(B) *Electronic disclosure*—(*1*) An issuer may provide an SBC (and any SBC provided thereafter) in electronic form (such as through an Internet posting or via electronic mail) if:

(*i*) Upon an individual's request for information or request for an application for coverage, the individual makes a request electronically; or

(*ii*) When submitting an application, an individual completes an application for coverage electronically.

(*2*) If an issuer provides an SBC in electronic form, the issuer must:

(*i*) Request that an individual acknowledge receipt of the SBC;

(*ii*) Make the SBC available in an electronic format that is readily usable by the general public;

(*iii*) If the SBC is posted on the Internet, display the SBC in a location that is prominent and readily accessible to the individual and provide timely notice, in electronic or non-electronic form, to each individual who requests information or applies for coverage that apprises the individual the SBC is available on the Internet and includes the applicable Internet address;

(*iv*) Promptly provide in accordance with the rules of paragraph (iii), without charge, penalty, or the imposition of any other condition or consequence, a paper copy of the SBC upon request. An issuer must provide an individual with the ability to request a paper copy of the SBC both by using the issuer's Web site (such as by clicking on a clearly identified box to make the request) and by calling a readily available telephone line, the number for which is prominently displayed on the issuer's Web site, policy documents, and other marketing materials related to the policy and clearly identified as to purpose; and

(*v*) Ensure an SBC provided in electronic form is provided in accordance with the appearance, content, and language requirements of this section.

(C) *Deemed compliance.* A health insurance issuer offering individual health insurance coverage that complies with the requirements set forth at 45 CFR § 159.120 (relating to the Federal health reform Web portal) is deemed to comply with the requirement to provide the SBC to an individual requesting information prior to applying for coverage. However, an issuer must provide any SBC provided at the time of application or subsequently in a form and manner compliant with the requirements of paragraphs (a)(4)(iii)(A) and (a)(4)(iii)(B) of this section.

(5) *Language.* A group health plan or health insurance issuer must provide the SBC in a culturally and linguistically appropriate manner. For purposes of this paragraph (a)(5), a plan or issuer is considered to provide the SBC in a culturally and linguistically appropriate manner if the thresholds and standards of § 147.136(e) of this chapter are met as applied to the SBC.

(b) *Notice of modifications.* If a group health plan, or health insurance issuer offering group or individual health insurance coverage, makes any material modification (as defined under section 102 of ERISA, 29 U.S.C. 1022) in any of the terms of the plan or coverage that would affect the content of the SBC, that is not reflected in the most recently provided SBC, and that occurs other than in connection with a renewal or reissuance of coverage, the plan or issuer must provide notice of the modification to enrollees (or, in the case of individual market coverage, an individual covered a health insurance policy), not later than 60 days prior to the date on which such modification will become effective. The notice of modification must be provided in a form

that is consistent with the rules of paragraph (a)(4) of this section.

(c) *Uniform glossary*—(1) *In general.* A group health plan, and a health insurance issuer offering group health insurance coverage, must make available to participants and beneficiaries, and a health insurance issuer offering individual health insurance coverage must make available to applicants, policyholders, and covered dependents, the uniform glossary described in paragraph (c)(2) of this section in accordance with the appearance and format requirements of paragraphs (c)(3) and (c)(4) of this section.

(2) *Health-coverage-related terms and medical terms.* The uniform glossary must provide uniform definitions, specified by the Secretary in guidance, for the following health-coverage-related terms and medical terms:

(i) Allowed amount, appeal, balance billing, co-insurance, complications of pregnancy, co-payment, deductible, durable medical equipment, emergency medical condition, emergency medical transportation, emergency room care, emergency services, excluded services, grievance, habilitation services, health insurance, home health care, hospice services, hospitalization, hospital outpatient care, in-network co-insurance, in-network co-payment, medically necessary, network, non-preferred provider, out-of-network co-insurance, out-of-network co-payment, out-of-pocket limit, physician services, plan, preauthorization, preferred provider, premium, prescription drug coverage, prescription drugs, primary care physician, primary care provider, provider, reconstructive surgery, rehabilitation services, skilled nursing care, specialist, usual customary and reasonable (UCR), and urgent care; and

(ii) Such other terms as the Secretary determines are important to define so that individuals and employers may compare and understand the terms of coverage and medical benefits (including any exceptions to those benefits), as specified in guidance.

(3) *Appearance.* A group health plan, and a health insurance issuer, must provide the uniform glossary with the appearance authorized in guidance, ensuring that the uniform glossary is presented in a uniform format and utilizes terminology understandable by the average plan enrollee (or, in the case of individual market coverage, an average individual covered under a health insurance policy).

(4) *Form and manner.* A plan or issuer must make the uniform glossary described in this paragraph (c) available upon request, in either paper or electronic form (as requested), within seven days of the request. (Under the rules of paragraph (a) of this section, the form authorized in guidance for the SBC will disclose to participants, beneficiaries, and individuals covered under an individual policy their rights to request a copy of the uniform glossary.)

(d) *Preemption.* For purposes of this section, the provisions of section 2724 of the PHS Act continue to apply with respect to preemption of State law. In addition, with respect to the standards for providing an SBC required under paragraph (a) of this section, State laws that require a health insurance issuer to provide an SBC that supplies less information than required under paragraph (a) of this section are preempted.

(e) *Failure to provide.* A health insurance issuer or a non-Federal governmental health plan that willfully fails to provide information required under this section is subject to a fine of not more than $1,000 for each such failure. A failure with respect to each covered individual constitutes a separate offense for purposes of this paragraph (e). HHS will enforce these provisions in a manner consistent with 45 CFR 150.101 through 150.465.

(f) *Applicability date.* This section is applicable beginning March 23, 2012. *See* § 147.140(d) of this chapter, providing that this section applies to grandfathered health plans.

[FR Doc. 2011–21193 Filed 8–17–11; 11:15 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[CMS–9982–NC]

45 CFR Part 147

Summary of Benefits and Coverage and Uniform Glossary—Templates, Instructions, and Related Materials Under the Public Health Service Act

AGENCY: Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Solicitation of comments.

SUMMARY: The Departments of the Health and Human Services, Labor, and the Treasury (the Departments) are simultaneously publishing in the **Federal Register** this document and proposed regulations (2011 proposed regulations) under the Patient Protection and Affordable Care Act to implement the disclosure for group health plans and health insurance issuers of the summary of benefits and coverage (SBC) and the uniform glossary. This document proposes a template for an SBC; instructions, sample language, and a guide for coverage examples calculations to be used in completing the template; and a uniform glossary that would satisfy the disclosure requirements under section 2715 of the Public Health Service (PHS) Act. Comments are invited on these materials.

DATES: *Comment Dates:* Comments are due on or before October 21, 2011.

ADDRESSES: Written comments may be submitted to any of the addresses specified below. Any comment that is submitted to any Department will be shared with the other Departments. Please do not submit duplicates.

All comments will be made available to the public. *Warning:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments are posted on the Internet exactly as received, and can be retrieved by most Internet search engines. No deletions, modifications, or redactions will be made to the comments received, as they are public records. Comments may be submitted anonymously.

Department of Labor. Comments to the Department of Labor, identified by RIN 1210–AB52, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: E–OHPSCA2715.EBSA@dol.gov.*
- *Mail or Hand Delivery:* Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, Room N–5653, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, *Attention:* RIN 1210–AB52.

Comments received by the Department of Labor will be posted

without change to *http://www.regulations.gov* and *http://www.dol.gov/ebsa,* and available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210.

Department of Health and Human Services. In commenting, please refer to file code CMS–9982–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions under the ''More Search Options'' tab.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9982–NC, P.O. Box 8016, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9982–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by following the instructions at the end of the ''Collection of Information Requirements'' section in this document.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. EST. To schedule an appointment to view public comments, phone 1–800–743–3951.

Internal Revenue Service. Comments to the IRS, identified by REG–140038–10, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* CC:PA:LPD:PR (REG–140038–10), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.
- *Hand or courier delivery:* Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–140038–10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington DC 20224.

All submissions to the IRS will be open to public inspection and copying in room 1621, 1111 Constitution Avenue, NW., Washington, DC from 9 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Amy Turner or Heather Raeburn, Employee Benefits Security Administration, Department of Labor, at (202) 693–8335; Karen Levin, Internal Revenue Service, Department of the Treasury, at (202) 622–6080; Jennifer Libster or Padma Shah, Centers for Medicare & Medicaid Services, Department of Health and Human Services, at (301) 492–4252.

Customer Service Information: Individuals interested in obtaining information from the Department of Labor concerning employment-based health coverage laws may call the EBSA Toll-Free Hotline at 1–866–444–EBSA (3272) or visit the Department of Labor's Web site (*http://www.dol.gov/ebsa*). In addition, information from HHS on private health insurance for consumers can be found on the Centers for Medicare & Medicaid Services (CMS) Web site (*http://www.cms.hhs.gov/HealthInsReformforConsume/01_Overview.asp*) and information on health reform can be found at *http://www.healthcare.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Departments of Health and Human Services (HHS), Labor, and the Treasury (the Departments) are taking a phased approach to issuing regulations and guidance implementing the revised Public Health Service Act (PHS Act) sections 2701 through 2719A and related provisions of the Patient Protection and Affordable Care Act (Affordable Care Act).[1] Section 2715 of the PHS Act directs the Departments to develop standards for use by a group health plan and a health insurance issuer in compiling and providing a summary of benefits and coverage (SBC) that ''accurately describes the benefits and coverage under the applicable plan or coverage.'' Section 2715 of the PHS Act also directs the Departments to provide for the development of a uniform glossary. The statute directs the Departments, in developing such standards, to ''consult with the National Association of Insurance Commissioners'' (referred to in this document as the ''NAIC''), ''a working group composed of representatives of health insurance-related consumer advocacy organizations, health insurance issuers, health care professionals, patient advocates including those representing

[1] The Affordable Care Act also adds section 715(a)(1) to the Employee Retirement Income Security Act (ERISA) and section 9815(a)(1) to the Internal Revenue Code (the Code) to incorporate the provisions of part A of title XXVII of the PHS Act into ERISA and the Code, and make them applicable to group health plans, and health insurance issuers providing health insurance coverage in connection with group health plans.

individuals with limited English proficiency, and other qualified individuals.''

As part of this required consultation, the NAIC convened the Consumer Information (B) Subgroup (NAIC working group), comprised of a diverse group of stakeholders.[2] This working group met frequently each month for over one year while developing its recommendations. The NAIC working group created two subgroups—one focused on developing a uniform glossary of health insurance and medical terms and the other focused on developing standards for the SBC. All drafts were discussed and agreed to by the entire NAIC working group and then submitted to the full NAIC membership for a vote to submit the drafts as recommendations to the Departments. Throughout the process, NAIC working group draft documents and meeting notes were displayed on the NAIC's Web site for public review, and several interested parties filed formal comments. In addition to participation from the NAIC working group members, conference calls and in-person meetings were open to other interested parties and individuals and provided an opportunity for non-member feedback. The NAIC indicates that stakeholders from a diverse pool of backgrounds participated in working group conference calls.[3]

As a result of this process, the NAIC working group recommended use of a uniform SBC template, as well as a uniform glossary, for the individual and group insurance markets. In developing these recommendations, the draft SBC template, including the coverage examples, and the draft uniform glossary underwent consumer testing,[4] sponsored by both consumer and insurance industry groups. These tests were intended to assist in determining necessary adjustments to ensure the final product was consumer friendly.[5] The Departments have received transmittals from the NAIC that include a recommended template for the SBC (referred to in this document as the ''SBC template'')[6] with instructions, samples, and a guide for coverage examples calculations to be used in completing the SBC template. The NAIC transmittals also included a recommended uniform glossary of coverage and medical terms (referred to in this document as the ''uniform glossary''). The SBC template and uniform glossary include modifications made by the NAIC working group in response to the results of extensive consumer testing.

The 2011 proposed regulations and this document follow the recommendations made by the NAIC and incorporate the documents drafted by the NAIC, including the SBC template (with instructions, sample language, and a guide for coverage examples calculations to be used in completing the SBC template) and the uniform glossary. The Appendices do not include a sample coverage example calculation for breast cancer in the individual market that was transmitted by the NAIC. Upon review, it appeared that some of the data in the example might be subject to copyright protection. Moreover, the sample coverage example calculation provided by the NAIC was limited to breast cancer in the individual market and did not address the other two coverage examples—maternity coverage and diabetes. Finally, particular coding information and pricing information included in the sample would change annually, which would result in the data included in the sample becoming outdated relatively quickly. Accordingly, HHS is publishing on its Web site (at *http://cciio.cms.gov*) the coding and pricing information necessary to perform coverage example calculations for all three coverage examples. HHS will update this information annually.

Instead of proposing possible changes to the NAIC's proposed SBC template and related materials at this time, this document proposes to incorporate the NAIC working group's recommended materials as transmitted (with the exception of the sample coverage example, explained above), and invites public comment. The Departments recognize that changes to the SBC template may be appropriate to accommodate various types of plan and coverage designs, to provide additional information to individuals, or to improve the efficacy of the disclosures recommended by the NAIC. In addition, the SBC template and related documents were drafted by the NAIC primarily for use by health insurance issuers.[7] The NAIC states in its transmittal letter that additional modifications may be needed for some group health plans. Consequently, comments are requested on these issues specifically and on the SBC template, sample completed SBC, instructions for both group health plan coverage and individual health insurance coverage, sample language for the ''Why this Matters'' section of the SBC, guide for coverage examples calculations, and on the uniform glossary generally. After the public comment period, the Departments will finalize these documents. Consistent with PHS Act section 2715(c), the Departments will periodically review and update these documents as appropriate, taking into account public comments.

II. Proposal

This document proposes an SBC template (with instructions, samples, and a guide for coverage examples calculations to be used in completing the SBC template), and the uniform glossary, to comply with the disclosure requirements of PHS Act section 2715, as authorized by the Departments pursuant to paragraph (a)(4) of the 2011 proposed regulations. The SBC template, sample completed SBC, instructions for both group health plan coverage and individual health insurance coverage, sample language for the ''Why This Matters'' section of the SBC, guide for coverage examples calculations, and uniform glossary are identical to the documents transmitted by the NAIC. These items are contained in the Appendices to this document.

In addition to the materials in the Appendices that are proposed in this document, HHS is providing (at *http://cciio.cms.gov*) the specific information necessary to simulate benefits covered under the plan or policy for the

[2] A list of the NAIC working group members can be found at: *http://www.naic.org/documents/committees_b_consumer_information_contacts.pdf.*

[3] Records and other information relating to all of the meetings held by the NAIC working group can be found at: *http://www.naic.org/committees_b_consumer_information.htm.*

[4] The NAIC consulted readability experts and conducted consumer testing. The SBC format was designed to enhance to consumer understanding and usability. For example, use of vocabulary, such as ''don't'' verses ''do not'' reflects intentional design based on feedback from consumer testing. These format choices reflect in part, the NAIC's efforts to address the statutory requirement that the form be ''culturally and linguistically appropriate.''

[5] Summaries of this consumer testing are available at: *http://www.naic.org/documents/committees_b_consumer_information_101012_ahip_focus_group_summary.pdf; http://www.naic.org/documents/committees_b_consumer_information_110603_ahip_bcbsa_consumer_testing.pdf; http://www.naic.org/documents/committees_b_consumer_information_101014_consumers_union.pdf* (a more detailed summary of which is accessible at: *http://prescriptionforchange.org/pdf/CU_Consumer_Testing_Report_Dec_2010.pdf*); and *http://www.naic.org/documents/committees_b_consumer_information_110603_consumers_union_testing.pdf.*

[6] In their materials, the NAIC uses the phrase ''Summary of Coverage'' to describe the SBC template. However, the Departments use the term ''Summary of Benefits and Coverage'' in the proposed regulations and this document. Both of these terms are meant to refer to the same document (located in Appendix A–1 of this document).

[7] National Association of Insurance Commissioners, Consumer Information Working Group, December 17, 2010 Letter to the Secretaries. Available at *http://www.naic.org/documents/committees_b_consumer_information_ppaca_letter_to_sebelius.pdf.*

coverage examples portion of the SBC (including specific medical items and services, dates of service, billing codes, and allowed charges for each claim in the three specified benefits scenarios). HHS will update this information annually on its Web site. The Departments propose that plans and issuers are not required to update their coverage examples for SBCs provided before the date that is 90 days after the date that HHS provides this updated information. That is, 90 days after HHS updates the information, SBCs that are otherwise required to be provided under paragraph (a) of the proposed rules should take into account the new information when providing coverage examples. For example, if HHS releases updated information on September 15 of a year, SBCs required to be provided on or after December 14 of that year under the rules of paragraph (a) of the proposed rules would need to include coverage examples calculated using the new information. However, these updates alone will not be considered a material modification under paragraph (b) of the 2011 proposed regulations. Comments are invited on this information as well, including the annual update provision. The preamble to the 2011 proposed regulations contains a request for comment regarding various approaches to providing the coverage examples. Commenters addressing the requirement to provide updated coverage examples are encouraged to consider how updates would be made to the coverage examples under these various approaches and what additional instructions should be added to address updates and a possible phased-in approach to implementation discussed in the preamble to the 2011 proposed regulations.

With respect to the element of the SBC regarding a statement about whether a plan or coverage provides minimum essential coverage (as defined under section 5000A(f) of the Code) and whether the plan's or coverage's share of the total allowed costs of benefits provided under the plan or coverage meets applicable minimum value requirements (minimum essential coverage statement),[8] because this content is not relevant until other elements of the Affordable Care Act are implemented, this statement is not in the NAIC recommendations. For the same reason, and as discussed more fully in the preamble to the 2011 proposed regulations, the minimum essential coverage statement is not required to be in the SBC until the plan or coverage is required to provide an SBC with respect to coverage beginning on or after January 1, 2014. As provided in the preamble to the 2011 proposed regulations, comments are requested on how employers might provide the information included in the minimum essential coverage statement and other plan-level reporting in a manner that minimizes duplication and burden.

In addition, the SBC template recommended by the NAIC and located in Appendix A–1 of this document includes Web sites for individuals to access the uniform glossary, for information about prescription drug coverage, and for information about the plan or coverage provider network. The Departments note, however, these Web sites are not working Web sites. Plans and issuers would need to modify this aspect of the SBC template to include relevant, working Web addresses (for the uniform glossary, this may be the Web address of either the Department of Labor or HHS Web site, or on the plan's or issuer's own Web site). The Departments invite comment on whether this statement in the SBC template regarding the electronically available uniform glossary should be modified to include a statement that the uniform glossary is available in paper form upon request.

III. Solicitation of Comments

The Departments solicit comments generally on the SBC template and related documents and the uniform glossary included in the Appendices, as well as on specific issues set forth below (including on what modifications, if any, are needed for group health plans to use the SBC template).

The NAIC stated in the December 2010 transmittal letter that the working group intentionally designed the layout and color of the SBC template based on consumer testing to make the document more readable and to facilitate comparison of different plan and coverage options. The Departments recognize, however, that color printing may be costly for some plans and issuers and therefore propose that a plan or issuer will be compliant if it uses either the color version (available on the Web sites of the Departments of Labor and HHS),[9] as recommended by the NAIC, or the grayscale version (included in the Appendices to this document). In addition, the Departments note that while the NAIC-recommended SBC template is only three double-sided pages, the Departments are proposing that a completed SBC may be four double-sided pages in length. The SBC template reserves space to ensure that a plan or issuer with different benefit designs (such as multiple, tiered provider networks) could provide all the necessary information, and that additional coverage examples could be added in the future, within four double-sided pages. (See the preamble to the 2011 proposed regulations for a request for comment regarding various approaches to providing the coverage examples.)

The Departments are interested in any general comments regarding the proposed SBC template, sample completed SBC, instructions for both group health plan coverage and individual health insurance coverage, sample language for the ''Why This Matters'' section of the SBC, guide for coverage examples calculations, and uniform glossary. In making this request for comment, the Departments note that the purpose of PHS Act section 2715 is to provide individuals and plan participants with a brief summary of plan or policy benefits and coverage so that they may more easily compare health care coverage and better understand the terms of coverage (or exceptions to the coverage). The SBC is intended to assist individuals purchasing coverage in the individual market in comparing the benefits and coverage of different individual policies offered by insurance issuers. Likewise, the SBC is intended to assist employees who are offered group coverage to compare among different employer-provided health care options or to compare their employer's options with other coverage for which they may be eligible, such as a spouse's or dependent's offer of employer-provided health care coverage, a former employer's COBRA continuation coverage,[10] or a policy on the individual market.

In order to make it as easy as possible for individuals to understand the terms of their own coverage and compare coverage and benefits efficiently and accurately, the statute provides for, and the NAIC recognized the importance of, presenting the SBC in a uniform format. We invite comments on how this statutory requirement should be

[8] PHS Act section 2715(b)(3)(G) provides that this statement must indicate whether the plan or coverage (1) provides minimum essential coverage (as defined under section 5000A(f) of the Code) and (2) ensures that the plan's or coverage's share of the total allowed costs of benefits provided under the plan or coverage is not less than 60 percent of such costs.

[9] *See http://www.dol.gov/ebsa* or *http://cciio.cms.gov.*

[10] As defined in 26 CFR 54.9801–2, 29 CFR 2590.701–2, and 45 CFR 144.103, COBRA means Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

applied, including the nature and extent of the uniformity that should be required in the specific language of the SBC and the manner and sequence in which the information in the SBC is presented. We ask that any comments proposing that flexibility be permitted in aspects of the presentation of the SBC explicitly address the potential positive or negative effects on individuals' ability to effectively compare benefits and coverage among and across individual policies and group health plans.

The Departments also invite comments on the following specific issues:

1. The SBC template is intended to be used by all types of plan or coverage designs. The Departments are interested in comments related to issues that may arise from the use of this template for different types of plan or coverage designs (for example, designs using tiered provider networks or group health plans that may use multiple issuers or service providers to provide or administer different categories of benefits within a benefit package).

2. The Departments are interested in comments regarding any modifications needed for use by group health plans (*e.g.,* with respect to disclosure regarding cost of coverage and changes in terminology required for self-insured plans, such as use of the term ''plan year'' instead of ''policy period'').

3. The Departments are interested in comments regarding whether the content of the SBC should require inclusion of additional information, such as information regarding any preexisting condition exclusion under the plan or policy,[11] status as a grandfathered health plan,[12] or other information that might be important for individuals to know about their coverage and how the SBC template could be modified to ensure effective disclosure of these additional elements, while respecting the statutory formatting requirements. For example, comments are requested on whether a simplified reporting method, such as a checkbox, could be used to disclose preexisting condition exclusions and grandfather status.

4. The fourth page of the SBC template includes a list of services that plans and issuers must indicate as either excluded or covered in the ''Excluded Services & Other Covered Services'' chart. The Departments solicit comments on whether services should be added or removed from this list, as well as whether the disclosure stating that the list is not complete is adequate.

5. The SBC template includes a disclosure on the first page indicating to consumers that the SBC is not the actual policy and does not include all of the coverage details found in the actual policy. The Departments solicit comments on whether this disclosure is adequate.

The uniform glossary is also included in Appendix E of this document. The Departments propose that plans and issuers cannot make any modifications to this glossary. The uniform glossary was developed to facilitate and enhance consumer comprehension and is not intended to provide legal or contractual definitions that necessarily apply accurately, without modification, to every plan or coverage. The NAIC consumer testing found that certain terms relating to cost-sharing provisions were particularly difficult for consumers to understand. As a result, the NAIC developed diagrams to accompany the textual definitions of these terms. The Departments solicit comments on the uniform glossary, including its terms and definitions, and whether other terms should be added to the glossary, as well as whether any of the terms would be considered inaccurate or misleading based on a particular plan or coverage design.

Comments are also invited on the standards set forth in the 2011 proposed regulations. To comment on the 2011 proposed regulations, see the comment section of the 2011 proposed regulations, published elsewhere in this issue of the **Federal Register**.

IV. Paperwork Reduction Act

According to the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (PRA), no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The Department notes that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. *See* 44 U.S.C. 3507. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. *See* 44 U.S.C. 3512.

This document relates to the information collection request (ICR) contained in a proposed regulation titled ''Summary of Benefits and Coverage and the Uniform Glossary,'' which is published elsewhere in today's issue of the **Federal Register**. For a discussion of the hour and cost burden associated with the ICR, please see the notice of proposed rulemaking.

Sarah Hall Ingram,

Acting Deputy Commissioner for Services and Enforcement, Internal Revenue Service.

Signed this 15th day of August, 2011.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

Dated: July 28, 2011.

Donald Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Dated: August 9, 2011.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

V. Appendices

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Overview of Appendices

As stated earlier in this document, the NAIC transmitted the work of the NAIC Working Group to the Departments. The Appendices to this document include the SBC documents drafted by the NAIC in their entirety, with the exception of the sample coverage example calculation for breast cancer in the

[11] **Note:** The general notice of preexisting condition exclusion and the individual notice of preexisting condition exclusion at 26 CFR 54.9801–3(c) and (e), 29 CFR 2590.701–3(c) and (e), and 45 CFR 146.111(c) and (e), were published as part of the Departments' HIPAA portability regulations on December 30, 2004, 69 FR 78720.

[12] **Note:** Under paragraph (a)(2) of the Departments' interim final regulations regarding status as a grandfathered health plan, to maintain grandfather status, group health plans and health insurance coverage must include a statement in any plan materials describing the benefits provided that the plan or coverage believes it is a grandfathered health plan. Model language is provided. See 26 CFR 54.9815–1251T(a)(2), 29 CFR 2590.715–1251(a)(2), and 45 CFR 147.140(a)(2), published in the **Federal Register** on June 17, 2010, 75 FR 34538.

individual market, as explained earlier in this document.

Appendix A–1 contains an SBC template, as developed by the NAIC Working Group. The NAIC Working Group incorporated all of their recommendations contained in the multiple transmittals to the Departments over the last several months in their final recommended SBC template.

Appendix A–2 contains a sample completed SBC, using information for a sample individual health insurance policy. While the sample completed SBC may not align perfectly with the instructions in every way, the document is useful in providing a general illustration of a completed SBC for a sample insurance policy.

Appendices B–1 and B–2 contain instructions for group health coverage and individual health insurance coverage, respectively, to use in completing the SBC template. The Departments are publishing the sample completed SBC and the instructions to facilitate compliance with the requirements of the 2011 proposed regulations and this document.

The SBC instructions include language that must be used when completing the ''Why This Matters'' column on the first page of the SBC template. Depending on the design of the policy or plan, there are two language options provided in Appendices C–1 (for when the answer in the applicable row is ''yes'') and C–2 (for when the answer in the applicable row is ''no''). Appendices C–1 and C–2 provide an example of how this column will look when populated with the required language, as applicable depending upon the terms of the plan or coverage.

Appendix D contains a guide for use by a plan or issuer in compiling information related to the coverage examples. This document, together with information provided in Microsoft Excel format by HHS at *http://cciio.cms.gov*, comprises all the information necessary to perform coverage example calculations for all three coverage examples. HHS will update the information on its Web site annually. With respect to these annual updates, the Departments propose that 90 days after HHS updates the information, SBCs that are otherwise required to be provided under paragraph (a) of the 2011 proposed rules would take into account the new information when providing coverage examples.

Finally, Appendix E contains the Uniform Glossary of Health Insurance and Medical Terms.

The Departments invite comments on all of the documents in the Appendices to this document and their use in relation to the requirements of the 2011 proposed regulations and this document.

BILING CODE 4120–01–P

Appendix A-1 Summary of Benefits and Coverage (SBC) Template

_____: _____ Policy Period: _____ – _____

Summary of Coverage: What this Plan Covers & What It Costs **Coverage for:** _____ | **Plan Type:** _____

This is not a policy. You can get the policy at www.insurancecompany.com/PLAN1500 or by calling 1-800-XXX-XXXX. A policy has more detail about how to use the plan and what you and your insurer must do. It also has more detail about your coverage and costs.

Important Questions	Answers	Why this Matters:
What is the premium?	$	The premium is the amount paid for health insurance. This is only an estimate based on information you've provided. After the insurer reviews your application, your actual premium may be higher or your application may be denied.
What is the overall deductible?	$	
Are there other deductibles for specific services?	$	
Is there an out-of-pocket limit on my expenses?	$	
What is not included in the out-of-pocket limit?		
Is there an overall annual limit on what the insurer pays?		
Does this plan use a network of providers?		
Do I need a referral to see a specialist?		
Are there services this plan doesn't cover?		

Questions: Call 1-800-XXX-XXXX or visit us at www.insurancecompany.com.
If you aren't clear about any of the terms used in this form, see the Glossary at www.insuranceterms.gov.

OMB Control Numbers 1545-XXXX, 1210-XXXX, and 0938-XXXX (expires XX/XX/XXXX)

_____ : _____ Policy Period: _____ – _____

Summary of Coverage: What this Plan Covers & What It Costs Coverage for: _____ | Plan Type: _____

- Co-payments are fixed dollar amounts (for example, $15) you pay for covered health care, usually when you receive the service.
- Co-insurance is *your* share of the costs of a covered service, calculated as a percent of the allowed amount for the service. You pay this plus any deductible amounts you owe under this health insurance plan. For example, if the health plan's allowed amount for an overnight hospital stay is $1,000 and you've met your deductible, your co-insurance payment of 20% would be $200. If you haven't met any of the deductible and it's at least $1,000, you would pay the full cost of the hospital stay.
- The plan's payment for covered services is based on the allowed amount. If an out-of-network provider charges more than the allowed amount, you may have to pay the difference. For example, if an out-of-network hospital charges $1,500 for an overnight stay and the allowed amount is $1,000, you may have to pay the $500 difference. (This is called balance billing.)
- This plan may encourage you to use _____ providers by charging you lower deductibles, co-payments and co-insurance amounts.

Common Medical Event	Services You May Need	Your cost if you use a Participating Provider	Non-Participating Provider	Limitations & Exceptions
If you visit a health care provider's office or clinic	Primary care visit to treat an injury or illness			
	Specialist visit			
	Other practitioner office visit			
	Preventive care/screening/immunization			
If you have a test	Diagnostic test (x-ray, blood work)			
	Imaging (CT/PET scans, MRIs)			
If you need drugs to treat your illness or condition	Generic drugs			
	Preferred brand drugs			
	Non-preferred brand drugs			
More information about drug coverage is at www.insurancecompany.com/prescriptions	Specialty drugs (e.g., chemotherapy)			
If you have outpatient surgery	Facility fee (e.g., ambulatory surgery center)			
	Physician/surgeon fees			
If you need	Emergency room services			

Questions: Call 1-800-XXX-XXXX or visit us at www.insurancecompany.com.
If you aren't clear about any of the terms used in this form, see the Glossary at www.insuranceterms.gov.

_____ : _____ Policy Period: _____ – _____

Summary of Coverage: What this Plan Covers & What it Costs Coverage for: _____ | Plan Type: _____

Common Medical Event	Services You May Need	Your cost if you use a Participating Provider	Your cost if you use a Non-Participating Provider	Limitations & Exceptions
immediate medical attention	Emergency medical transportation			
	Urgent care			
If you have a hospital stay	Facility fee (e.g., hospital room)			
	Physician/surgeon fee			
If you have mental health, behavioral health, or substance abuse needs	Mental/Behavioral health outpatient services			
	Mental/Behavioral health inpatient services			
	Substance use disorder outpatient services			
	Substance use disorder inpatient services			
If you become pregnant	Prenatal and postnatal care			
	Delivery and all inpatient services			
If you have a recovery or other special health need	Home health care			
	Rehabilitation services			
	Habilitation services			
	Skilled nursing care			
	Durable medical equipment			
	Hospital service			
If your child needs dental or eye care	Eye exam			
	Glasses			
	Dental check-up			

Excluded Services & Other Covered Services:

Services Your Plan Does NOT Cover (This isn't a complete list. Check your policy for others.)		
•	•	•

Questions: Call 1-800-XXX-XXXX or visit us at www.insurancecompany.com.
If you aren't clear about any of the terms used in this form, see the Glossary at www.insuranceterms.gov.

_____: _____ **Policy Period:** _____ – _____

Summary of Coverage: What this Plan Covers & What it Costs **Coverage for:** _____ | **Plan Type:** _____

Other Covered Services (This isn't a complete list. Check your policy for other covered services and your costs for these services.)
•

Your Rights to Continue Coverage:

You can keep this insurance as long as you pay your premium unless one or more of the following happens:

- you commit fraud
- the insurer stops offering services in the state
- you move outside the coverage area

Your Grievance and Appeals Rights:

- A **grievance** is a complaint you have about your health insurer or plan. You have the right to file a written complaint to express your dissatisfaction or denial of coverage for claims under this health insurance. Call 1-800-XXX-XXXX or visit www. Xxxxxxxxxxxxxx.com.

- An **appeal** is a request for your health insurer or plan to review a decision or a grievance again. For more information on the appeals process, call your state office of health insurance customer assistance at: 1-800-XXX-XXXX or visit www. Xxxxxxxxxxxxxx.gov.

To see examples of how this plan might cover costs for a sample medical situation, see the next page.

Questions: Call 1-800-XXX-XXXX or visit us at www.insurancecompany.com.
If you aren't clear about any of the terms used in this form, see the Glossary at www.insuranceterms.gov.

_____: _____ Policy Period: _____ – _____

Coverage Examples Coverage for: _____ | Plan Type: _____

About these Coverage Examples:

These examples show how this plan might cover medical care in three situations. Use these examples to see, in general, how much insurance protection you might get from different plans.

This is not a cost estimator.

Don't use these examples to estimate your actual costs under this plan. The actual care you receive will be different from these examples, and the cost of that care also will be different.

See the next page for important information about these examples.

Having a baby
(normal delivery)

- **Amount owed to providers:** $10,000
- **Plan pays $**
- **You pay $**

Sample care costs:

First office visit	$100
Radiology	$300
Laboratory tests	$200
Routine obstetric care	$2,000
Hospital charges (mother)	$4,100
Hospital charges (baby)	$1,900
Anesthesia	$1,000
Circumcision	$200
Vaccines, other preventive	$200
Total	**$10,000**

You pay:

Deductibles	$
Co-pays	$
Co-insurance	$
Limits or exclusions	$
Total	**$**

Treating breast cancer
(lumpectomy, chemotherapy, radiation)

- **Amount owed to providers:** $98,000
- **Plan pays $**
- **You pay $**

Sample care costs:

Office visits & procedures	$4,000
Radiology	$4,000
Laboratory tests	$2,400
Hospital charges	$3,300
Inpatient medical care	$200
Outpatient surgery	$3,400
Chemotherapy	$64,000
Radiation therapy	$13,000
Prostheses (wig)	$500
Pharmacy	$2,000
Mental health	$1,200
Total	**$98,000**

You pay:

Deductibles	$
Co-pays	$
Co-insurance	$
Limits or exclusions	$
Total	**$**

Managing diabetes
(routine maintenance of existing condition)

- **Amount owed to providers:** $7,800
- **Plan pays $**
- **You pay $**

Sample care costs:

Office visits & procedures	$960
Laboratory tests	$300
Medical equipment & supplies	$40
Pharmacy	$6,500
Total	**$7,800**

You pay:

Deductibles	$
Co-pays	$
Co-insurance	$
Limits or exclusions	$
Total	**$**

Questions: Call 1-800-XXX-XXXX or visit us at www.insurancecompany.com.
If you aren't clear about any of the terms used in this form, see the Glossary at www.insuranceterms.gov.

_____: _____ Policy Period: _____ – _____

Coverage Examples Coverage for: _____ | Plan Type: _____

Questions and answers about Coverage Examples:

What are some of the assumptions behind the Coverage Examples?

- Costs don't include premiums.
- Sample care costs are based on national averages supplied to the U.S. Department of Health and Human Services (HHS), and aren't specific to a particular geographic area or health plan.
- Patient's condition was not an excluded or preexisting condition.
- All services and treatments started and ended in the same policy period.
- There are no other medical expenses for any member covered under this plan. Out-of-pocket expenses are based only on treating the condition in the example.
- The patient received all care from in-network providers. If the patient had received care from out-of-network providers, costs would have been higher.

What does a Coverage Example show?

For each treatment situation, the Coverage Example helps you see how deductibles, co-payments, and co-insurance can add up. It also helps you see what expenses might be left up to you to pay because the service or treatment isn't covered or payment is limited.

Does the Coverage Example predict my own care needs?

✘ **No.** Treatments shown are just examples. The care you would receive for these conditions could be different, based on your doctor's advice, your age, how serious your condition is, and many other factors.

Does the Coverage Example predict my future expenses?

✘ **No.** Coverage Examples are **not** cost estimators. You can't use the examples to estimate costs for an actual condition. They are for comparative purposes only. Your own costs will be different depending on the care you receive, the prices your providers charge, and the reimbursement your health plan allows.

Can I use Coverage Examples to compare plans?

✓ **Yes.** When you look at the Summaries of Coverage for other plans, you'll find the same coverage examples. When you compare plans, check the "You Pay" box for each example. The smaller that number, the more coverage the plan provides.

Are there other costs I should consider when comparing plans?

✓ **Yes.** An important cost is the premium you pay. Generally, the lower your premium, the more you'll pay in out-of-pocket costs, such as co-payments, deductibles, and co-insurance. You also should consider contributions to accounts such as health savings accounts (HSAs), flexible spending arrangements (FSAs) or health reimbursement accounts (HRAs) that help you pay out-of-pocket expenses.

Questions: Call 1-800-XXX-XXXX or visit us at www.insurancecompany.com.
If you aren't clear about any of the terms used in this form, see the Glossary at www.insuranceterms.gov.

Appendix A-2 Sample Completed SBC (Individual Health Insurance Coverage)

Insurance Company 1: PPO Plan 1

Summary of Coverage: What this Plan Covers & What it Costs

Policy Period: 1/1/2011 – 12/31/2011
Coverage for: Individual + Spouse | **Plan Type:** PPO

This is not a policy. You can get the policy at www.insurancecompany.com/PLAN1500 or by calling 1-800-XXX-XXXX. A policy has more detail about how to use the plan and what you and your insurer must do. It also has more detail about your coverage and costs.

Important Questions	Answers	Why this Matters:
What is the premium?	**$481** monthly	The premium is the amount paid for health insurance. This is only an estimate based on information you've provided. After the insurer reviews your application, your actual premium may be higher or your application may be denied.
What is the overall deductible?	**$2,500** person / **$7,500** family Doesn't apply to preventive care	You must pay all the costs up to the deductible amount before this health insurance plan begins to pay for covered services you use. Check your policy to see when the deductible starts over (usually, but not always, January 1st). See the chart starting on page 2 for how much you pay for covered services after you meet the deductible.
Are there other deductibles for specific services?	Yes; **$300** for pharmacy expenses	You must pay all of the costs for these services up to the specific deductible amount before this plan begins to pay for these services.
Is there an out-of-pocket limit on my expenses?	Yes. **$2,500** person / **$7,500** family	The out-of-pocket limit is the most you could pay during a policy period for your share of the cost of covered services. This limit helps you plan for health care expenses.
What is not included in the out-of-pocket limit?	Co-payments, premium, balance-billed charges, prescription drugs, and health care this plan doesn't cover.	Even though you pay these expenses, they don't count toward the out-of-pocket limit. So, a longer list of expenses means you have less coverage.
Is there an overall annual limit on what the insurer pays?	No.	The chart starting on page 2 describes any limits on what the insurer will pay for specific covered services, such as office visits.
Does this plan use a network of providers?	Yes. See www.insurancecompany.com for a list of participating doctors and hospitals.	If you use an in-network doctor or other health care provider, this plan will pay some or all of the costs of covered services. Plans use the term in-network, preferred, or participating for providers in their network.
Do I need a referral to see a specialist?	No. You don't need a referral to see a specialist.	You can see the specialist you choose without permission from this plan.
Are there services this plan doesn't cover?	Yes.	Some of the services this plan doesn't cover are listed in the "Excluded Services & Other Covered Services" section.

Questions: Call 1-800-XXX-XXXX or visit us at www.insurancecompany.com.
If you aren't clear about any of the terms used in this form, see the Glossary at www.insuranceterms.gov.

OMB Control Numbers 1545-XXXX, 1210-XXXX, and 0938-XXXX (expires XX/XX/XXXX)

Insurance Company 1: PPO Plan 1

Summary of Coverage: What this Plan Covers & What It Costs

Policy Period: 1/1/2011 – 12/31/2011
Coverage for: Individual + Spouse | Plan Type: PPO

- Co-payments are fixed dollar amounts (for example, $15) you pay for covered health care, usually when you receive the service.
- Co-insurance is *your* share of the costs of a covered service, calculated as a percent of the allowed amount for the service. You pay this plus any deductible amounts you owe under this health insurance plan. For example, if the health plan's allowed amount for an overnight hospital stay is $1,000 and you've met your deductible, your co-insurance payment of 20% would be $200. If you haven't met any of the deductible and it's at least $1,000, you would pay the full cost of the hospital stay.
- The plan's payment for covered services is based on the allowed amount. If an out-of-network provider charges more than the allowed amount, you may have to pay the difference. For example, if an out-of-network hospital charges $1,500 for an overnight stay and the allowed amount is $1,000, you may have to pay the $500 difference. (This is called balance billing.)
- This plan may encourage you to use participating providers by charging you lower deductibles, co-payments and co-insurance amounts.

Common Medical Event	Services You May Need	Your cost if you use a Participating Provider	Your cost if you use a Non-Participating Provider	Limitations & Exceptions
If you visit a health care provider's office or clinic	Primary care visit to treat an injury or illness	$35 co-pay/visit	40% co-insurance	none
	Specialist visit	$50 co-pay/visit	40% co-insurance	none
	Other practitioner office visit	20% co-insurance for chiropractor and acupuncture	40% co-insurance for chiropractor and acupuncture	none
	Preventive care/screening/immunization	$0	40% co-insurance	
If you have a test	Diagnostic test (x-ray, blood work)	0% co-insurance	40% co-insurance	none
	Imaging (CT/PET scans, MRIs)	0% co-insurance	40% co-insurance	none
If you need drugs to treat your illness or condition More information about drug coverage is at www.insurancecompany.com/prescriptions	Generic drugs	$10 co-pay (retail); $10 co-pay (mail order)	40% co-insurance	Covers up to a 30-day supply (retail prescription); 31-90 day supply (mail order prescription)
	Preferred brand drugs	20% co-insurance (retail and mail order)	40% co-insurance	none
	Non-preferred brand drugs	40% co-insurance (retail and mail order)	60% co-insurance	none
	Specialty drugs (e.g., chemotherapy)	0% co-insurance		none

Questions: Call 1-800-XXX-XXXX or visit us at www.insurancecompany.com.
If you aren't clear about any of the terms used in this form, see the Glossary at www.insuranceterms.gov.

Insurance Company 1: PPO Plan 1

Summary of Coverage: What this Plan Covers & What it Costs

Policy Period: 1/1/2011 – 12/31/2011

Coverage for: Individual + Spouse | **Plan Type:** PPO

Common Medical Event	Services You May Need	Your cost if you use a Participating Provider	Your cost if you use a Non-Participating Provider	Limitations & Exceptions
If you have outpatient surgery	Facility fee (e.g., ambulatory surgery center)	0% co-insurance	40% co-insurance	none
	Physician/surgeon fees	0% co-insurance	40% co-insurance	none
If you need immediate medical attention	Emergency room services	0% co-insurance	40% co-insurance	none
	Emergency medical transportation	0% co-insurance	40% co-insurance	none
	Urgent care	0% co-insurance	40% co-insurance	none
If you have a hospital stay	Facility fee (e.g., hospital room)	0% co-insurance	40% co-insurance	none
	Physician/surgeon fee	0% co-insurance	40% co-insurance	none
If you have mental health, behavioral health, or substance abuse needs	Mental/Behavioral health outpatient services	0% co-insurance	40% co-insurance	After 8 visits, not covered.
	Mental/Behavioral health inpatient services	0% co-insurance	40% co-insurance	none
	Substance use disorder outpatient services	0% co-insurance	40% co-insurance	none
	Substance use disorder inpatient services	0% co-insurance	40% co-insurance	none
If you become pregnant	Prenatal and postnatal care	Not Covered	Not Covered	none
	Delivery and all inpatient services	Not Covered	Not Covered	none
If you have a recovery or other special health need	Home health care	0% co-insurance	40% co-insurance	none
	Rehabilitation services	0% co-insurance	40% co-insurance	none
	Habilitation services	0% co-insurance	40% co-insurance	none
	Skilled nursing care	0% co-insurance	40% co-insurance	none
	Durable medical equipment	0% co-insurance	40% co-insurance	none
	Hospital service	0% co-insurance	40% co-insurance	none
If your child needs dental or eye care	Eye exam	Not Covered	Not Covered	none
	Glasses	Not Covered	Not Covered	none
	Dental check-up	Not Covered	Not Covered	none

Questions: Call 1-800-XXX-XXXX or visit us at www.insurancecompany.com.
If you aren't clear about any of the terms used in this form, see the Glossary at www.insuranceterms.gov.

Insurance Company 1: PPO Plan 1

Summary of Coverage: What this Plan Covers & What it Costs

Policy Period: 1/1/2011 – 12/31/2011
Coverage for: Individual + Spouse | **Plan Type:** PPO

Excluded Services & Other Covered Services:

Services Your Plan Does NOT Cover (This isn't a complete list. Check your policy for others.)

- Bariatric surgery
- Non-emergency care when traveling outside the U.S.
- Cosmetic surgery
- Dental care (Adult)
- Infertility treatment
- Long-term care
- Private-duty nursing
- Routine eye care (Adult)
- Routine foot care
- Routine hearing tests
- Weight loss programs

Other Covered Services (This isn't a complete list. Check your policy for other covered services and your costs for these services.)

- Acupuncture
- Chiropractic care
- Hearing aids

Your Rights to Continue Coverage:

You can keep this insurance as long as you pay your premium unless one or more of the following happens:

- you commit fraud
- the insurer stops offering services in the state
- you move outside the coverage area

Your Grievance and Appeals Rights:

- A **grievance** is a complaint you have about your health insurer or plan. You have the right to file a written complaint to express your dissatisfaction or denial of coverage for claims under this health insurance. Call 1-800-XXX-XXXX or visit www. Xxxxxxxxxxxxxx.com.
- An **appeal** is a request for your health insurer or plan to review a decision or a grievance again. For more information on the appeals process, call your state office of health insurance customer assistance at: 1-800-XXX-XXXX or visit www. Xxxxxxxxxxxxxx.gov.

To see examples of how this plan might cover costs for a sample medical situation, see the next page.

Questions: Call 1-800-XXX-XXXX or visit us at www.insurancecompany.com.
If you aren't clear about any of the terms used in this form, see the Glossary at www.insuranceterms.gov.

Insurance Company 1: PPO Plan 1

Coverage Examples

Policy Period: 1/1/2011 – 12/31/2011
Coverage for: Individual + Spouse | **Plan Type:** PPO

About these Coverage Examples:

These examples show how this plan might cover medical care in three situations. Use these examples to see, in general, how much insurance protection you might get from different plans.

This is not a cost estimator.

Don't use these examples to estimate your actual costs under this plan. The actual care you receive will be different from these examples, and the cost of that care also will be different.

See the next page for important information about these examples.

Having a baby
(normal delivery)

- **Amount owed to providers:** $10,000
- **Plan pays** $0
- **You pay** $10,000 (maternity is not covered, so you pay 100%)

Sample care costs:

First office visit	$100
Radiology	$300
Laboratory tests	$200
Routine obstetric care	$2,000
Hospital charges (mother)	$4,100
Hospital charges (baby)	$1,900
Anesthesia	$1,000
Circumcision	$200
Vaccines, other preventive	$200
Total	**$10,000**

You pay:

Deductibles	$0
Co-pays	$0
Co-insurance	$0
Limits or exclusions	$10,000
Total	**$10,000**

Treating breast cancer
(lumpectomy, chemotherapy, radiation)

- **Amount owed to providers:** $98,000
- **Plan pays** $94,800
- **You pay** $3,200

Sample care costs:

Office visits & procedures	$4,000
Radiology	$4,000
Laboratory tests	$2,400
Hospital charges	$3,300
Inpatient medical care	$200
Outpatient surgery	$3,400
Chemotherapy	$64,000
Radiation therapy	$13,000
Prostheses (wig)	$500
Pharmacy	$2,000
Mental health	$1,200
Total	**$98,000**

You pay:

Deductibles	$2,500
Co-pays	$200
Co-insurance	$0
Limits or exclusions	$500
Total	**$3,200**

Managing diabetes
(routine maintenance of existing condition)

- **Amount owed to providers:** $7,800
- **Plan pays** $6,800
- **You pay** $1,000

Sample care costs:

Office visits & procedures	$960
Laboratory tests	$300
Medical equipment & supplies	$40
Pharmacy	$6,500
Total	**$7,800**

You pay:

Deductibles	$300
Co-pays	$260
Co-insurance	$400
Limits or exclusions	$40
Total	**$1,000**

Questions: Call 1-800-XXX-XXXX or visit us at www.insurancecompany.com.
If you aren't clear about any of the terms used in this form, see the Glossary at www.insuranceterms.gov.

Questions and answers about Coverage Examples:

What are some of the assumptions behind the Coverage Examples?

- Costs don't include premiums.
- Sample care costs are based on national averages supplied to the U.S. Department of Health and Human Services (HHS), and aren't specific to a particular geographic area or health plan.
- Patient's condition was not an excluded or preexisting condition.
- All services and treatments started and ended in the same policy period.
- There are no other medical expenses for any member covered under this plan. Out-of-pocket expenses are based only on treating the condition in the example.
- The patient received all care from in-network providers. If the patient had received care from out-of-network providers, costs would have been higher.

What does a Coverage Example show?

For each treatment situation, the Coverage Example helps you see how deductibles, co-payments, and co-insurance can add up. It also helps you see what expenses might be left up to you to pay because the service or treatment isn't covered or payment is limited.

Does the Coverage Example predict my own care needs?

✘ **No.** Treatments shown are just examples. The care you would receive for these conditions could be different, based on your doctor's advice, your age, how serious your condition is, and many other factors.

Does the Coverage Example predict my future expenses?

✘ **No.** Coverage Examples are **not** cost estimators. You can't use the examples to estimate costs for an actual condition. They are for comparative purposes only. Your own costs will be different depending on the care you receive, the prices your providers charge, and the reimbursement your health plan allows.

Can I use Coverage Examples to compare plans?

✓ **Yes.** When you look at the Summaries of Coverage for other plans, you'll find the same coverage examples. When you compare plans, check the "You Pay" box for each example. The smaller that number, the more coverage the plan provides.

Are there other costs I should consider when comparing plans?

✓ **Yes.** An important cost is the premium you pay. Generally, the lower your premium, the more you'll pay in out-of-pocket costs, such as co-payments, deductibles, and co-insurance. You also should consider contributions to accounts such as health savings accounts (HSAs), flexible spending arrangements (FSAs) or health reimbursement accounts (HRAs) that help you pay out-of-pocket expenses.

Appendix B-1 Instructions– Group Health Plan Coverage

What Your Plan Covers and What it Costs

Draft Instruction Guide for Group Policies

Edition Date: July 2011

Purpose of the form: Beginning in March 2012, the Patient Protection and Affordable Care Act (PPACA) requires all health insurance issuers offering group health insurance coverage to provide enrollees and potential enrollees an accurate summary of benefits and coverage explanation. This form does not apply to excepted benefits as defined by the Public Health Services Act (PHSA). Federal law requires this document so eligible employees will find it easier to compare policies and understand their coverage.

Requirements to provide/deliver the form: As set forth below, this form must be provided to the employer or eligible employees at the time of issuance of the policy or at renewal, as applicable.

While it is the insurer's, or a representative of the insurer's, responsibility to accurately fill out and deliver the form, these instructions acknowledge that eligible employees receive information about their health insurance primarily through their employer. The following are the permitted methods of delivery:

a. When an insurer, or a representative of an insurer, meets in person with the eligible employee, the insurer or a representative of the insurer may hand-deliver the completed form to the eligible employee. Alternatively, the insurer, or representative of the insurer, may offer the eligible employee the following options, and shall provide the form to be delivered in the manner selected by the eligible employee:
   1) A printed copy deposited in the United States mail, postage pre-paid, within seven (7) days of the request;
   2) An electronic copy delivered to an e-mail address provided by the eligible employee;
   3) An electronic copy delivered via a link on the Internet;
   4) A copy delivered by any other means acceptable to both the insurer and the eligible employee.

b. For an eligible employee who conducts their enrollment electronically, the insurer, or a representative of the insurer, must make the form available on the electronic site and the insurer must require the eligible employee to acknowledge receipt of the form as a necessary step to completing the enrollment application.

c. For an enrollment application that is completed over the phone or through the mail, the insurer, or a representative of the insurer, shall offer a printed copy of the completed form within seven (7) days to the address provided by the eligible employee. Alternatively, the insurer, or representative of the insurer, may offer the eligible employee the following

options, and shall provide the form to be delivered in the manner selected by the eligible employee:

1) An electronic copy delivered to an e-mail address provided by the eligible employee;
2) An electronic copy delivered via a link on the Internet;
3) A copy delivered by any other means acceptable to both the insurer and the eligible employee.

d. When an insurer issues a policy or delivers a certificate the form shall be included with the policy or certificate and provided in the manner selected by the policy holder or certificate holder.

e. When the policy or certificate is renewed, the insurer shall provide the form in the same manner in which the policy or certificate were provided along with the renewal documents.

An oral description of the form is not sufficient. An insurer, or a representative of the insurer, may not provide the form solely by orally explaining the form and its contents either in person or over the telephone.

Unless otherwise required by law, this form is a freestanding document and may not be incorporated into any other document that an insurer, or an insurer's representative, provides to an applicant, policy holder or certificate holder.

General Instructions: Read all instructions carefully before completing the form.

- This form must be filled out accurately and by the insurer in good faith.
- Form language and formatting must be precisely reproduced, unless instructions allow or instruct otherwise. Unless otherwise instructed, the insurer must use 12-point (as required by federal law) Times New Roman font, and replicate all symbols, formatting, bolding, colors, and shading exactly. Attached is an example of a blank form.
- Insurers must customize all identifiable company information throughout the document, including websites and telephone numbers.
- If there is a different amount for in-network and out-of-network expenses (such as annual deductible, additional deductibles, or out-of-pocket limits), list both amounts and indicate as such, using the terms to describe provider networks used by the insurer. For example, if the policy uses the terms "preferred provider" and "non-preferred provider" and the annual deductible is $2,000 for a preferred provider and $5,000 for a non-preferred provider, then the Answer column should show "$2000 preferred provider, $5,000 non-preferred provider".
- The items shown on Page 1 must always appear on Page 1, and the rows of the chart must always appear in the same order. The chart starting on page 2 shown in the example must always begin on Page 2, and the rows shown on this chart must always appear in the same order. However, the chart rows shown on Page 2 may extend to Page 3 if space requires, and the chart rows on Page 3 may extend to the beginning of Page 4 if space requires. The *Excluded Services and Other Covered Services* section may appear on Page 3 or Page 4, but must always immediately follow the chart starting on page 2. The

Excluded Services and Other Covered Services section must be followed by the *Your Rights to Continue Coverage* section, the *Your Grievance and Appeals Rights* section, and the *Coverage Examples* section, in that order.

- Footer: The footer must appear at the bottom left of every page. The insurer must insert the appropriate telephone number and website information.
- For initial forms (provided to employees in the pre-selection stage), insurers may provide both single and family information for each category, where applicable (e.g. premium, deductible, out-of-pocket limit and annual limit). For example, for the deductible category, the Answer column may show "$2,000 Individual" in the first line, and $3,000 Family" in the second line". For final forms (provided to employees after selection), insurers should only include information for the relevant plan.
- For all form sections to be filled out by the insurer (particularly in the *Answers* column on page 1, and the *Your Cost* and *Limitations and Exceptions* columns in the chart that starts on page 2), the insurer should use plain language and present the information in a culturally and linguistically appropriate manner and utilize terminology understandable by the average individual.

Filling out the form:

Top Left Header (Page 1):

On the top left hand corner of the first page, the insurer must show the following information:

- **First line:** Show the plan name and insurance company name in 16 point font and bold. Example: "**Maximum Health Plan: Alpha Insurance Group**".
  - Insurers have the option to use their logo instead of the typing in the company name if the logo includes the name of the entity issuing the coverage.
  - The insurer must use the commonly known company name.

Top Right Header (Page 1):

On the top right hand corner of the first page, the insurer must show the following information:

- **First line:** After *Policy Period*, the insurer must show the beginning and end dates for the applicable policy period in the following format: "MM/DD/YYYY – MM/DD/YYYY". For example: "Policy Period: 09/15/2010 - 09/14/2011".
- **Second line**:
  - After the words "Coverage For", indicate who the policy is for (such as Individual, Individual + Spouse, Family). The insurer will use the terms used by the policy, but should ensure that the term used will make it easy for the eligible employee to compare similar types of plans.
  - After the words "Plan Type", indicate the type of insurance plan, such as HMO, PPO, POS, Indemnity, or High-deductible.

Disclaimer (Page 1):

The disclaimer should be replicated and the insurer may not vary the font size, graphic or formatting. The insurer should insert the plan's website and telephone number.

Important Questions/Answers/ Why This Matters Chart

General Instructions for the *Important Questions* chart:

- This chart must always appear on Page 1, and the rows must always appear in the same order. Insurers must complete the *Answers* column for each question on this chart, using the instructions below.
- Insurers must show the appropriate language in the *Why This Matters* box as instructed in the instructions below. Insurers must replicate the language given for the *Why This Matters* box exactly, and may not alter the language.
- When responding with a list of items, use words such as "and", "or", or "plus" rather than using a semi-colon. For example: "Yes, $5,000 deductible for prescription drugs and $2,000 for occupational therapy" rather than "Yes, $5,000 for prescription drugs; $2,000 for occupational therapy".

1. ***What Is The Premium?:***

Answers column:

a. Instructions for the Initial Form (provided before the employee selects a plan):

1) Insurers will include the following statement: "Please contact your employer for your share of the premium amount."

2) Employers will provide an addendum that defines the monthly premiums for each coverage level for each plan to support the evaluation of plans by eligible employees during the open enrollment period. This addendum should include the following premium information:

a) For small groups whose premiums are based on table rates, the complete rate table should be attached with a reference in the Premium box to refer to the attached rates. This will allow eligible employees to identify the premiums they would pay based on their combination of age, gender, and coverage level/tier.

b) For groups whose premiums are not based on age factors, premiums for each coverage level/tier available for the plan should be displayed. This will allow eligible employees to identify the premiums they would pay based on their coverage level/tier.

b. Final Form for Group Plans (provided after the employee selects a plan)

1) Insurers will include the following statement: "Please contact your employer for your share of the premium amount."

2) Employers will provide an addendum with the following premium information:

a) For small groups whose premiums are based on table rates, the premiums they will pay based on their combination of age, gender, and coverage level/tier should be displayed. For example: Male/Female, Age xx – xx, Coverage Tier - $xxx per month

b) For groups whose premiums are not based on age factors, premiums for each coverage level/tier available for the plan should be displayed. This will allow eligible employees to identify the

premiums they would pay based on their coverage level/tier. For example: Coverage Level - $xxx per month

Why This Matters column:

c. The insurer must always insert the following language: "The **premium** is the amount paid for health insurance."

2. ***What Is The Overall Deductible?:***

Answers column:

a. If there is no calendar year or policy period deductible, answer "$0".

b. If there is a calendar year or policy period deductible, answer with the dollar amount and indicate whether it is based on a calendar year, or policy period. For example: "$5,000 for calendar year" or "$5,000 for policy period".

c. If there is a calendar year or policy period deductible, underneath the dollar amount insurers must include language specifying major categories of covered services that are NOT subject to this deductible. For example, "Does not apply to preventive care and generic drugs".

d. If there is a calendar year or policy period deductible, underneath the dollar amount insurers must include language listing major exceptions, such as out-of-network coinsurance, deductibles for specific services and copayments, which do not count toward the deductible. For example, "Out-of-network coinsurance and copayments don't count toward the deductible."

e. Show the answer for the type of policy only. For example, if this is an individual policy, show answers only for individual. If a family policy and there is a single deductible amount for the family, show answers only for family.

f. If portraying a family policy for which there is a separate deductible amount for each individual and the family, show the individual deductible on the first line, and the family deductible on the second line. For example, the first line may show "Individual $2,000" and the second line may show "Family $3,000".

Why This Matters column:

g. If there is no calendar year or policy period deductible, show the following language: "See the chart starting on page 2 for your other costs for services this plan covers".

h. If there is a calendar year or policy period deductible, show the following language: "You must pay all the costs up to the **deductible** amount before this health insurance plan begins to pay for covered services you use. Check your policy to see when the deductible starts over (usually, but not always, January 1st). See the chart starting on page 2 for how much you pay for covered services after you meet the **deductible**."

3. ***Are There Other Deductibles for Specific Services?:***

Answers column:

a. If the calendar year or policy period deductible is the only deductible, answer with the phrase "No, there are no other deductibles." Do not answer with just one word.

b. If there are other deductibles, answer "Yes", then list the names and deductible amounts of the three most significant deductibles other than the annual deductible.

Significance of deductibles are determined by the insurer based on two factors: probability of use and financial impact on the employee. Examples of other deductibles include deductibles for Prescription Drug, Hospital, and Mental Health). For example: "Yes, $2,000 for prescription drug expenses and $2,000 for occupational therapy services".

c. If the plan has more than three other deductibles and not all deductibles are shown, the following statement must appear at the end of the list: "There are other deductibles."

d. If the plan has less than three other deductibles, the following statement must appear at the end of the list: "There are no other deductibles."

e. Show the answer for the type of policy only. For example, if this is an individual policy, show answers only for individual. If this is a family policy and there is a single deductible amount for the family, show answers only for family.

f. If portraying a family policy for which there is a separate deductible amount for each individual and the family, show both the individual and family deductible. For example: "Prescription drugs -- Individual $200, Family $500"

Why This Matters column:

g. If there are no other deductibles, the insurer must show the following language: "Because you don't have to meet **deductibles** for specific services, this plan starts to cover costs sooner."

h. If there are other deductibles, the insurer must show the following language: "You must pay all the costs for these services up to the specific deductible amount before this plan begins to pay for these services."

4. ***Is There An Out-of-Pocket Limit On My Expenses?***

Answers column

a. If there are no out-of-pocket limits, respond "No. There's no out-of-pocket limit on your expenses" on the first line. Do not respond with a one-word answer.

b. If there is an out-of-pocket limit, respond "Yes", along with a specific dollar amount that applies in each plan year, and to each charge with a separate out-of-pocket limit on the first line. For example: "Yes. $5,000".

c. If there are other types of annual limits, such as annual or plan year limits on visits, services or drugs, then the insurer must show the following language on the second line: "Other limits apply – see the chart that starts on page 2."

d. If an individual policy, show answers only for individual. If a family policy and there is a single out-of-pocket limit for the family, show answers only for family.

e. If a family policy, and there is a single out-of-pocket limit for each individual and a separate out-of-pocket limit for the family, show the individual out-of-pocket limit on the first line, and the family out-of-pocket limit on the second line. For example, the first line may show "Individual $1,000" and the second line may show "Family $3,000".

Why This Matters column:

f. If there is an out-of-pocket limit, the insurer must show the following language: "The **out-of-pocket** limit is the most you could pay during a policy period for your share of the cost of covered services. This limit helps you plan for health care expenses."

g. If there is no out-of-pocket limit, the insurer must show the following language: "There's no limit on how much you could pay during a policy period for your share of the cost of covered services."

5. ***What Is Not Included In The Out-of-Pocket Limit?***

Answers column

a. If there is no out-of-pocket limit, indicate "This question doesn't apply to this plan."

b. If there is an out-of-pocket limit, the insurer must list any major exceptions. This list must always include: premium, balance-billed charges, and health care this plan doesn't cover. Depending on the policy, the list could also include: copayments, out of network coinsurance, deductibles, and penalties for failure to obtain pre-authorization for services. The insurer must state that these items do not count toward the limit. For example: "Copayments, premium, balance-billed charges, and health care this plan doesn't cover."

Why This Matters column:

c. If there is an out-of-pocket limit, the insurer must show the following language: "Even though you pay these expenses, they don't count toward the **out-of-pocket limit**. So, a longer list of expenses means you have less coverage."

d. If there is no out-of-pocket limit, the insurer must show "Not applicable because there's no **out-of-pocket limit** on your expense."

6. ***Is There An Overall Annual Limit On What The Insurer Pays?***

Answers column

a. The insurer should respond "Yes" or "No" based on whether the policy has an overall annual limit.

b. If the answer is "Yes", the insurer should include a brief description and dollar amount of the overall annual limit. For example: "Yes. This policy has an overall annual limit of $750,000".

c. If the answer is "No", the insurer should state, "No. This policy has no overall annual limit on the amount it will pay each year."

Why This Matters column:

d. If there is an overall annual limit, the insurer must show the following language: "This plan will pay for covered services only up to this limit during each policy period, even if your own need is greater. You're responsible for all expenses above this limit. The chart starting on page 2 describes *specific* coverage limits such as limits on the number of office visits."

e. If there is no overall annual limit, the insurer must show the following language: "The chart starting on page 2 describes any limits on what the insurer will pay for *specific* covered services, such as office visits."

7. ***Does This Plan Use A Network of Providers?:***

Answers column

a. If this plan does not use a network, the insurer must respond, "No. This plan doesn't use a network". Do not use a one-word response.

b. If the plan does use a network, the insurer must briefly explain its network policy. For example "Yes, this plan uses preferred providers. You may use health care providers that aren't preferred providers, but you may pay more."

c. Insurers have the ability to use plan specific language when distinguishing between preferred provider and non-preferred provider or in-network and out-of-network out-of-pocket limits, etc.

d. Include information on where to find a list of preferred providers or in-network providers, etc. For example "For a list of preferred providers, see www.insurancecompany.com or call 1-888-123-4567."

e. ER and other exceptions to non-preferred provider requirements should add that information to answer field.

f. Plans should highlight that some out-of-network specialists are often used by network providers (e.g., anesthesiologists).

Why This Matters column:

g. If this plan uses a network, the insurer must show the following language: "If you use an in-network doctor or other health care provider, this plan will pay some or all of the costs of covered services. Plans use the terms **in-network**, **preferred**, or **participating** to refer to providers in their network."

h. If this plan does not use a network, the insurer must show the following language: "The providers you choose won't affect your costs."

8. ***Do I Need A Referral To See A Specialist?:***

Answers column:

a. Insurers have the ability to use plan specific language when distinguishing between preferred provider and non-preferred specialists or in-network and out-of-network out-of-pocket limits, etc.

b. Insurers should specify whether a written or verbal approval is required to see a specialist.

c. Insurers should specify whether specialist approval is different for different plan benefits.

Why This Matters column:

d. If there is a referral required, the insurer must show the following language: "This plan will pay some or all of the costs to see a specialist but only if you have the plan's permission before you see the **specialist** for covered services."

e. If there is no referral required, the insurer must show the following language: "You can see the **specialist** you choose without permission from this plan".

9. ***Are there services this plan doesn't cover?:***

Answers column:

a. If there are any items in the *Services Your Plan Does Not Cover* box in the on page 3 or 4, the insurer should answer "Yes". See the instructions for the *Excluded Services and Other Covered Services* section for more related information.

Why This Matters column:

b. If there are no excluded services shown in the *Services Your Plan Does Not Cover* box on page 3 or 4, then the insurer must show the language: "This plan also

covers many other common health care services listed on page [3 or 4]." The insurer should note the correct page (3 or 4) depending on where the *Services Your Plan Does Not Cover* box appears on the form.

c. If there are excluded services shown in the *Services Your Plan Does Not Cover* box on page 3 or 4, then the insurer must show the language: "Some of the services this plan doesn't cover are listed on page [3 or 4]." The insurer should insert the correct page (3 or 4) depending on where the *Services Your Plan Does Not Cover* box appears on the form.

Covered Services, Cost Sharing, Limitations and Exceptions

Information Box:

- The information box at the top of Page 2 should be replicated with the same text, formatting, graphic, bolded words, and bullet points. Only the fourth bullet may change.
- The fourth bullet will change depending on the plan:
  - For most plans that use a network, the insurer should fill in the blank on the 4th bullet, using the terminology that the insurer uses for "in-network" or "preferred provider". This should be the same term as used in the heading of the far-left sub-column under the *Your Cost* column.
  - For plans that have the same cost-sharing percentage for in-network services as out-of-network services, the insurer should delete the 4th bullet and replace it with: "Your costs for [in-network] providers will be lower than [out-of-network] providers." Insert the term used for in-network and out-of-network shown on the sub-column headers under the *Your Cost* column.
  - For non-networked plans, the insurer should delete the 4th bullet and replace it with: "Your costs are the same no matter which provider you see."
- If any of the explanations in this box are inaccurate for the plan, then the insurer should use the chart below (in either the *Your Cost* column or the *Limitations and Exceptions* column) to show that information. For instance, if cost-sharing is not subject to the deductible (and therefore the second bullet is not accurate for this plan), then the insurer should indicate in the *Your Cost* column next to each cost-sharing charge that the charge is "not subject to the deductible".

Chart Starting on Page 2 :

1. **Location of Chart:** This chart must always begin on Page 2, and the rows shown on Pages 2 and 3 must always appear in the same order. However, the rows shown on Page 2 may extend to Page 3 if space requires, and the rows shown on Page 3 may extend to the beginning of Page 4 if space requires. The heading of the chart must appear on all pages used.

2. ***Your Cost* columns:**
   a. Insurers may vary the number of sub-columns depending upon the type of policy and the number of preferred provider networks. Most policies that use a network should use two columns, although some policies with more than one level of in-

network provider may use three columns. HMOs should use two columns. Non-networked plans may use one column.

b. Insurers should insert the terminology used in the policy to title the sub-columns. For example, the columns may be called "In-Network" and "Out-of-Network", or "Preferred Provider" and "Non-Preferred Provider" based on the terms used in the policy. Insurers should be aware that consumer testing has demonstrated that consumers more readily understand the terms "In-Network" and "Out-of-Network". The sub-headings should be deleted for non-networked plans with only one column.

c. The columns should appear from left to right, from most in-network to most out-of-network. For example, if a 3-column format is used, the sub-columns might be labeled (from left to right) "In-Network Preferred Provider," "In-Network Provider," and then "Out-of-Network Provider."

d. For HMOs providing no out-of-network benefits, the insurer should insert "Not covered" in all applicable boxes under the far-right sub-heading under the *Your Cost* column (which, for policies providing out-of-network benefits, would usually be out-of-network provider or non-preferred provider column.

e. Insurers must complete the responses under these sub-columns based on how the health insurance coverage covers the specific services listed in the chart.

1) Fill in the costs column(s) with the co-insurance percentage, the co-payment amount, "No charge" if the employee pays nothing, or "Not covered" if the service is not covered by the plan. When referring to coinsurance, include a percentage valuation. For example: 20% coinsurance. When referring to co-payments, include a per occurrence cost. For example: $20/visit or $15/prescription.

2) When responding with a list of items, use words such as "and", "or", or "plus" rather than using a semi-colon. For example: "Yes, $5,000 deductible for prescription drugs and $2,000 for occupational therapy" rather than "Yes, $5,000 for prescription drugs; $2,000 for occupational therapy".

3. ***Limitations and Exceptions*** **column:**

a. In this column, list the significant limitations and exceptions for each row. Significance of limitations and exceptions is determined by the insurer based on two factors: probability of use and financial impact on the employee. Examples include, but are not limited to, limits on the number of visits, limits on specific dollar amount paid by the insurer, prior authorization requirements, unusual exceptions to cost sharing, lack of applicability of a deductible, or a separate deductible.

b. The limitation and exception should specify dollar amounts, service limitations, and annual maximums if applicable. Language should be formatted as follows "Coverage is limited to $XX/visit and $XXX annual max." or "No coverage for XXXX."

c. If the policy requires the employee to pay 100% of a service in-network, then that should be considered an "excluded service" and should appear in the *Limitations and Exceptions* column and also appear in the *Services Your Plan Does Not Cover*

box on Page 3 or 4. For example, policies that exclude services in-network such as pregnancy, habilitation services, prescription drugs, or mental health services, must show these exclusions in both the *Limitations and Exceptions* column and the *Services Your Policy Does Not Cover* box.

d. If there are pre-authorization requirements, the insurer must show the requirement including specific information about the penalty for non-compliance.

e. If there are no items that need to appear in the limitations and exceptions box for a row, then the insurer should show "----none---".

f. For each section of the chart (for each *Common Medical Event*), the insurer has the discretion to merge the boxes in the *Limitations and Exceptions* column and display one response across multiple rows if such a merger would lessen the need to replicate comments and would save space.

4. Specific Instructions for *Common Medical Events:*

a. *If you visit a health care provider's office or clinic:*

1) If the policy covers other practitioners care (which includes chiropractic care and/or acupuncture), in the "Other practitioner office visit" row, the insurer will provide the cost-sharing for the other practitioners care in the *Your Cost* columns. For example, under in-network sub-column, the insurer may respond "20% coinsurance for chiropractor and 10% coinsurance for acupuncture".

2) If the policy does not cover other practitioners care, the insurer will show "Not Covered" in the Your Cost columns for *Other Practitioner Office visit.*

b. *If you need drugs to treat your illness or condition:*

1) Under the *Common Medical Events* column, provide a link to the website location where the employee can find more information about prescription drug coverage for this policy.

2) Under the *Services You May Need* column, the insurer should list and complete the categories of prescription drug coverage in the policy (for example, the insurer might fill out 4 rows with the terms, "Generic drugs", "Preferred brand drugs", "Non-preferred brand drugs", and "Specialty drugs". It is recommended that insurers avoid the term "tiers" and instead use "categories" as it is more easily understood by consumers.

3) Under the *Your Cost* column, insurers should include the cost-sharing for both retail and mail-order.

c. *If you have outpatient surgery:*

1) If there are significant expenses associated with a typical outpatient surgery that have higher cost-sharing than the facility fee or physician/surgeon fee, or are not covered, then they must be shown under the *Limitations and Exceptions* column. Significance of such expenses are determined by the insurer based on two factors: probability of use and financial impact on the employee. For example, an insurer might show

that the cost-sharing for the physician/surgeon fee row is "20% coinsurance", but the *Limitations and Exceptions* might show "Radiology 50% coinsurance".

d. If you have a hospital stay:

1) If there are significant expenses associated with a typical hospital stay that has higher cost-sharing than the facility fee or physician/surgeon fee, or are not covered, then that must be shown in under the *Limitations and Exceptions* column. Significance of such expenses are determined by the insurer based on two factors: probability of use and financial impact on the employee. For example, an insurer might show that the cost-sharing for the facility fee row is "20% coinsurance", but the *Limitations and Exceptions* might show "anesthesia 50% coinsurance".

Disclosures:

The *Excluded Services and Other Covered Services*, *Your Rights to Continue Coverage*, *Your Grievance and Appeals Rights* and *Coverage Examples* sections must always appear in the order shown. The *Excluded Services and Other Covered Benefits* section may appear on Page 3 or Page 4 depending on the length of the chart starting on page 2, but it will always follow immediately after the chart starting on page 2.

Excluded Services and Other Covered Services:

1. Each insurer must place all services listed below in either the "*Services Your Plan Does Not Cover*" box or the "*Other Covered Services*" box according to the policy provisions. The required list of services includes: Acupuncture, Bariatric Surgery, Non-emergency care when travelling outside the U.S., Chiropractic Care, Cosmetic Surgery, Dental care (adult), Hearing aids, Infertility treatment, Long-term care, Private-duty nursing, Routine eye care (adult), Routine foot care, and Weight loss programs.

2. The insurer may not add any other benefits to the *Other Covered Services* box other than the ones listed in (1) above.

3. Services that appear in the *Limitations and Exceptions* column in the chart starting on page 2 because the policy requires the employee to pay 100% of the service in-network, should also appear in the *Services Your Plan Does Not Cover* box. For example, policies that exclude services in-network such as pregnancy, habilitation services, prescription drugs, or mental health services, must show these exclusions in both the *Limitations and Exceptions* column (in the chart starting on page 2 chart) and in this *Services Your Plan Does Not Cover* box.

4. List placement must be in alphabetical order for each box. The lists must use bullets next to each item.

5. For example, if an insurer excludes all of the services on the list above (#1) except Chiropractic services, and also showed exclusion of Habilitation Services on Page 2 and exclusion of Dental care (child) on page 3, the Other Benefits Covered box would show "Chiropractic Care" and the *Services Your Plan Does Not Cover* box would show "Acupuncture, Non-emergency care when travelling outside the U.S., Cosmetic surgery, Dental care (child), Habilitation Services, Infertility treatment, Long-term care, Private-duty nursing, Routine eye care (adult), Routine foot care, Routine hearing tests, Weight loss programs."

6. If the insurer provides limited coverage for one of the services listed in (1) above, the limitation must be stated in the *Services Your Plan Does Not Cover* box or the *Other Benefits Covered* box. For example if an insurer provides acupuncture in limited circumstances, the statement in the *Services Your Plan Does Not Cover* box would show: Acupuncture unless it is prescribed by a physician for rehabilitation purposes, Non-emergency care when travelling outside the U.S., Cosmetic surgery, Dental care (adult), Infertility treatment, Long-term care, Private-duty nursing, Routine eye care (adult), Routine foot care, Routine hearing tests, Weight loss programs."

Your Rights to Continue Coverage:
This section must appear. Insurers must include the following items for all policies:

- "you or your employer commit fraud or intentional misrepresentations of material fact",
- "the insurer stops offering this policy or services in the state"
- "you move outside the coverage area"

Insurers must also include the following for group plans:

- "your employer/sponsor changes insurance carrier"
- "your employer cancels or non-renews your coverage"
- "your employment/sponsorship terminates and you are not eligible to continue coverage under COBRA or state law"

Your Grievance and Appeals Rights:
This section must appear. Depending on where plans are sold, identify the proper state health insurance customer assistance program and include their website and phone number.

Coverage Examples:

a. HHS will provide all insurers with standardized data to be inserted in the "Sample care costs" section for each coverage example. HHS will also provide underlying detail that will allow carriers to calculate "You Pay" amounts, payments including: Date of Service, CPT code, Provider Type, Category, descriptive Notes identifying the specific service provided, and Allowed Amount.

b. The "Amount owed to providers," also known as the Allowed Amount, will always equal the Total of the "Sample care costs." Each insurer must calculate cost sharing, using the detailed data provided by HHS, and populate the "You Pay" fields. Dollar values are to be rounded off to the nearest hundred dollars (for Sample care costs that are equal to or greater than $100) or to the nearest ten dollars (for Sample care costs that are less than

$100), in order to reinforce to consumers that numbers in the examples are estimates and do not reflect their actual medical costs. For example, if the coinsurance amount is estimated at $57, the insurer would list $60 in the appropriate "You Pay" section of the Coverage Example.

c. Services on the template provided by HHS are listed individually for classification and pricing purposes to facilitate the population of the "You Pay" section. HHS specifies the Category used to roll up detail costs into the "Sample care costs" categories section. Some plans may classify that service under another category and should reflect that difference accordingly. The insurer should apply their cost sharing and benefit features for each policy in order to complete the "You pay" section, but must leave the "Sample care costs" section as is. Examples of categories that might differ between the You Pay and Sample Care Costs sections could include, but are not limited to:
    - Payment of services based on the location where they are provided (inpatient, outpatient, office, etc.)
    - Payment of items as prescription drugs vs. medical equipment

d. Each insurer must calculate and populate the "You pay" total and sub-totals based upon the cost sharing and benefit features of the plan for which the document is being created. These calculations should be made using the order in which the services were provided (Date of Service).

    1. **Deductible** – includes everything the member pays up to the deductible amount. Any co-pays that accumulate toward the deductible are accounted for in this cost sharing category, rather than under co-pays

    2. **Co-pays** – those co-pays that don't apply to the deductible

    3. **Limits or exclusions** – anything member pays for non-covered services or services that exceed plan limits.

    4. **Co-insurance** – anything member pays above the deductible that's not a co-pay or non-covered service. This should be the same figure as the Total less the Deductible, Co-Pays and Limits.

e. Each insurer must calculate and populate the "Plan pays" amount by subtracting the "You pay" total from the "Amount owed to providers" total.

f. If all of the costs associated with the "having a baby" example are excluded under the plan, then the phrase "(maternity is not covered, so you pay 100%)" is added after the "You pay" amount. Otherwise no narrative should appear after the "You pay" amount.

g. Insurers must use the "Questions and answers about Coverage Examples" as they appear and not alter the text, font, graphic, shading or colors [Should insurers be allowed to print in black and white?]. This should be placed immediately following the Coverage Examples.

h. If the insurer provides coverage only for medical services (e.g., pharmacy or mental health benefits are carved out and administered by another insurer), the insurer should complete the Coverage Example for only those benefits that it covers, consistent with the features outlined on pages 1 to 4 of the Summary of Coverage. These non-covered costs for excluded services would show up under the "limits and exclusions" section of the "You Pay" table. [NOTE: Should we require inclusion of a disclaimer on the Coverage Example (and on the Summary of Coverage) that notes that certain benefits may be administered by a separate insurer? Should we also amend the instructions for the Summary of Coverage to address this issue in terms of how the benefits are described?]

Need Assistance?

Insurers should contact _____ at _____ to obtain assistance in completing these documents.

Appendix B-2 Instructions– Individual Health Insurance Coverage

What Your Plan Covers and What it Costs

Draft Instruction Guide for Individually Purchased or Non-Group Policies

Edition Date: July 2011

Purpose of the form: Beginning in March 2012, the Patient Protection and Affordable Care Act (PPACA) requires all health insurance issuers offering individual health insurance coverage to provide enrollees and potential enrollees an accurate summary of benefits and coverage explanation. This form does not apply to excepted benefits as defined by the Public Health Services Act (PHSA). Federal law requires this document so consumers will find it easier to compare policies and understand their coverage.

Requirements to provide the form: As set forth below, this form must be provided to an applicant, to the policyholder or to the certificate holder at the time of issuance of the policy or delivery of the certificate and to the policyholder or certificate holder at renewal, as applicable.

While it is the insurer's, or a representative of the insurer's, responsibility to accurately fill out and deliver the form, these instructions acknowledge that consumers receive information about their health insurance through three primary channels of communication: 1) insurance companies, 2) agents, and 3) solicitations made via telemarketers and the internet. The following are the permitted methods of delivery:

a. When an insurer, or a representative of an insurer, meets in person with the potential applicant, the insurer or a representative of the insurer may hand-deliver the completed form to the individual. Alternatively, the insurer, or representative of the insurer, may offer the individual the following options, and shall provide the form to be delivered in the manner selected by the individual:
   1) A printed copy deposited in the United States mail, postage pre-paid, within seven (7) days of the request;
   2) An electronic copy delivered to an e-mail address provided by the individual;
   3) An electronic copy delivered via a link on the Internet;
   4) A copy delivered by any other means acceptable to both the insurer and the individual.

b. For an applicant who conducts the insurance application electronically, the insurer, or a representative of the insurer, must make the form available on the electronic site and the insurer must require the applicant to acknowledge receipt of the form as a necessary step to completing the initial application process.

c. For an insurance application that is completed over the phone or through the mail, the insurer, or a representative of the insurer, shall offer a printed copy of the completed form

within seven (7) days to the address provided by the applicant. Alternatively, the insurer, or representative of the insurer, may offer the individual the following options, and shall provide the form to be delivered in the manner selected by the individual:

1) An electronic copy delivered to an e-mail address provided by the individual;
2) An electronic copy delivered via a link on the Internet;
3) A copy delivered by any other means acceptable to both the insurer and the individual.

d. When an insurer issues a policy or delivers a certificate the form shall be included with the policy or certificate and provided in the manner selected by the policy holder or certificate holder.

e. When the policy or certificate is renewed, the insurer shall provide the form in the same manner in which the policy or certificate were provided along with the renewal documents.

An oral description of the form is not sufficient. An insurer, or a representative of the insurer, may not provide the form solely by orally explaining the form and its contents either in person or over the telephone.

If two or more applicants jointly request an insurance product or service from an insurer, the insurer may satisfy the requirement to provide this form by providing one form to those applicants jointly.

Unless otherwise required by law, this form is a freestanding document and may not be incorporated into any other document that an insurer, or an insurer's representative, provides to an applicant, policy holder or certificate holder.

General Instructions: Read all instructions carefully before completing the form.

- This form must be filled out accurately and by the insurer in good faith.
- Form language and formatting must be precisely reproduced, unless instructions allow or instruct otherwise. Unless otherwise instructed, the insurer must use 12-point (as required by federal law) Times New Roman font, and replicate all symbols, formatting, bolding, colors, and shading exactly. Attached is an example of a blank form.
- Insurers must customize all identifiable company information throughout the document, including websites and telephone numbers.
- If there is a different amount for in-network and out-of-network expenses (such as annual deductible, additional deductibles, or out-of-pocket limits), list both amounts and indicate as such, using the terms to describe provider networks used by the insurer. For example, if the policy uses the terms "preferred provider" and "non-preferred provider" and the annual deductible is $2,000 for a preferred provider and $5,000 for a non-preferred provider, then the Answer column should show "$2000 preferred provider, $5,000 non-preferred provider".
- The items shown on Page 1 must always appear on Page 1, and the rows of the chart must always appear in the same order. The chart starting on page 2 shown in the example must always begin on Page 2, and the rows shown on this chart must always appear in the

same order. However, the chart rows shown on Page 2 may extend to Page 3 if space requires, and the chart rows on Page 3 may extend to the beginning of Page 4 if space requires. The *Excluded Services and Other Covered Services* section may appear on Page 3 or Page 4, but must always immediately follow the chart starting on page 2. The *Excluded Services and Other Covered Services* section must be followed by the *Your Rights to Continue Coverage* section, the *Your Grievance and Appeals Rights* section, and the *Coverage Examples* section, in that order.

- Footer: The footer must appear at the bottom left of every page. The insurer must insert the appropriate telephone number and website information.
- For all form sections to be filled out by the insurer (particularly in the *Answers* column on page 1, and the *Your Cost* and *Limitations and Exceptions* columns in the chart that starts on page 2), the insurer should use plain language and present the information in a culturally and linguistically appropriate manner and utilize terminology understandable by the average individual.

Filling out the form:

Top Left Header (Page 1):

On the top left hand corner of the first page, the insurer must show the following information:

- **First line:** Show the plan name and insurance company name in 16 point font and bold. Example: "**Maximum Health Plan: Alpha Insurance Group**".
  - Insurers have the option to use their logo instead of the typing in the company name if the logo includes the name of the entity issuing the coverage.
  - The insurer must use the commonly known company name.

Top Right Header (Page 1):

On the top right hand corner of the first page, the insurer must show the following information:

- **First line:** After *Policy Period*, the insurer must show the beginning and end dates for the applicable policy period in the following format: "MM/DD/YYYY – MM/DD/YYYY". For example: "Policy Period: 09/15/2010 - 09/14/2011".
- **Second line**:
  - After the words "Coverage For", indicate who the policy is for (such as Individual, Individual + Spouse, Family). The insurer will use the terms used by the policy, but should ensure that the term used will make it easy for the consumer to compare similar types of plans.
  - After the words "Plan Type", indicate the type of insurance plan, such as HMO, PPO, POS, Indemnity, or High-deductible.

Disclaimer (Page 1):

The disclaimer should be replicated and the insurer may not vary the font size, graphic or formatting. The insurer should insert the plan's website and telephone number.

Important Questions/Answers/ Why This Matters Chart

General Instructions for the *Important Questions* chart:

- This chart must always appear on Page 1, and the rows must always appear in the same order. Insurers must complete the *Answers* column for each question on this chart, using the instructions below.
- Insurers must show the appropriate language in the *Why This Matters* box as instructed in the instructions below. Insurers must replicate the language given for the *Why This Matters* box exactly, and may not alter the language.
- When responding with a list of items, use words such as "and", "or", or "plus" rather than using a semi-colon. For example: "Yes, $5,000 deductible for prescription drugs and $2,000 for occupational therapy" rather than "Yes, $5,000 for prescription drugs; $2,000 for occupational therapy".

1. *What Is The Premium?*:

Answers column:

a. Answer with the dollar amount (rounded to the closest whole dollar) and time period (such as monthly). Example: "$[xxx] [monthly]".

b. Premium amounts may be provided in good faith by the insurer or agent.

c. If a consumer is shopping for plans and has yet to fill out a health insurance application or has not yet been medically underwritten, insurers may, consistent with state law, use a base premium based on five factors: the number of people to be covered by the policy (i.e. individual or family), age, gender, smoking status, and location (zip code).

Why This Matters column:

d. The insurer must always insert the following language: "The **premium** is the amount paid for health insurance."

e. If the consumer is shopping for plans and has been provided a base premium as described in (c) above, the insurer must also include the statement: "This is only an estimate based on information you've provided. After the insurer reviews your application, your actual premium may be higher or your application may be denied". This sentence should appear immediately after the sentence described in (d) above.

2. *What Is The Overall Deductible?*:

Answers column:

a. If there is no calendar year or policy period deductible, answer "$0".

b. If there is a calendar year or policy period deductible, answer with the dollar amount and indicate whether it is based on a calendar year, or policy period. For example: "$5,000 for calendar year" or "$5,000 for policy period".

c. If there is a calendar year or policy period deductible, underneath the dollar amount insurers must include language specifying major categories of covered services that are NOT subject to this deductible. For example, "Does not apply to preventive care and generic drugs".

d. If there is a calendar year or policy period deductible, underneath the dollar amount insurers must include language listing major exceptions, such as out-of-

network coinsurance, deductibles for specific services and copayments, which do not count toward the deductible. For example, "Out-of-network coinsurance and copayments don't count toward the deductible."

e. Show the answer for the type of policy only. For example, if this is an individual policy, show answers only for individual. If a family policy and there is a single deductible amount for the family, show answers only for family.

f. If portraying a family policy for which there is a separate deductible amount for each individual and the family, show the individual deductible on the first line, and the family deductible on the second line. For example, the first line may show "Individual $2,000" and the second line may show "Family $3,000".

Why This Matters column:

g. If there is no calendar year or policy period deductible, show the following language: "See the chart starting on page 2 for your other costs for services this plan covers."

h. If there is a calendar year or policy period deductible, show the following language: "You must pay all the costs up to the **deductible** amount before this health insurance plan begins to pay for covered services you use. Check your policy to see when the deductible starts over (usually, but not always, January 1st). See the chart starting on page 2 for how much you pay for covered services after you meet the **deductible**."

3. ***Are There Other Deductibles for Specific Services?*:**

Answers column:

a. If the calendar year or policy period deductible is the only deductible, answer with the phrase "No, there are no other deductibles." Do not answer with just one word.

b. If there are other deductibles, answer "Yes", then list the names and deductible amounts of the three most significant deductibles other than the annual deductible. Significance of deductibles are determined by the insurer based on two factors: probability of use and financial impact on the consumer. Examples of other deductibles include deductibles for Prescription Drug, Hospital, and Mental Health). For example: "Yes, $2,000 for prescription drug expenses and $2,000 for occupational therapy services".

c. If the plan has more than three other deductibles and not all deductibles are shown, the following statement must appear at the end of the list: "There are other deductibles."

d. If the plan has less than three other deductibles, the following statement must appear at the end of the list: "There are no other deductibles."

e. Show the answer for the type of policy only. For example, if this is an individual policy, show answers only for individual. If this is a family policy and there is a single deductible amount for the family, show answers only for family.

f. If portraying a family policy for which there is a separate deductible amount for each individual and the family, show both the individual and family deductible. For example: "Prescription drugs -- Individual $200, Family $500"

Why This Matters column:

g. If there are no other deductibles, the insurer must show the following language: "Because you don't have to meet **deductibles** for specific services, this plan starts to cover costs sooner."

h. If there are other deductibles, the insurer must show the following language: "You must pay all the costs for these services up to the specific deductible amount before this plan begins to pay for these services."

4. ***Is There An Out-of-Pocket Limit On My Expenses?***

Answers column

a. If there are no out-of-pocket limits, respond "No. There's no out-of-pocket limit on your expenses" on the first line. Do not respond with a one-word answer.

b. If there is an out-of-pocket limit, respond "Yes", along with a specific dollar amount that applies in each plan year, and to each charge with a separate out-of-pocket limit on the first line. For example: "Yes. $5,000".

c. If there are other types of annual limits, such as annual or plan year limits on visits, services or drugs, then the insurer must show the following language on the second line: "Other limits apply – see the chart that starts on Page 2".

d. If an individual policy, show answers only for individual. If a family policy and there is a single out-of-pocket limit for the family, show answers only for family.

e. If portraying a family policy, for which there is a single out-of-pocket limit for each individual and a separate out-of-pocket limit for the family, show the individual out-of-pocket limit on the first line, and the family out-of-pocket limit on the second line. For example, the first line may show "Individual $1,000" and the second line may show "Family $3,000".

Why This Matters column:

f. If there is an out-of-pocket limit, the insurer must show the following language: "The **out-of-pocket** limit is the most you could pay during a policy period for your share of the cost of covered services. This limit helps you plan for health care expenses."

g. If there is no out-of-pocket limit, the insurer must show the following language: "There's no limit on how much you could pay during a policy period for your share of the cost of covered services."

5. ***What Is Not Included In The Out-of-Pocket Limit?***

Answers column

a. If there is no out-of-pocket limit, indicate "This question doesn't apply to this plan."

b. If there is an out-of-pocket limit, the insurer must list any major exceptions. This list must always include: premium, balance-billed charges, and health care this plan doesn't cover. Depending on the policy, the list could also include: copayments, out of network coinsurance, deductibles, and penalties for failure to obtain pre-authorization for services. The insurer must state that these items do not count toward the limit. For example: "Copayments, premium, balance-billed charges, and health care this plan doesn't cover."

Why This Matters column:

c. If there is an out-of-pocket limit, the insurer must show the following language: "Even though you pay these expenses, they don't count toward the **out-of-pocket limit**. So, a longer list of expenses means you have less coverage."

d. If there is no out-of-pocket limit, the insurer must show "Not applicable because there's no **out-of-pocket limit** on your expenses".

6. ***Is There An Overall Annual Limit On What The Insurer Pays?***

Answers column

a. The insurer should respond "*Yes*" or "*No*" based on whether the policy has an overall annual limit.

b. If the answer is "Yes", the insurer should include a brief description and dollar amount of the overall annual limit. For example: "Yes. This policy has an overall annual limit of $750,000".

c. If the answer is "No", the insurer should state, "No. This policy has no overall annual limit on the amount it will pay each year."

Why This Matters column:

d. If there is an overall annual limit, the insurer must show the following language: "This plan will pay for covered services only up to this limit during each policy period, even if your own need is greater. You're responsible for all expenses above this limit. The chart starting on page 2 describes *specific* coverage limits, such as limits on the number of office visits."

e. If there is no overall annual limit, the insurer must show the following language: "The chart starting on page 2 describes any limits on what the insurer will pay for *specific* covered services, such as office visits."

7. ***Does This Plan Use A Network of Providers?:***

Answers column

a. If this plan does not use a network, the insurer must respond, "No. This plan doesn't use a network". Do not use a one-word response.

b. If the plan does use a network, the insurer must briefly explain its network policy. For example "Yes, this plan uses preferred providers. You may use health care providers that aren't preferred providers, but you may pay more."

c. Insurers have the ability to use plan specific language when distinguishing between preferred provider and non-preferred provider or in-network and out-of-network out-of-pocket limits, etc.

d. Include information on where to find a list of preferred providers or in-network providers, etc. For example "For a list of preferred providers, see www.insurancecompany.com or call 1-888-123-4567."

e. ER and other exceptions to non-preferred provider requirements should add that information to answer field.

f. Plans should highlight that some out-of-network specialists are often used by network providers (e.g., anesthesiologists).

Why This Matters column:

g. If this plan uses a network, the insurer must show the following language: "If you use an in-network doctor or other health care provider, this plan will pay some or

all of the costs of covered services. Plans use the terms **in-network**, **preferred**, or **participating** to refer to providers in their network."

h. If this plan does not use a network, the insurer must show the following language: "The providers you choose won't affect your costs."

8. ***Do I Need A Referral To See A Specialist?:***

Answers column:

a. Insurers have the ability to use plan specific language when distinguishing between preferred provider and non-preferred specialists or in-network and out-of-network out-of-pocket limits, etc.

b. Insurers should specify whether a written or verbal approval is required to see a specialist.

c. Insurers should specify whether specialist approval is different for different plan benefits.

Why This Matters column:

d. If there is a referral required, the insurer must show the following language: "This plan will pay some or all of the costs to see a **specialist** for covered services but only if you have the plan's permission before you see the specialist."

e. If there is no referral required, the insurer must show the following language: "You can see the **specialist** you choose without permission from this plan".

9. ***Are There Services This Plan Doesn't Cover?:***

Answers column:

a. If there are any items in the *Services Your Plan Does Not Cover* box on page 3 or 4, the insurer should answer "Yes". See the instructions for the *Excluded Services and Other Covered Services* section for more related information.

Why This Matters column:

b. If there are no excluded services shown in the *Services Your Plan Does Not Cover* box on page 3 or 4, then the insurer must show the language: "This plan also covers many common health care services listed on page [3 or 4]." The insurer should note the correct page (3 or 4) depending on where the *Services Your Plan Does Not Cover* box appears on the form.

c. If there are excluded services shown in the *Services Your Plan Does Not Cover* box on page 3 or 4, then the insurer must show the language: "Some of the services this plan doesn't cover are listed on page [3 or 4]." The insurer should insert the correct page (3 or 4) depending on where the *Services Your Plan Does Not Cover* box appears on the form.

Covered Services, Cost Sharing, Limitations and Exceptions

Information Box:

- The information box at the top of Page 2 should be replicated with the same text, formatting, graphic, bolded words, and bullet points. Only the fourth bullet may change.
- The fourth bullet will change depending on the plan:
  - For most plans that use a network, the insurer should fill in the blank on the 4th bullet, using the terminology that the insurer uses for "in-network" or "preferred

provider". This should be the same term as used in the heading of the far-left sub-column under the *Your Cost* column.

- For plans that have the same cost-sharing percentage for in-network services as out-of-network services, the insurer should delete the 4th bullet and replace it with: "Your costs for [in-network] providers will be lower than [out-of-network] providers." Insert the term used for in-network providers and out-of-network providers shown on the sub-column headers under the *Your Costs* column.
- For non-networked plans, the insurer should delete the 4th bullet and replace it with: "Your costs are the same no matter which provider you see."

- If any of the explanations in this box are inaccurate for the plan, then the insurer should use the chart (in either the *Your Cost* column or the *Limitations and Exceptions* column) below to show that information. For instance, if cost-sharing is not subject to the deductible (and therefore the second bullet is not accurate for this plan), then the insurer should indicate in the *Your Cost* column next to each cost-sharing charge that the charge is "not subject to the deductible".

Chart starting on page 2:

1. **Location of Chart:** This chart must always begin on Page 2, and the rows shown on Pages 2 and 3 must always appear in the same order. However, the rows shown on Page 2 may extend to Page 3 if space requires, and the rows shown on Page 3 may extend to the beginning of Page 4 if space requires. The heading of the chart must appear on all pages used.

2. ***Your Cost* columns:**
   a. Insurers may vary the number of sub-columns depending upon the type of policy and the number of preferred provider networks. Most policies that use a network should use two columns, although some policies with more than one level of in-network provider may use three columns. HMOs should use two columns. Non-networked plans may use one column.
   b. Insurers should insert the terminology used in the policy to title the sub-columns. For example, the columns may be called "In-Network" and "Out-of-Network", or "Preferred Provider" and "Non-Preferred Provider" based on the terms used in the policy. Insurers should be aware that consumer testing has demonstrated that consumers more readily understand the terms "In-Network" and "Out-of-Network". The sub-headings should be deleted for non-networked plans with only one column.
   c. The columns should appear from left to right, from most in-network to most out-of-network. For example, if a 3-column format is used, the sub-columns might be labeled (from left to right) "In-Network Preferred Provider," "In-Network Provider", and then "Out-of-Network Provider."
   d. For HMOs providing no out-of-network benefits, the insurer should insert "Not covered" in all applicable boxes under the far-right sub-heading under the Your Cost column (which, for policies providing out-of-network benefits, would usually be out-of-network provider or non-preferred provider column.

e. Insurers must complete the responses under these sub-columns based on how the health insurance coverage covers the specific services listed in the chart.
   1) Fill in the costs column(s) with the co-insurance percentage, the co-payment amount, "No charge" if the consumer pays nothing, or "Not covered" if the service is not covered by the plan. When referring to coinsurance, include a percentage valuation. For example: 20% coinsurance. When referring to co-payments, include a per occurrence cost. For example: $20/visit or $15/prescription.
   2) When responding with a list of items, use words such as "and", "or", or "plus" rather than using a semi-colon. For example: "Yes, $5,000 deductible for prescription drugs and $2,000 for occupational therapy" rather than "Yes, $5,000 for prescription drugs; $2,000 for occupational therapy".

3. *Limitations and Exceptions* Column:

a. In this column, list the significant limitations and exceptions for each row. Significance of limitations and exceptions is determined by the insurer based on two factors: probability of use and financial impact on the consumer. Examples include, but are not limited to, limits on the number of visits, limits on specific dollar amount paid by the insurer, prior authorization requirements, unusual exceptions to cost sharing, lack of applicability of a deductible, or a separate deductible.

b. The limitation and exception should specify dollar amounts, service limitations, and annual maximums if applicable. Language should be formatted as follows "Coverage is limited to $XX/visit and $XXX annual max." or "No coverage for XXXX."

c. If the policy requires the consumer to pay 100% of a service in-network, then that should be considered an "excluded service" and should appear in the *Limitations and Exceptions* column and also appear in the *Services Your Plan Does Not Cover* box on Page 3 or 4. For example, policies that exclude services in-network such as pregnancy, habilitation services, prescription drugs, or mental health services, must show these exclusions in both the *Limitations and Exceptions* column and the *Services Your Plan Does Not Cover* box.

d. If there are pre-authorization requirements, the insurer must show the requirement including specific information about the penalty for non-compliance.

e. If there are no items that need to appear in the limitations and exceptions box for a row, then the insurer should show "----none---".

f. For each section of the chart (for each *Common Medical Event*), the insurer has the discretion to merge the boxes in the *Limitations and Exceptions* column and display one response across multiple rows if such a merger would lessen the need to replicate comments and would save space.

4. Specific Instructions for *Common Medical Events:*

a. *If you visit a health care provider's office or clinic:*

1) If the policy covers other practitioners care (which includes chiropractic care and/or acupuncture), in the "Other practitioner office visit" row, the insurer will provide the cost-sharing for the other practitioners care in the *Your Cost* columns. For example, under the in-network sub-column, the insurer may respond "20% coinsurance for chiropractor and 10% coinsurance for acupuncture".
2) If the policy does not cover other practitioners care, the insurer will show "Not Covered" in the Your Cost columns for *Other Practitioner Office visit.*

b. *If you need drugs to treat your illness or condition:*
1) Under the *Common Medical Events* column, provide a link to the website location where the consumer can find more information about prescription drug coverage for this policy.
2) Under the *Services You May Need* column, the insurer should list and complete the categories of prescription drug coverage in the policy (for example, the insurer might fill out 4 rows with the terms, "Generic drugs", "Preferred brand drugs", "Non-preferred brand drugs", and "Specialty drugs". It is recommended that insurers avoid the term "tiers" and instead use "categories" as it is more easily understood by consumers.
3) Under the *Your cost* column, insurers should include the cost-sharing for both retail and mail-order.

c. *If you have outpatient surgery:*
1) If there are significant expenses associated with a typical outpatient surgery that have higher cost-sharing than the facility fee or physician/surgeon fee, or are not covered, then they must be shown under the *Limitations and Exceptions* column. Significance of such expenses are determined by the insurer based on two factors: probability of use and financial impact on the consumer. For example, an insurer might show that the cost-sharing for the physician/surgeon fee row is "20% coinsurance", but the *Limitations and Exceptions* might show "Radiology 50% coinsurance".

d. *If you have a hospital stay:*
1) If there are significant expenses associated with a typical hospital stay that has higher cost-sharing than the facility fee or physician/surgeon fee, or are not covered, then that must be shown in under the *Limitations and Exceptions* column. Significance of such expenses are determined by the insurer based on two factors: probability of use and financial impact on the consumer. For example, an insurer might show that the cost-sharing for the facility fee row is "20% coinsurance", but the *Limitations and Exceptions* might show "anesthesia 50% coinsurance".

Disclosures:

The *Excluded Services and Other Covered Services, Your Rights to Continue Coverage, Your Grievance and Appeals Rights and Coverage Examples* sections must always appear in the order shown. The *Excluded Services and Other Covered Benefits* section may appear on Page 3 or Page 4 depending on the length of the chart starting on page 2, but it will always follow immediately after the chart starting on page 2.

Excluded Services and Other Covered Services:

1. Each insurer must place all services listed below in either the "*Services Your Plan Does Not Cover*" box or the "*Other Covered Services*" box according to the policy provisions. The required list of services includes: Acupuncture, Bariatric Surgery, Non-emergency care when travelling outside the U.S., Chiropractic Care, Cosmetic Surgery, Dental care (adult), Hearing aids, Infertility treatment, Long-term care, Private-duty nursing, Routine eye care (adult), Routine foot care, and Weight loss programs.

2. The insurer may not add any other benefits to the *Other Covered Services* box other than the ones listed in (1) above.

3. Services that appear in the *Limitations and Exceptions* column in the chart starting on page 2 because the policy requires the consumer to pay 100% of the service in-network, should also appear in the *Services Your Plan Does Not Cover* box. For example, policies that exclude services in-network such as pregnancy, habilitation services, prescription drugs, or mental health services, must show these exclusions in both the *Limitations and Exceptions* column (in the chart starting on page 2) and in this *Services Your Plan Does Not Cover* box.

4. List placement must be in alphabetical order for each box. The lists must use bullets next to each item.

5. For example, if an insurer excludes all of the services on the list above (#1) except Chiropractic services, and also showed exclusion of Habilitation Services on Page 2 and exclusion of Dental care (child) on page 3, the Other Benefits Covered box would show "Chiropractic Care" and the *Services Your Plan Does Not Cover* box would show "Acupuncture, Non-emergency care when travelling outside the U.S., Cosmetic surgery, Dental care (child), Habilitation Services, Infertility treatment, Long-term care, Private-duty nursing, Routine eye care (adult), Routine foot care, Routine hearing tests, Weight loss programs."

6. If the insurer provides limited coverage for one of the services listed in (1) above, the limitation must be stated in the *Services Your Plan Does Not Cover* box or the Other Benefits Covered box. For example if an insurer provides acupuncture in limited circumstances, the statement in the *Services Your Plan Does Not Cover* box would show: Acupuncture unless it is prescribed by a physician for rehabilitation purposes, Non-emergency care when travelling outside the U.S., Cosmetic surgery, Dental care (adult),

Infertility treatment, Long-term care, Private-duty nursing, Routine eye care (adult), Routine foot care, Routine hearing tests, Weight loss programs."

Your Rights to Continue Coverage:

This section must appear. Insurers must include the following items:

- "you commit fraud or intentional misrepresentations of material fact",
- "the insurer stops offering this policy or services in the state"
- "you move outside the coverage area"

Insurers must also include the following for association plans:

- "your employer/sponsor changes insurance carrier"

Your Grievance and Appeals Rights:

This section must appear. Depending on where plans are sold, identify the proper state health insurance customer assistance program and include their website and phone number.

Coverage Examples:

a. HHS will provide all insurers with standardized data to be inserted in the "Sample care costs" section for each coverage example. HHS will also provide underlying detail that will allow carriers to calculate "You Pay" amounts, payments including: Date of Service, CPT code, Provider Type, Category, descriptive Notes identifying the specific service provided, and Allowed Amount.

b. The "Amount owed to providers," also known as the Allowed Amount, will always equal the Total of the "Sample care costs." Each insurer must calculate cost sharing, using the detailed data provided by HHS, and populate the "You Pay" fields. Dollar values are to be rounded off to the nearest hundred dollars (for Sample care costs that are equal to or greater than $100) or to the nearest ten dollars (for Sample care costs that are less than $100), in order to reinforce to consumers that numbers in the examples are estimates and do not reflect their actual medical costs. For example, if the coinsurance amount is estimated at $57, the insurer would list $60 in the appropriate "You Pay" section of the Coverage Example.

c. Services on the template provided by HHS are listed individually for classification and pricing purposes to facilitate the population of the "You Pay" section. HHS specifies the Category used to roll up detail costs into the "Sample care cost" categories section. Some plans may classify that service under another category and should reflect that difference accordingly. The insurer should apply their cost sharing and benefit features for each policy in order to complete the "You pay" section, but must leave the "Sample care costs" section as is. Examples of categories that might differ between the You Pay and Sample Care Costs sections could include, but are not limited to:
    - Payment of services based on the location where they are provided (inpatient, outpatient, office, etc.)
    - Payment of items as prescription drugs vs. medical equipment

d. Each insurer must calculate and populate the "You pay" total and sub-totals based upon the cost sharing and benefit features of the plan for which the document is being created. These calculations should be made using the order in which the services were provided (Date of Service).

1. **Deductible** – includes everything the member pays up to the deductible amount. Any co-pays that accumulate toward the deductible are accounted for in this cost sharing category, rather than under co-pays

2. **Co-pays** – those co-pays that don't apply to the deductible

3. **Limits or exclusions** – anything member pays for non-covered services or services that exceed plan limits.

4. **Co-insurance** – anything member pays above the deductible that's not a co-pay or non-covered service. This should be the same figure as the Total less the Deductible, Co-Pays and Limits.

e. Each insurer must calculate and populate the "Plan pays" amount by subtracting the "You pay" total from the "Amount owed to providers" total.

f. If all of the costs associated with the "having a baby" example are excluded under the plan, then the phrase "(maternity is not covered, so you pay 100%)" is added after the "You pay" amount. Otherwise no narrative should appear after the "You pay" amount.

g. Insurers must use the "Questions and answers about Coverage Examples" as they appear and not alter the text, font, graphic, shading or colors [Should insurers be allowed to print in black and white?]. This should be placed immediately following the Coverage Examples.

h. If the insurer provides coverage only for medical services (e.g., pharmacy or mental health benefits are carved out and administered by another insurer), the insurer should complete the Coverage Example for only those benefits that it covers, consistent with the features outlined on pages 1 to 4 of the Summary of Coverage. These non-covered costs for excluded services would show up under the "limits and exclusions" section of the "You Pay" table. [NOTE: Should we require inclusion of a disclaimer on the Coverage Example (and on the Summary of Coverage) that notes that certain benefits may be administered by a separate insurer? Should we also amend the instructions for the Summary of Coverage to address this issue in terms of how the benefits are described?]

Need Assistance?

Insurers should contact _____ at _____ to obtain assistance in completing these documents.

Appendix C-1 Why This Matters language for "Yes" Answers

Health Plan Name: Insurance Company 1

What This Plan Covers & What it Costs

Policy Period: 9/15/2010 - 9/14/2011
Coverage for: Individual | Plan Type: HMO

This is not a policy. You can get the policy at www.insurancecompany.com/HMO1500 or by calling 1-800-XXX-XXXX. A policy has more detail about how to use the plan and what you and your insurer must do. It also has more detail about your coverage and costs.

Important Questions	Answers	Why This Matters:
What is the premium?	$	The **premium** is the amount paid for health insurance. This is only an estimate based on information you've provided. After the insurer reviews your application, your actual premium may be higher or your application may be denied.
What is the overall deductible?	$	You must pay all the costs up to the **deductible** amount before this health insurance plan begins to pay for covered services you use. Check your policy to see when the **deductible** starts over (usually, but not always, January 1st). See the chart starting on page 2 for how much you pay for covered services after you meet the **deductible**.
Are there other deductibles for specific services?	Yes. $	You must pay all of the costs for these services up to the specific deductible amount before this plan begins to pay for these services.
Is there an out-of-pocket limit on my expenses?	Yes. $	The **out-of-pocket** limit is the most you could pay during a policy period for your share of the cost of covered services. This limit helps you plan for health care expenses.
What is not included in the out-of-pocket limit?		Even though you pay these expenses, they don't count toward the **out-of-pocket limit**. So, a longer list of expenses means you have less coverage.
Is there an overall annual limit on what the insurer pays?	Yes. $	This plan will pay for covered services only up to this limit during each policy period, even if your own need is greater. You're responsible for all expenses above this limit. The chart starting on page 2 describes *specific* coverage limits, such as limits on the number of office visits.
Does this plan use a network of providers?	Yes.	If you use an **in-network** doctor or other health care provider, this plan will pay some or all of the costs of covered services. Plans use the term **in-network, preferred,** or **participating** for providers in their network.
Do I need a referral to see a specialist?	Yes.	This plan will pay some or all of the costs to see a **specialist** for covered services but only if you have the plan's permission before you see the specialist.
Are there services this plan doesn't cover?	Yes.	Some of the services this plan doesn't cover are listed on page 3.

Questions: Call 1-800-XXX-XXXX or visit us at www.insurancecompany.com
If you aren't clear about any of the terms used in this form, see the Glossary at www.insuranceterms.gov.

FINAL (pg1 - YES), 11/16/10 1 of 4

Appendix C-2 Why This Matters language for "No" Answers

Health Plan Name: Insurance Company 1

What This Plan Covers & What it Costs

Policy Period: 9/15/2010 - 9/14/2011
Coverage for: Individual | Plan Type: HMO

This is not a policy. You can get the policy at www.insurancecompany.com/HMO1500 or by calling 1-800-XXX-XXXX. A policy has more detail about how to use the plan and what you and your insurer must do. It also has more detail about your coverage and costs.

Important Questions	Answers	Why This Matters:
What is the premium?	$	The premium is the amount paid for health insurance. This is only an estimate based on information you've provided. After the insurer reviews your application, your actual premium may be higher or your application may be denied.
What is the overall deductible?	$	See the chart starting on page 2 for your other costs for services this plan covers.
Are there other deductibles for specific services?	No.	Because you don't have to meet deductibles for specific services, this plan starts to cover costs sooner.
Is there an out-of-pocket limit on my expenses?	No.	There's no limit on how much you could pay during a policy period for your share of the cost of covered services.
What is not included in the out-of-pocket limit?	This plan has no out-of-pocket limit.	Not applicable because there's no out-of-pocket limit on your expenses.
Is there an overall annual limit on what the insurer pays?	No.	The chart starting on page 2 describes any limits on what the insurer will pay for specific covered services, such as office visits.
Does this plan use a network of providers?	No.	The providers you choose won't affect your costs.
Do I need a referral to see a specialist?	No.	You can see the specialist you choose without permission from this plan.
Are there services this plan doesn't cover?	No.	This plan also covers many common health care services listed on page 3.

Questions: Call 1-800-XXX-XXXX or visit us at www.insurancecompany.com
If you aren't clear about any of the terms used in this form, see the Glossary at www.insuranceterms.gov.

Appendix D Guide for Coverage Examples Calculations

BCBSF Individual PPO Plan | Breast Cancer - Plan Year 2 (2009) | DRAFT

	A	B	C
1	**Description of condition** (brief description of major services)		**Instructions to Insurers:** *Do not modify this tab. The numbers shown here roll up from the* **Scenario** *tab. Transfer this label to the Summary of Coverage exactly as shown here.*
2			
3	**Sample care costs:**		**Instructions for HHS:**
4	Office visits & procedures	$0	** HHS to provide this label exactly as they want it to appear on the Summary of Coverage.*
5	Radiology	$0	** HHS to reuse existing sample care cost categories unless a new category is required.*
6	Laboratory tests	$0	** HHS to specify no more than 11 sample care cost categories as space on the page with 12 point font dictates.*
7	Hospital charges	$0	** All of these costs roll up from the Scenario tab; HHS to confirm these totals match to the Scenario tab.*
8	Inpatient medical care	$0	
9	Outpatient surgery	$0	
10	Chemotherapy	$0	
11	Radiation therapy	$0	
12	Prostheses (wig)	$0	
13	Pharmacy	$0	
14	Mental health	$0	
15	**Total**	$0	** This total must match the total on the Scenario tab; HHS to confirm it matches before issuing to insurers.*
16			
17	**Assumptions**		
18	The following are assumptions that all health plan carriers make to calculate the scenario.		
19			
20	**Standard Assumptions**		
21	*These assumptions are standard across all scenarios. (HHS to apply these assumptions regardless of scenario.)*		
22	Costs do not include premiums.		
23	Condition was not an excluded as a pre-existing condition.		
24	There are no other medical expenses for any member covered under the plan.		
25	All care is in-network. No out-of-network charges or any other variation in Sample Care Costs.		
26	All services occur in same policy period.		
27	All prior authorizations were obtained.		
28	All services were deemed medically necessary.		
29	All costs (allowed amount, sample care costs, member costs) greater than $100 are rounded to the nearest hundred dollars.		
30	All costs (allowed amount, sample care costs, member costs) less than $100 are rounded to the nearest ten dollars.		
31	All medications are covered as generic equivalents if available.		
32	All care is in-network and considered first tier (or the tier associated with the lowest level of cost sharing), for those products that incorporate tiered provider networks.		
33	**Special Assumptions**		
34	*These assumptions are specific to this scenario only. (HHS to specify special assumptions.)*		
35	[HHS to supply any assumptions that are specific to this scenario]		

BCBSF Individual PPO Plan | Breast Cancer - Plan Year 1 (2008) | DRAFT

	A	B	C	D	E	F	G	H
1	**Medical Condition:**					***Condition Name***		
	Note: Services on this tab are listed individually for classification and pricing purposes to facilitate the population of the "Sample care costs" section. HHS specifies the Category in order to roll up costs into that category in the "Sample care costs" section so that those costs are uniform across all carriers and plans. However, some plans may classify that service under another category. The insurer should apply their cost sharing and benefit features for each policy in order to complete the "You pay" section, but must leave the "Sample care costs" section as is. Examples of cost sharing and benefit features include, but are not limited to: • Payment of services based on the location where they are provided (inpatient, outpatient, office, etc.) • Payment of items as prescription drugs vs. medical equipment ***Instructions to HHS for Completing the Columns:*** **Date of Service** - include Month/Day of service so insurers understand the order in which services are rendered. Do not include year. **Diagnosis Code** - include the ICD code for each service **CPT code** - include the CPT code for each service **Provider Type** - use one of the types listed on the "Provider Types" tab to classify each service by provider **Category** - use one of the categories listed on the "Sample Care Cost Categories" tab to classify each service so they roll up into the broader cost categories on the "Label and Assumptions" tab **Notes** - freeform field to include any special notes for that service							
2	**Allowed Amount** - include the total cost for each service that would be owed to providers that insurers will use to calculate cost-sharing							
3	**Date of Service**	**Diagnosis Code**	**CPT Code**	**Provider Type**	**Category**	**Notes**	**Allowed Amount**	
4	**Total**						0.00	*This amount must match the total first tab*
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
17								

	A	B
1	**Provider Type**	
2	The following are the provider types to use on the "Scenario" tab ~ "Provider Type" column to classify each service by provider type. This aids the insurers in applying benefits to each service.	
3		
4	**Provider Type**	**What providers are covered under this Provider Type and other notes:**
5	Primary	Primary Care Physician or non-Specialist
6	Specialist	Cardiology, Dermatology, Neurology, etc.
7	Alternative Provider	Chiropractor, Acupuncturist, etc.
8	Outpatient Facility	
9	Inpatient Facility	
10	Pharmacy Retail	
11	Pharmacy Mail Order	
12	Pharmacy Administered	All prescriptions reimburseable under a Pharmacy plan that are administered in a provider's office or hospital
13	Emergency Room	
14	Home Health	
15	Skilled Nursing Facility	
16	Ambulance	

Sample Care Cost Categories

The following are the sample care cost categories to use on the "Scenario" tab ~ "Category" column to classify each service so that they roll up to the same sample care cost categories in the Coverage Example label on the "Label and Assumptions" tab. This facilitates consistency between the

Category	What services are covered under this Category and other notes:
Office visits & procedures	Includes services by all physicians (primary care, specialist, etc.) and alternative providers (chiropractor, acupuncture, etc.)
First office visit	Applies to maternity scenario only; other scenarios would use "Office visits & procedures"
Anesthesia	
Chemotherapy	
Circumcision	
Emergency care	Includes emergency room facility charges, physician services, ambulance transportation
Home health care	
Hospital charges	Facility charges for inpatient/outpatient services; discharge management
Hospital charges (baby)	Applies to maternity scenario only; other scenarios would use "Hospital charges"
Hospital charges (mother)	Applies to maternity scenario only; other scenarios would use "Hospital charges"
Inpatient medical care	Services by physicians, surgeons, anesthesiologists, etc.
Laboratory tests	Includes blood work
Medical equipment & supplies	Includes durable medical equipment, orthotics, prosthetics
Mental health	
Outpatient surgery	Physician and facility charges
Pharmacy	Includes all prescription drugs (generic, brand/preferred, non-preferred) which are not administered in a hospital, physician's office or other facility
Radiation therapy	
Radiology	Includes radiology and imaging procedures, CT, MRI, Ultrasounds, x-rays
Rehabilitation services	Includes provision of treatment at any facility
Routine obstetric care	Applies to maternity scenario only; typically a bundled payment
Skilled nursing care	
Vaccines, other preventive	

Appendix E Uniform Glossary of Coverage and Medical Terms

Glossary of Health Insurance and Medical Terms

- This glossary has many commonly used terms, but it isn't a full list. These are not contract terms. Those can be found in your insurance policy or certificate. You can get a copy of the policy at [www.insurancecompany.com] or you may call [1-800-xxx-xxxx.]
- **Bold** text indicates a term defined in this Glossary.
- See page 4 for an example showing how deductibles, co-insurance and out-of-pocket limits work together in a real life situation.

Allowed Amount

Maximum amount on which payment is based for covered health care services. This may be called "eligible expense," "payment allowance" or "negotiated rate." If your **provider** charges more than the allowed amount, you may have to pay the difference. (See **Balance Billing**.)

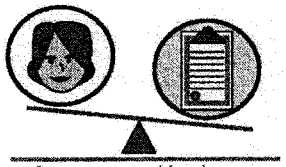
Appeal

A request for your health insurer or **plan** to review a decision or a **grievance** again.

Balance Billing

When a **provider** bills you for the difference between the provider's charge and the **allowed amount**. For example, if the provider's charge is $100 and the allowed amount is $70, the provider may bill you for the remaining $30. A **preferred provider** may ***not*** balance bill you.

Co-insurance



Your share of the costs of a covered health care service, calculated as a percent (for example, 20%) of the **allowed amount** for the service. You pay co-insurance ***plus*** any **deductibles** you owe. For example, if the **health insurance** or **plan's** allowed amount for an office visit is $100 and you've met your deductible, your co-insurance payment of 20% would be $20. The health insurance or plan pays the rest of the allowed amount.

(See page 4 for a detailed example.)

Complications of Pregnancy

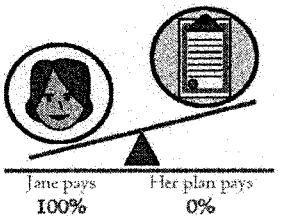
Conditions due to pregnancy, labor and delivery that require medical care to prevent serious harm to the health of the mother or the fetus. Morning sickness and a non-emergency caesarean section aren't complications of pregnancy.

OMB Control Numbers 1545-XXXX, 1210-XXXX, and 0938-XXXX (expires XX/XX/XXXX)

Co-payment

A fixed amount (for example, $15) you pay for a covered health care service, usually when you receive the service. The amount can vary by the type of covered health care service.

Deductible



The amount you owe for health care services your **health insurance** or **plan** covers before your health insurance or plan begins to pay. For example, if your deductible is $1000, your plan won't pay anything until you've met your $1000 deductible for covered health care services subject to the deductible. The deductible may not apply to all services.

(See page 4 for a detailed example.)

Durable Medical Equipment (DME)

Equipment and supplies ordered by a health care **provider** for everyday or extended use. Coverage for DME may include: oxygen equipment, wheelchairs, crutches or blood testing strips for diabetics.

Emergency Medical Condition

An illness, injury, symptom or condition so serious that a reasonable person would seek care right away to avoid severe harm.

Emergency Medical Transportation

Ambulance services for an **emergency medical condition**.

Emergency Room Care

Emergency services received in an emergency room.

Emergency Services

Evaluation of an **emergency medical condition** and treatment to keep the condition from getting worse.

Excluded Services

Health care services that your **health insurance** or **plan** doesn't pay for or cover.

Grievance
A complaint that you communicate to your health insurer or **plan**.

Habilitation Services
Health care services that help a person keep, learn or improve skills and functioning for daily living. Examples include therapy for a child who isn't walking or talking at the expected age. These services may include physical and occupational therapy, speech-language pathology and other services for people with disabilities in a variety of inpatient and/or outpatient settings.

Health Insurance
A contract that requires your health insurer to pay some or all of your health care costs in exchange for a **premium.**

Home Health Care
Health care services a person receives at home.

Hospice Services
Services to provide comfort and support for persons in the last stages of a terminal illness and their families.

Hospitalization
Care in a hospital that requires admission as an inpatient and usually requires an overnight stay. An overnight stay for observation could be outpatient care.

Hospital Outpatient Care
Care in a hospital that usually doesn't require an overnight stay.

In-network Co-insurance
The percent (for example, 20%) you pay of the **allowed amount** for covered health care services to providers who contract with your **health insurance** or **plan**. In-network co-insurance usually costs you less than **out-of-network co-insurance.**

In-network Co-payment
A fixed amount (for example, $15) you pay for covered health care services to providers who contract with your **health insurance** or **plan**. In-network co-payments usually are less than **out-of-network co-payments.**

Medically Necessary
Health care services or supplies needed to prevent, diagnose or treat an illness, injury, disease or its symptoms and that meet accepted standards of medicine.

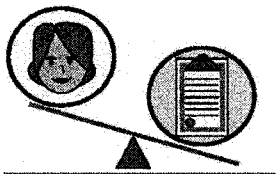
Network
The facilities, providers and suppliers your health insurer or **plan** has contracted with to provide health care services.

Non-Preferred Provider
A **provider** who doesn't have a contract with your health insurer or **plan** to provide services to you. You'll pay more to see a non-preferred provider. Check your policy to see if you can go to all providers who have contracted with your **health insurance** or plan, or if your health insurance or plan has a "tiered" **network** and you must pay extra to see some providers.

Out-of-network Co-insurance
The percent (for example, 40%) you pay of the **allowed amount** for covered health care services to providers who do ***not*** contract with your **health insurance** or **plan**. Out-of-network co-insurance usually costs you more than **in-network co-insurance.**

Out-of-network Co-payment
A fixed amount (for example, $30) you pay for covered health care services from providers who do ***not*** contract with your **health insurance** or **plan**. Out-of-network co-payments usually are more than **in-network co-payments.**

Out-of-Pocket Limit
The most you pay during a policy period (usually a year) before your **health insurance** or **plan** begins to pay 100% of the **allowed amount**. This limit never includes your **premium**, balance-billed charges or health care your health insurance or plan doesn't cover. Some health insurance or plans don't count all of your co-payments, deductibles, **co-insurance** payments, out-of-network payments or other expenses toward this limit.



(See page 4 for a detailed example.)

Physician Services
Health care services a licensed medical physician (M.D. – Medical Doctor or D.O. – Doctor of Osteopathic Medicine) provides or coordinates.

Plan
A benefit your employer, union or other group sponsor provides to you to pay for your health care services.

Preauthorization
A decision by your health insurer or **plan** that a health care service, treatment plan, **prescription drug** or **durable medical equipment** is **medically necessary**. Sometimes called prior authorization, prior approval or precertification. Your **health insurance** or plan may require preauthorization for certain services before you receive them, except in an emergency. Preauthorization isn't a promise your health insurance or plan will cover the cost.

Preferred Provider
A **provider** who has a contract with your health insurer or **plan** to provide services to you at a discount. Check your policy to see if you can see all preferred providers or if your **health insurance** or plan has a "tiered" **network** and you must pay extra to see some providers. Your health insurance or plan may have preferred providers who are also "participating" providers. Participating providers also contract with your health insurer or plan, but the discount may not be as great, and you may have to pay more.

Premium
The amount that must be paid for your **health insurance** or **plan**. You and/or your employer usually pay it monthly, quarterly or yearly.

Prescription Drug Coverage
Health insurance or **plan** that helps pay for **prescription drugs** and medications.

Prescription Drugs
Drugs and medications that by law require a prescription.

Primary Care Physician
A physician (M.D. – Medical Doctor or D.O. – Doctor of Osteopathic Medicine) who directly provides or coordinates a range of health care services for a patient.

Primary Care Provider
A physician (M.D. – Medical Doctor or D.O. – Doctor of Osteopathic Medicine), nurse practitioner, clinical nurse specialist or physician assistant, as allowed under state law, who provides, coordinates or helps a patient access a range of health care services.

Provider
A physician (M.D. – Medical Doctor or D.O. – Doctor of Osteopathic Medicine), health care professional or health care facility licensed, certified or accredited as required by state law.

Reconstructive Surgery
Surgery and follow-up treatment needed to correct or improve a part of the body because of birth defects, accidents, injuries or medical conditions.

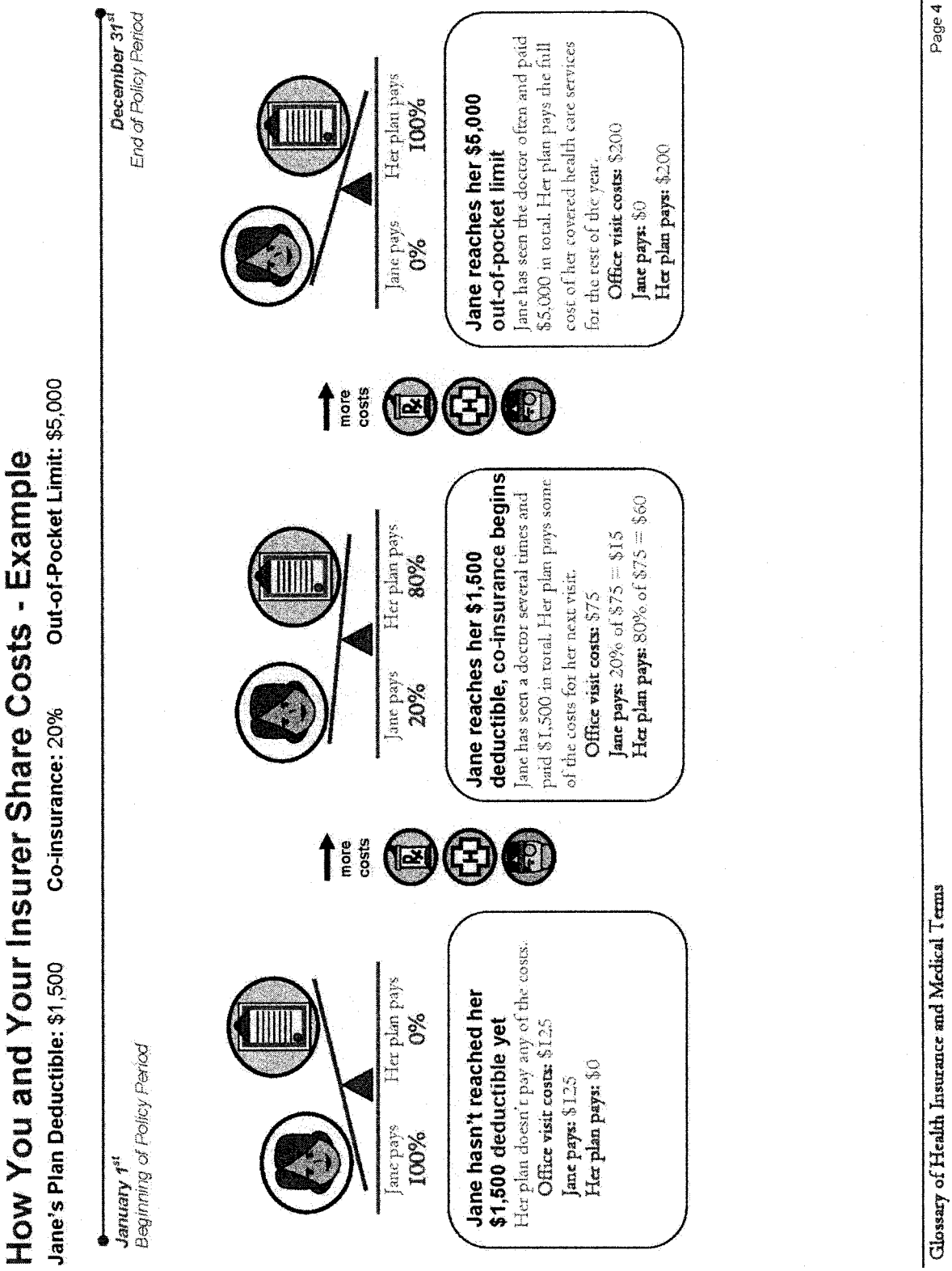
Rehabilitation Services
Health care services that help a person keep, get back or improve skills and functioning for daily living that have been lost or impaired because a person was sick, hurt or disabled. These services may include physical and occupational therapy, speech-language pathology and psychiatric rehabilitation services in a variety of inpatient and/or outpatient settings.

Skilled Nursing Care
Services from licensed nurses in your own home or in a nursing home. Skilled care services are from technicians and therapists in your own home or in a nursing home.

Specialist
A physician specialist focuses on a specific area of medicine or a group of patients to diagnose, manage, prevent or treat certain types of symptoms and conditions. A non-physician specialist is a **provider** who has more training in a specific area of health care.

UCR (Usual, Customary and Reasonable)
The amount paid for a medical service in a geographic area based on what providers in the area usually charge for the same or similar medical service. The UCR amount sometimes is used to determine the **allowed amount**.

Urgent Care
Care for an illness, injury or condition serious enough that a reasonable person would seek care right away, but not so severe as to require **emergency room care**.



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H.R. 2553/P.L. 112–27
Airport and Airway Extension Act of 2011, Part IV (Aug. 5, 2011; 125 Stat. 270)

H.R. 2715/P.L. 112–28
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